TORTS & DAMAGES

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1 Batangas Laguna Tayabas Bus Company & Armando Pon v. IAC, The Heirs of Paz Vda. De Pamfilo, The Heirs Of Norma Neri, and Baylon Sales And Nena Vda. De Rosales| Paras
G.R. Nos. 74387-90 November 14, 1988

FACTS

- A bus owned by petitioner BLTB and driven by petitioner Pon collided with a bus owned by Superlines, when the former tried to overtake a car just as the Superlines' Bus was coming from the opposite direction.
- The collision resulted in the death of Rosales, Pamfilo and Neri, as well as injuries to the wife of Rosales, and Sales. These people were passengers of the petitioner's bus.
- Rosales and Sales, as well as the surviving heirs of Pamfilo, Rosales and Neri instituted separate cases ih the CFI against BLTB and Superlines, together with their drivers. Criminal cases against the drivers were also filed in a different CFI.
- CFI ruled that only BLTB and Pon should be liable, and they were ordered jointly and severally to pay damages. On appeal, the IAC affirmed the CFI's ruling.
- Petitioners contended that the CFI erred in ruling that the actions of private respondents are based on culpa contractual, since if it were private respondents' intention to file an action based on culap contractual, they could have done so by merely impleading BLTB and Pon. Instead the respondents filed an action against all defendants based on culpa aquiliana or tort.

ISSUES & ARGUMENTS

WON erred in ruling that the actions of private respondents are based on culpa contractual

HOLDING & RATIO DECIDENDI

IAC anchored its decision on both culpa contractual and culpa aquiliana

- The proximate cause of the death and injuries of the passengers was the negligence of the bus driver Pon, who recklessly overtook a car despite knowing that that the bend of highway he was negotiating on had a continuous yellow line signifying a "no-overtaking" zone.
- It is presumed that a a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.
- In the instant case, the driver of the BLTB bus failed to act with diligence demanded by the circumstances. Pon should have remembered that when a motor vehicle is approaching or rounding a curve there is special necessity for keeping to the right side of the road and the driver has not the right to drive on the left hand side relying upon having time to turn to the right if a car is approaching from the opposite direction comes into view.
- As to the liability of the petitioners, Pon is primarily liable for his negligence in driving recklessly the truck owned by BLTB. The liability of the BLTB itself is also primary, direct and immediate in view of the fact that the deat of or injuries to its passengers was through the negligence of its employee.
- The common carrier's liability for the death of or injuries to its passengers is based on its contractual obligation to carry its passengers safely to their destination. They are presumed to have acted negligently unless they prove that they have observed extaordinary diligence. In the case at bar, the appellants acted negligently.
- BLTB is also solidarly liable with its driver even though the liability of the driver springs from quasi delict while that of the bus company from contract.

IAC decision affirmed. Respondents win.

SATURDAY ALCISO

2 Aboitiz v CA | Regalado
G.R. No. 84458 November 6, 1989 | 179 SCRA 95

FACTS

- On May 11, 1975, Anacleto Viana boarded the vessel M/V Antonia, owned by Aboitiz Shipping Corp. (Aboitiz), at the port at San Jose, Occidental Mindoro, bound for Manila, having purchased a ticket (No. 117392) in the sum of P23.10. On May 12, 1975, said vessel arrived at Pier 4, North Harbor, Manila, and the passengers therein disembarked, a gangplank having been provided connecting the side of the vessel to the pier. Instead of using said gangplank Anacleto Viana disembarked on the third deck which was on the level with the pier. After said vessel had landed, the Pioneer Stevedoring Corporation (Pioneer) took over the exclusive control of the cargoes loaded on said vessel pursuant to the Memorandum of Agreement dated July 26, 1975 between the third party Pioneer and Aboitiz.
- The crane owned by Pioneer and operated by its crane operator Alejo Figueroa was placed alongside the vessel and one (1) hour after the passengers of said vessel had disembarked, it started operation by unloading the cargoes from said vessel. While the crane was being operated, Anacleto Viana who had already disembarked from said vessel obviously remembering that some of his cargoes were still loaded in the vessel, went back to the vessel, and it was while he was pointing to the crew of the said vessel to the place where his cargoes were loaded that the crane hit him, pinning him between the side of the vessel and the crane. He was thereafter brought to the hospital where he died three (3) days thereafter, on May 15, 1975. For his hospitalization, medical, burial and other miscellaneous expenses, Anacleto's wife, herein plaintiff, spent a total of P9,800.00. Anacleto Viana who was only forty (40) years old when he met said fateful accident was in good health. His average annual income as a farmer or a farm supervisor was 400 cavans of palay annually. His parents, herein plaintiffs Antonio and Gorgonia Viana, prior to his death had been recipient of twenty (20) cavans of palay as support or P120.00 monthly. Because of Anacleto's death, plaintiffs suffered mental anguish and extreme worry or moral damages. For the filing of the instant case, they had to hire a lawyer for an agreed fee of ten thousand (P10,000.00) pesos.
- The Vianas filed a complaint for damages against ABoitiz for breach of contract of carriage. And in a decision rendered by the trial court, Aboitiz was made to pay damages incurred. Upon appeal, the Court of Appeals affirmed the trial court decision except as to the amount of damages.

ISSUES & ARGUMENTS

- **W/N Aboitiz is liable for damages incurred the Vianas?**
  - **Petitioner's Argument:** Aboitiz contends that since one (1) hour had already elapsed from the time Anacleto Viana disembarked from the vessel and that he was given more than ample opportunity to unload his cargoes prior to the operation of the crane, his presence on the vessel was no longer reasonable and he consequently ceased to be a passenger. Corollarily, it insists that the doctrine in La Mallorca vs. Court of Appeals, et al. is not applicable to the case at bar.

HOLDING & RATIO DECIDENDI

YES. The rule is that the relation of carrier and passenger continues until the passenger has been landed at the port of destination and has left the vessel owner's dock or premises. All persons who remain on the premises a reasonable time after leaving the conveyance are to be deemed passengers, and what is a reasonable time or a reasonable delay within this rule is to be determined from all the circumstances, and includes a reasonable time to see after his baggage and prepare for his departure. The carrier-passenger relationship is not terminated merely by the fact that the person transported has been carried to his destination if, for example, such person remains in the carrier's premises to claim his baggage.

- That reasonableness of time should be made to depend on the attending circumstances of the case, such as the kind of common carrier, the nature of its business, the customs of the place, and so forth, and therefore precludes a consideration of the time element per se without taking into account such other factors. It is thus of no moment whether in the cited case of La Mallorca there was no appreciable interregnum for the passenger therein to leave the carrier's premises whereas in the case at bar, an interval of one (1) hour had elapsed before the victim met the accident. The primary factor to be considered is the existence of a reasonable cause as will justify the presence of the victim on or near the petitioner's vessel. We believe there exists such a justifiable cause.
- Under the law, common carriers are, from the nature of their business and for reasons of public policy, bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. More particularly, a common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances. Thus, where a passenger dies or is injured, the common carrier is presumed to have been at fault or to have acted negligently. This gives rise to an action for breach of contract of carriage where all that is required of plaintiff is to prove the existence of the contract of carriage and its non-performance by the carrier, that is, the failure of the carrier to carry the passenger safely to his destination, which, in the instant case, necessarily includes its failure to safeguard its passenger with extraordinary diligence while such relation subsists.

TEL VIRTUDEZ

3 Dangwa Transportation Co., Inc. And Theodore Lardizabal vs. CA, Heirs of the late Pedrito Cudiamat | Regalado
G.R. No. 95582, October 7, 1991 |

FACTS

- Lardizabal was driving a passenger bus belonging to Dangwa Transportation. There was an accident and its passenger Cudiamat died as a consequence.
- There was a difference of opinion in the RTC and the CA:

  RTC – Cudiamat was negligent for trying to board a moving bus while holding an umbrella with his other hand. However, for equity reasons, an amount of Php 10,000 was awarded to the heirs. This is also because the company earlier offered a settlement anyway, and there was a lack of diligence of the company when it left the doors open (since no one would even try to come in a moving bus with its doors closed.

  CA – Cudiamat tried to get on the bus while it was stationary (in between bunkhouse 53 & 54). Cudiamat made a signal that he wanted to board the bus. When he was at the platform (which was wet and slippery because of a drizzle, and was closing his umbrella, the bus driver suddenly jerked forward and stepped on the accelerator, even before the victim was able to secure his seat. He was run over by the rear tires of the bus. He died after the bus did not immediately deliver him to a hospital and instead dropped off the other passengers and a refrigerator. Award of damages = Php 30k + 20k + 280k.

- The SC believed the version of the CA, basing on testimony and physical evidence.

ISSUES & ARGUMENTS

W/N the award of damages was proper? (Primary, torts related)

HOLDING & RATIO DECIDENDI

No. The damages awarded are to be reduced.

- With respect to the award of damages, an oversight was, however, committed by respondent Court of Appeals in computing the actual damages based on the gross income of the victim.

- The rule is that the amount recoverable by the heirs of a victim of a tort is not the loss of the entire earnings, but rather the loss of that portion of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earnings, are to be considered, that is, the total of the earnings less expenses necessary in the creation of such earnings or income and minus living and other incidental expenses.

Other issues not directly related to torts, but may be asked in recitation:

- in an action based on a contract of carriage, the court need not make an express finding of fault or negligence on the part of the carrier in order to hold it responsible to pay the damages sought by the passenger. By contract of carriage, the carrier assumes the express obligation to transport the passenger to his destination safely and observe extraordinary diligence with a due regard for all the circumstances, and any injury that might be suffered by the passenger is right away attributable to the fault or negligence of the carrier.
- This is an exception to the general rule that negligence must be proved, and it is therefore incumbent upon the carrier to prove that it has exercised extraordinary diligence as prescribed in Articles 1733 and 1755 of the Civil Code.

- It is the duty of common carriers of passengers, including common carriers by railroad train, streetcar, or motorbus, to stop their conveyances a reasonable length of time in order to afford passengers an opportunity to board and enter, and they are liable for injuries suffered by boarding passengers resulting from the sudden starting up or jerking of their conveyances while they are doing so.

- It is not negligence *per se*, or as a matter of law, for one attempt to board a train or streetcar which is moving slowly. An ordinarily prudent person would have made the attempt board the moving conveyance under the same or similar circumstances. The fact that passengers board and alight from slowly moving vehicle is a matter of common experience both the driver and conductor in this case could not have been unaware of such an ordinary practice.

- The victim herein, by stepping and standing on the platform of the bus, is already considered a passenger and is entitled all the rights and protection pertaining to such a contractual relation. Hence, it has been held that the duty which the carrier passengers owes to its patrons extends to persons boarding cars as well as to those alighting therefrom.

- Common carriers, from the nature of their business and reasons of public policy, are bound to observe extraordinary diligence for the safety of the passengers transported by the according to all the circumstances of each case. **16** A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence very cautious persons, with a due regard for all the circumstances

4 Atienza v COMELEC
December 20, 1994|239 SCRA 298

FACTS

Antonia Sia was elected mayor of Madrilejos, Cebu in the elections of 1988 over Lou Atienza by 126 votes. Atienza filed an election protest in the RTC and it was held that Atienza was, in fact, the real winner of the elections. RTC ordered Sia to reimburse Atienza P300K representing Atienza's expenses for the election protest.

Sia appealed the case to the COMELEC. COMELEC dismissed the case because the principal issue (that of the election protest itself) became moot and academic since the May 1992 synchronized elections had come. There was, however, an issue regarding the award of monetary damages. Sia alleges that the appeal could not be simply dismissed because it would amount to the affirmance of the monetary judgment without considering the merits of the appeal.

COMELEC resolved the issue and reversed their decision. There is no need for Sia to pay P300K anymore.

ISSUES & ARGUMENTS

Should Sia pay damages amounting to P300?

HOLDING & RATIO DECIDENDI

NO.

For actual damages to be recovered, Article 2199 of the Civil Code provides that one is entitled to an adequate compensation for pecuniary loss suffered by him, it should be provided for by law or stipulation. In this case, it is impossible for a party in an election protest to recover actual or compensatory damage in the absence of a law expressly provide in for situations allowing for the recovery of the same.

Most election protest cases where the monetary claim does not hinge on either a contract or quasi-contract or a tortuous act or omission, the claimant must be able to point out to specific provision of law authorizing the money claim for election protest expenses against the losing party.

In the earlier Election Codes, there has been a provision regarding the bonds or cash deposit required. This has been removed from the current Omnibus Election Code. Had it been retained, that would have been the basis of the actual and compensatory damages. Although there is a provision on deposit requirements for election protests in the COMELEC Rules of Procedure, these are in the nature of filing fees, not damages. These filing fees refer to the expenses incurred by the COMELEC in the course of administering election cases and are species different from the bond or cash deposit required by the previous election laws.

5 People vs. Bayotas

FACTS

Rogelio Bayotas y Cordova was charged with Rape and eventually convicted thereof. Pending appeal of his conviction, Bayotas died in the National Bilibid Hospital due to cardio respiratory arrest. Consequently, the Supreme Court in its Resolution dismissed the criminal aspect of the appeal. However, it required the Solicitor General to file its comment with regard to Bayotas' civil liability arising from his commission of the offense charged. In his comment, the Solicitor General expressed his view that the death of accused-appellant did not extinguish his civil liability as a result of his commission of the offense charged. The Solicitor General, relying on the case of *People v. Sendaydiego* insists that the appeal should still be resolved for the purpose of reviewing his conviction by the lower court on which the civil liability is based. Counsel for the accused-appellant, on the other hand, opposed the view of the Solicitor General arguing that the death of the accused while judgment of conviction is pending appeal extinguishes both his criminal and civil penalties. In support of his position, said counsel invoked the ruling of the Court of Appeals in *People v. Castillo and Ocfemia* which held that the civil obligation in a criminal case takes root in the criminal liability and, therefore, civil liability is extinguished if accused should die before final judgment is rendered.

ISSUE & ARGUMENTS

Whether the death of the accused pending appeal of his conviction extinguish his civil liability.

HOLDING & RATIO DECIDENDI

Yes. Article 89 of the Revised Penal Code is the controlling statute. It reads, in part: *Art. 89. How criminal liability is totally extinguished. — Criminal liability is totally extinguished: (1.) By the death of the convict, as to the personal penalties; and as to the pecuniary penalties liability therefor is extinguished only when the death of the offender occurs before final judgment;* The legal precept contained in this Article is lifted from Article 132 of the Spanish El Codigo Penal de 1870. Accordingly, SC rule: if the private offended party, upon extinction of the civil liability *ex delicto* desires to recover damages from the *same act or omission complained of,* he must subject to Section 1, Rule 111 (1985 Rules on Criminal Procedure as amended) file a separate civil action, this time predicated not on the felony previously charged but on other sources of obligation. The source of obligation upon which the separate civil action is premised determines against whom the same shall be enforced. If the same act or omission complained of also arises from *quasi-delict* or may, by provision of law, result in an injury to person or property (real or personal), the separate civil action must be filed against the executor or administrator of the estate of the accused pursuant to Sec. 1, Rule 87 of the Rules of Court: Sec. 1. *Actions which may and which may not be brought against executor or administrator.* — No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and *actions to recover damages for an injury to person or property, real or personal,* may be commenced against him.

This is in consonance with our ruling in Belamala where we held that, in recovering damages for injury to persons thru an independent civil action based on Article 33 of the Civil Code, the same must be filed against the executor or administrator of the estate of deceased accused and not against the estate under Sec. 5, Rule 86 because this rule explicitly limits the claim to those for funeral expenses, expenses for the last sickness of the decedent, judgment for money and claims arising from contract, express or implied. Contractual money claims, we stressed, refers only to *purely personal obligations* other than those which have their source in delict or tort.

Conversely, if the same act or omission complained of also arises from contract, the separate civil action must be filed against the estate of the accused, pursuant to Sec. 5, Rule 86 of the Rules of Court.

Summary of Rules:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and *only* the civil liability *directly* arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. [19] Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

(a) Law (b) Contracts (c) Quasi-contracts (d) . . . (e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.
4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 [21] of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription. [22]

Applying this set of rules to the case at bench, SC held that the death of appellant Bayotas extinguished his criminal liability and the civil liability based solely on the act complained of, *i.e.*, rape. Consequently, the appeal is hereby dismissed without qualification.

JOY ADRANEDA

6 Elcano vs. Hill | Barredo
G.R. No. L-24803, May 26, 1977| 77 SCRA 98

FACTS

- Reginald Hill was a married minor living and getting subsistence from his father, co-defendant Marvin. He killed Agapito Elcano, son of petitioners, for which he was criminally prosecuted. However, he was acquitted on the ground that his act was not criminal because of "lack of intent to kill, coupled with mistake."
- Subsequently, petitioners filed a civil action for recovery of damages against defendants, which the latter countered by a motion to dismiss. Trial court

ISSUES & ARGUMENTS

- **Whether the action for recovery of damages against Reginald and Marvin Hill is barred by res judicata.**
- **Whether there is a cause of action against Reginald's father, Marvin. Respondents:** Marvin Hill is relieved as guardian of Reginald through emancipation by marriage. Hence the Elcanos could not claim against Marvin Hill.

HOLDING & RATIO DECIDENDI

The acquittal of Reginald Hill in the criminal case has not extinguished his liability for *quasi-delict*, hence that acquittal is not a bar to the instant action against him.

- There is need for a reiteration and further clarification of the dual character, criminal and civil, of fault or negligence as a source of obligation, which was firmly established in this jurisdiction in *Barredo vs. Garcia* (73 Phil. 607).
- In this jurisdiction, the separate individuality of a *cuasi-delito* or *culpa aquiliana*, under the Civil Code has been fully and clearly recognized, even with regard to a negligent act for which the wrongdoer could have been prosecuted and convicted in a criminal case and for which, after such a conviction, he could have been sued for civil liability arising from his crime. (p. 617, 73 Phil.)
- Notably, Article 2177 of the New Civil Code provides that: "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."
- Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, if he is actually charged also criminally, to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary. In other words, the extinction of civil liability referred to in Par. (e) of Section 3, Rule 111, refers exclusively to civil liability founded on Article 100 of the Revised Penal Code, whereas the civil liability for the same act considered as a *quasi-delict* only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused.

Marvin Hill vicariously liable. However, since Reginald has come of age, as a matter of equity, the former's liability is now merely subsidiary.

- Under Art. 2180, the father and in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company. In the case at bar, Reginald, although married, was living with his father and getting subsistence from him at the time of the killing.
- The joint and solidary liability of parents with their offending children is in view of the parental obligation to supervise minor children in order to prevent damage to third persons. On the other hand, the clear implication of Art. 399, in providing that a minor emancipated by marriage may not sue or be sued without the assistance of the parents is that such emancipation does not carry with it freedom to enter into transactions or do not any act that can give rise to judicial litigation.

Order appealed from REVERSED. Trial court ordered to proceed in accordance with the foregoing opinion.

DANI BOLONG

7 DMPI Employees vs. Velez Metal-NAFLU | PARDO, J.
G.R. No. 129282, November 29, 2001

FACTS

An information for estafa was filed against Carmen Mandawe for alleged failure to account to respondent Eriberta Villegas the amount of P608,532.46.
Respondent Villegas entrusted this amount to Carmen Mandawe, an employee of petitioner DMPI-ECCI, for deposit with the teller of petitioner.
Subsequently, on March 29, 1994, respondent Eriberta Villegas filed with the Regional Trial Court, a complaint against Carmen Mandawe and petitioner DMPI-ECCI for a sum of money and damages with preliminary attachment arising out of the same transaction.

In time, petitioner sought the dismissal of the civil case on the ground that there is a pending criminal case in RTC Branch 37, arising from the same facts,

Trial court issued an order dismissing the case. However upon respondent's motion for reconsideration, the order of dismissal was recalled On Feb. 21 1997.

ISSUE

Whether or not the civil case could proceed independently of the criminal case for estafa without the necessary reservation exercised by the party
HOLDING & RATIO DECIDENDI

YES

- As a general rule, an offense causes two (2) classes of injuries. The first is the social injury produced by the criminal act which is sought to be repaired thru the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime which injury is sought to be compensated through indemnity which is civil in nature.

- Thus, "every person criminally liable for a felony is also civilly liable." This is the law governing the recovery of civil liability arising from the commission of an offense.

- Civil liability includes restitution, reparation for damage caused, and indemnification of consequential damages

- The offended party may prove the civil liability of an accused arising from the commission of the offense in the criminal case since the civil action is either deemed instituted with the criminal action or is separately instituted.

- Rule 111, Section 1 of the Revised Rules of Criminal Procedure, which became effective on December 1, 2000, provides that:

  "(a) 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."

- Rule 111, Section 2 further provides that —

  "After the criminal action has been commenced, *the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.*"

- However, with respect to civil actions for recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code arising from the same act or omission, the rule has been changed. Under the present rule, only the civil liability arising from the offense charged is deemed instituted with the criminal action unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.[17]

- There is no more need for a reservation of the right to file the independent civil actions under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines. "The reservation and waiver referred to refers only to the civil action for the recovery of the civil liability arising from the offense charged. This does not include recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission which may be prosecuted separately even without a reservation.

- The changes in the Revised Rules on Criminal Procedure pertaining to independent civil actions which became effective on December 1, 2000 are applicable to this case.

- Procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage. There are no vested rights in the rules of procedure. Thus, Civil Case No. CV-94-214, an independent civil action for damages on account of the fraud committed against respondent Villegas under Article 33 of the Civil Code, may proceed independently even if there was no reservation as to its filing.

8 Roy Padilla, Filomeno Galdones, Ismael Gonzalgo And Jose Farley Bedenia Vs. CA| GUTIERREZ, JR., J.
G.R. No. L-39999 May 31, 1984| 129 SCRA 558

FACTS

- Petitioner Padilla was the Mayor of Panganiban, CamNorte, while the other petitioners were policemen, who did a clearing operation of the public market by virtue of the order of the Mayor.
- In this operation, PR Antonio Vergara and his family's stall (Pub Market Bldg 3) was forcibly opened, cleared of its content and demolished by ax, crowbar and hammers.
    - Petitioner's defense: Vergara was given (prior notice) 72 hrs to vacate.
    - Vergara's: Petitioners took they advantage of their positions; must be charged the with grave coercion; there was evident premeditation.
- RTC: Petitioners are guilty of grave coercion, to be punished 5mos &1day imprisonment, and solidarily fined 30K for moral damages, 10K actual and 10K exemplary.
- CA: acquitted, but solidarily liable for actual damages of P9,600.
- MR denied. Petitioners now appeal claiming that they are not liable for damages by virtue of the acquittal.

ISSUES & ARGUMENTS

W/N Petitioners are liable still for civil damages despite acquittal of the CA?
Defense of Petitioner: the civil liability which is included in the criminal action is that arising from and as a consequence of the criminal act, and the defendant was acquitted in the criminal case, (no civil liability arising from the criminal case), no civil liability arising from the criminal charge could be imposed upon him.

HOLDING & RATIO DECIDENDI

PETITIONERS ARE LIABLE TO PAY DAMAGES.

- First, they were acquitted due to REASONABLE DOUBT. Grave coercion is committed if force upon the person is applied, and not force upon things as in this case. The CA held that they should've been charged with threats or malicious mischief. Since, these offenses were not alleged in the complaint, Petitioners cannot be prosecuted for it.
- HOWEVER, the clearing and demolition was not denied. As a result, Vergara indeed suffered damages pertaining to: cost of stall construction (1300), value furniture and equipment(300), value of goods seized(8K), amounting to P9600. Under the law, petitioners are liable.
    - RPC 100: every person criminally liable is civilly liable
    - 2176: damages due under quasi-delict, limited though by 2177: from recovering twice from the same act.
    - ROC Rule 111, Sec 2 last paragraph:
        - **Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil action might arise did not exist.** In other cases, the person entitled to the civil action may institute it in the Jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damage suffered.
    - Art 29, NCC:
        - 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.
- Facts support existence of damage; the extinction of Petitioner's criminal liability (acquittal) did not carry with it the extinction of their civil liability.
- Application of Art 29: action need not be filed in a separate civil action all the time, (as in this case) where fact of injury, its commission and result were already established in the criminal proceeding. Since by preponderance of evidence, civil liability was proven to exist, indemnity is due in favor of Vergara. A separate action will simply delay relief due to Vergara.

Petition DENIED. CA AFFIRMED.

9 Philippine Rabbit Bus Lines, Inc. vs People of the Philippines | Panganiban, J. G.R. No. 147703, April 24, 2004 |

FACTS

- "On July 27, 1994, accused [Napoleon Roman y Macadangdang] was found guilty and convicted of the crime of reckless imprudence resulting to triple homicide, multiple physical injuries and damage to property and was sentenced to suffer the penalty of four (4) years, nine (9) months and eleven (11) days to six (6) years, and to pay damages several people.
- "The court further ruled that [petitioner], in the event of the insolvency of accused, shall be liable for the civil liabilities of the accused. Evidently, the judgment against accused had become final and executory.
- "Admittedly, accused had jumped bail and remained at-large. It is worth mention[ing] that Section 8, Rule 124 of the Rules of Court authorizes the dismissal of appeal when appellant jumps bail. Counsel for accused, also admittedly hired and provided by [petitioner], filed a notice of appeal which was denied by the trial court. We affirmed the denial of the notice of appeal filed in behalf of accused.
- "Simultaneously, on August 6, 1994, [petitioner] filed its notice of appeal from the judgment of the trial court. On April 29, 1997, the trial court gave due course to [petitioner's] notice of appeal. On December 8, 1998, [petitioner] filed its brief. On December 9, 1998, the Office of the Solicitor General received [a] copy of [petitioner's] brief. On January 8, 1999, the OSG moved to be excused from filing [respondents'] brief on the ground that the OSG's authority to represent People is confined to criminal cases on appeal. The motion was however denied per Our resolution of May 31, 1999. On March 2, 1999, [respondent]/private prosecutor filed the instant motion to dismiss."[6] (Citations omitted)
- The CA ruled that the institution of a criminal case implied the institution also of the civil action arising from the offense. Thus, once determined in the criminal case against the accused-employee, the employer's subsidiary civil liability as set forth in Article 103 of the Revised Penal Code becomes conclusive and enforceable.
- The appellate court further held that to allow an employer to dispute independently the civil liability fixed in the criminal case against the accused-employee would be to amend, nullify or defeat a final judgment. Since the notice of appeal filed by the accused had already been dismissed by the CA, then the judgment of conviction and the award of civil liability became final and executory. Included in the civil liability of the accused was the employer's subsidiary liability. Hence, this Petition.

ISSUES & ARGUMENTS

W/N an employer, who dutifully participated in the defense of its accused-employee, may appeal the judgment of conviction independently of the accused..

HOLDING & RATIO DECIDENDI

The Petition has no merit.

When the accused-employee absconds or jumps bail, the judgment meted out becomes final and executory. The employer cannot defeat the finality of the judgment by filing a notice of appeal on its own behalf in the guise of asking for a review of its subsidiary civil liability. Both the primary civil liability of the accused-employee and the subsidiary civil liability of the employer are carried in one single decision that has become final and executory.

Article 102 of the Revised Penal Code states the subsidiary civil liabilities of innkeepers, as follows:

> "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 regulation shall have been committed by them or their employees.
>
> "Innkeepers are also subsidiary liable for restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit 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."

Moreover, the foregoing subsidiary liability applies to employers, according to Article 103 which reads:

> "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."

Having laid all these basic rules and principles, we now address the main issue raised by petitioner.

At the outset, we must explain that the 2000 Rules of Criminal Procedure has clarified what civil actions are deemed instituted in a criminal prosecution.

Section 1 of Rule 111 of the current Rules of Criminal Procedure provides:

> "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.
>
> "x x x x x x x x x"

Only the civil liability of the accused arising from the crime charged is deemed impliedly instituted in a criminal action; that is, unless the offended party waives the civil action, reserves the right to institute it separately, or institutes it prior to the criminal action.[18] Hence, the subsidiary civil liability of the employer under Article 103 of the Revised Penal Code may be enforced by execution on the basis of the judgment of conviction meted out to the employee.[19]

It is clear that the 2000 Rules deleted the requirement of reserving independent civil actions and allowed these to proceed separately from criminal actions. Thus, the civil actions referred to in Articles 32,[20] 33,[21] 34[22] and 2176[23] of the Civil Code shall remain "separate, distinct and independent" of any criminal prosecution based on the same act. Here are some direct consequences of such revision and omission:

> 1. The right to bring the foregoing actions based on the Civil Code need not be reserved in the criminal prosecution, since they are not deemed included therein.
> 2. The institution or the waiver of the right to file a separate civil action arising from the crime charged does not extinguish the right to bring such action.
> 3. The only limitation is that the offended party cannot recover more than once for the same act or omission.[24]

What is deemed instituted in every criminal prosecution is the civil liability arising from the crime or delict per se (civil liability *ex delicto*), but not those liabilities arising from quasi-delicts, contracts or quasi-contracts. In fact, even if a civil action is filed separately, the *ex delicto* civil liability in the criminal prosecution remains, and the offended party may – subject to the control of the prosecutor – still intervene in the criminal action, in order to protect the remaining civil interest therein.[25]

This discussion is completely in accord with the Revised Penal Code, which states that "[e]very person criminally liable for a felony is also civilly liable."[26]

Petitioner argues that, as an employer, it is considered a party to the criminal case and is conclusively bound by the outcome thereof. Consequently, petitioner must be accorded the right to pursue the case to its logical conclusion – including the appeal.

The argument has no merit. Undisputedly, petitioner is not a direct party to the criminal case, which was filed solely against Napoleon M. Roman, its employee.

The cases dealing with the subsidiary liability of employers uniformly declare that, strictly speaking, they are not parties to the criminal cases instituted against their employees.[28] Although in substance and in effect, they have an interest therein, this fact should be viewed in the light of their subsidiary liability. While they may assist their employees to the extent of supplying the latter's lawyers, as in the present case, the former cannot act independently on their own behalf, but can only defend the accused.

Moreover, within the meaning of the principles governing the prevailing criminal procedure, the accused impliedly withdrew his appeal by jumping bail and thereby made the judgment of the court below final.[35] Having been a fugitive from justice for a long period of time, he is deemed to have waived his right to appeal. Thus, his conviction is now final and executory. The Court in *People v. Ang Gioc*[36] ruled:

> "There are certain fundamental rights which cannot be waived even by the accused himself, but the right of appeal is not one of them. This right is granted solely for the benefit of the accused. He may avail of it or not, as he pleases. He may waive it either expressly or by implication. When the accused flees after the case has been submitted to the court for decision, he will be deemed to have waived his right to appeal from the judgment rendered against him. X x x."[37]

By fleeing, the herein accused exhibited contempt of the authority of the court and placed himself in a position to speculate on his chances for a reversal. In the process, he kept himself out of the reach of justice, but hoped to render the judgment nugatory at his option.[38] Such conduct is intolerable and does not invite leniency on the part of the appellate court.[39]

Consequently, the judgment against an appellant who escapes and who refuses to surrender to the proper authorities becomes final and executory.[40]

Thus far, we have clarified that petitioner has no right to appeal the criminal case against the accused-employee; that by jumping bail, he has waived his right to appeal; and that the judgment in the criminal case against him is now final.

As a matter of law, the subsidiary liability of petitioner now accrues. Petitioner argues that the rulings of this Court in *Miranda v. Malate Garage & Taxicab, Inc.*,[41] *Alvarez v. CA*[42] and *Yusay v. Adil*[43] do not apply to the present case, because it has followed the Court's directive to the employers in these cases to take part in the criminal cases against their employees. By participating in the defense of its employee, herein petitioner tries to shield itself from the undisputed rulings laid down in these leading cases.

Such posturing is untenable. In dissecting these cases on subsidiary liability, petitioner lost track of the most basic tenet they have laid down – that an employer's liability in a finding of guilt against its accused-employee is subsidiary.

Under Article 103 of the Revised Penal Code, employers are subsidiarily liable for the adjudicated civil liabilities of their employees in the event of the latter's insolvency.[44] The provisions of the Revised Penal Code on subsidiary liability – Articles 102 and 103 – are deemed written into the judgments in the cases to which they are applicable.[45] Thus, in the dispositive portion of its decision, the trial court need not expressly pronounce the subsidiary liability of the employer.

In the absence of any collusion between the accused-employee and the offended party, the judgment of conviction should bind the person who is subsidiarily liable.[46] In effect and implication, the stigma of a criminal conviction surpasses mere civil liability.[47]
To allow employers to dispute the civil liability fixed in a criminal case would enable them to amend, nullify or defeat a final judgment rendered by a competent court.[48] By the same token, to allow them to appeal the final criminal conviction of their employees without the latter's consent would also result in improperly amending, nullifying or defeating the judgment.

The decision convicting an employee in a criminal case is binding and conclusive upon the employer not only with regard to the former's civil liability, but also with regard to its amount. The liability of an employer cannot be separated from that of the employee.[49]

Before the employers' subsidiary liability is exacted, however, there must be adequate evidence establishing that (1) they are indeed the employers of the convicted employees; (2) that the former are engaged in some kind of industry; (3) that the crime was committed by the employees in the discharge of their duties; and (4) that the execution against the latter has not been satisfied due to insolvency.[50]

The resolution of these issues need not be done in a separate civil action. But the determination must be based on the evidence that the offended party and the employer may fully and freely present. Such determination may be done in the same criminal action in which the employee's liability, criminal and civil, has been pronounced;[51] and in a hearing set for that precise purpose, with due notice to the employer, as part of the proceedings for the execution of the judgment.

Just because the present petitioner participated in the defense of its accused-employee does not mean that its liability has transformed its nature; its liability remains subsidiary. Neither will its participation erase its subsidiary liability. The fact remains that since the accused-employee's conviction has attained finality, then the subsidiary liability of the employer *ipso facto* attaches.

According to the argument of petitioner, fairness dictates that while the finality of conviction could be the proper sanction to be imposed upon the accused for jumping bail, the same sanction should not affect it. In effect, petitioner-employer splits this case into two: *first,* for itself; and *second,* for its accused-employee.

The untenability of this argument is clearly evident. There is only one criminal case against the accused-employee. A finding of guilt has both criminal and civil aspects. It is the height of absurdity for this single case to be final as to the accused who jumped bail, but not as to an entity whose liability is dependent upon the conviction of the former.
The subsidiary liability of petitioner is incidental to and dependent on the pecuniary civil liability of the accused-employee. Since the civil liability of the latter has become final and enforceable by reason of his flight, then the former's subsidiary civil liability has also become immediately enforceable. Respondent is correct in arguing that the concept of subsidiary liability is highly contingent on the imposition of the primary civil liability.

10 Manliclic v. Calaunan | Chico-Nazario
G.R. No. 150157 January 25, 2007| 512 SCRA 642

FACTS

- Petitioner Manliclic is a driver of Philippine Rabbit Bus Lines, Inc. (PRBLI) While driving his bus going to Manila, he bumped rear left side of the owner-type jeep of Respondent Calaunan.
- Because of the collision, petitioner was criminally charged with reckless imprudence resulting to damage to property with physical injuries. Subsequently, respondent filed a damage suit against petitioner and PRBLI.
- According to respondent, his jeep was cruising at the speed of 60 to 70 kilometers per hour on the slow lane of the expressway when the Philippine Rabbit Bus overtook the jeep and in the process of overtaking the jeep, the Philippine Rabbit Bus hit the rear of the jeep on the left side. At the time the Philippine Rabbit Bus hit the jeep, it was about to overtake the jeep. In other words, the Philippine Rabbit Bus was still at the back of the jeep when the jeep was hit. On the other hand, according to petitioner, explained that when the Philippine Rabbit bus was about to go to the left lane to overtake the jeep, the latter jeep swerved to the left because it was to overtake another jeep in front of it.
- Petitioner was then acquitted of the criminal charges against him. However, in the civil case, he, along with his employer, PRBLI, was still made to pay damages to respondent.

ISSUES & ARGUMENTS

- **What is the effect of Manliclic's acquittal to the civil case?**

HOLDING & RATIO DECIDENDI

SINCE THE CIVIL CASE IS ONE FOR QUASI DELICT, MANLICLIC'S ACQUITTAL DOES NOT AFFECT THE CASE. MANLICLIC AND PRBLI ARE STILL LIABLE FOR DAMAGES

- A quasi-delict or culpa aquiliana is a separate legal institution under the Civil Code with a substantivity all its own, and individuality that is entirely apart and independent from a delict or crime – a distinction exists between the civil liability arising from a crime and the responsibility for quasi-delicts or culpa extra-contractual. The same negligence causing damages may produce civil liability arising from a crime under the Penal Code, or create an action for quasi-delicts or culpa extra-contractual under the Civil Code. It is now settled that acquittal of the accused, even if based on a finding that he is not guilty, does not carry with it the extinction of the civil liability based on quasi delict.
- In other words, if an accused is acquitted based on reasonable doubt on his guilt, his civil liability arising from the crime may be proved by preponderance of evidence only. However, if an accused is acquitted on the basis that he was not the author of the act or omission complained of (or that there is declaration in a final judgment that the fact from which the civil might arise did not exist), said acquittal closes the door to civil liability based on the crime or ex delicto. In this second instance, there being no crime or delict to speak of, civil liability based thereon or ex delicto is not possible. In this case, a civil action, if any, may be instituted on grounds other than the delict complained of.
- As regards civil liability arising from quasi-delict or culpa aquiliana, same will not be extinguished by an acquittal, whether it be on ground of reasonable doubt or that accused was not the author of the act or omission complained of (or that there is declaration in a final judgment that the fact from which the civil liability might arise did not exist). The responsibility arising from fault or negligence in a *quasi-delict* is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. An acquittal or conviction in the criminal case is entirely irrelevant in the civil case based on quasi-delict or culpa aquiliana.

JOHN FADRIGO

11 Air France v. Carascoso and CA
G.R. No. L-21438 September 28, 1966

FACTS

On March 28, 1958, the defendant, Air France, through its authorized agent, Philippine Air Lines, Inc., issued to plaintiff a "first class" round trip airplane ticket from Manila to Rome. From Manila to Bangkok, plaintiff travelled in "first class", but at Bangkok, the Manager of the defendant airline forced plaintiff to vacate the "first class" seat that he was occupying because, in the words of the witness Ernesto G. Cuento, there was a "white man", who, the Manager alleged, had a "better right" to the seat. When asked to vacate his "first class" seat, the plaintiff, as was to be expected, refused, and told defendant's Manager that his seat would be taken over his dead body; a commotion ensued, and, according to said Ernesto G. Cuento, "many of the Filipino passengers got nervous in the tourist class; when they found out that Mr. Carrascoso was having a hot discussion with the white man [manager], they came all across to Mr. Carrascoso and pacified Mr. Carrascoso to give his seat to the white man" and plaintiff reluctantly gave his "first class" seat in the plane.

ISSUES & ARGUMENTS

Was Carrascoso entitled to the first class seat he claims and therefore entitles to damages?

HOLDING & RATIO DECIDENDI

Yes. It is conceded in all quarters that on March 28, 1958 he paid to and received from petitioner a first class ticket. But petitioner asserts that said ticket did not represent the true and complete intent and agreement of the parties; that said respondent knew that he did not have confirmed reservations for first class on any specific flight, although he had tourist class protection; that, accordingly, the issuance of a first class ticket was no guarantee that he would have a first class ride, but that such would depend upon the availability of first class seats.

If, as petitioner underscores, a first-class-ticket holder is not entitled to a first class seat, notwithstanding the fact that seat availability in specific flights is therein confirmed, then an air passenger is placed in the hollow of the hands of an airline. What security then can a passenger have? It will always be an easy matter for an airline aided by its employees, to strike out the very stipulations in the ticket, and say that there was a verbal agreement to the contrary. What if the passenger had a schedule to fulfill? We have long learned that, as a rule, a written document speaks a uniform language; that spoken word could be notoriously unreliable. If only to achieve stability in the relations between passenger and air carrier, adherence to the ticket so issued is desirable. Such is the case here. The lower courts refused to believe the oral evidence intended to defeat the covenants in the ticket. Why, then, was he allowed to take a first class seat in the plane at Bangkok, if he had no seat or, if another had a better right to the seat?
To authorize an award for moral damages there must be an averment of fraud or bad faith. It is true that there is no specific mention of the term bad faith in the complaint. But, the inference of bad faith is there, it may be drawn from the facts and circumstances set forth therein. The contract was averred to establish the relation between the parties. But the stress of the action is put on wrongful expulsion. It is, therefore, unnecessary to inquire as to whether or not there is sufficient averment in the complaint to justify an award for moral damages. Deficiency in the complaint, if any, was cured by the evidence. An amendment thereof to conform to the evidence is not even required.

Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is that any rule or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier.

J.C. LERIT

12 LRTA v Navidad | Vitug
GR 145804, 6 February 2003

FACTS

- On 14 October 1993, about half an hour past 7:00 p.m., Nicanor Navidad, then drunk, entered the EDSA LRT station after purchasing a "token" (representing payment of the fare). While Navidad was standing on the platform near the LRT tracks, Junelito Escartin, the security guard assigned to the area approached Navidad. A misunderstanding or an altercation between the two apparently ensued that led to a fist fight. No evidence, however, was adduced to indicate how the fight started or who, between the two, delivered the first blow or how Navidad later fell on the LRT tracks. At the exact moment that Navidad fell, an LRT train, operated by Rodolfo Roman, was coming in.Navidad was struck by the moving train, and he was killed instantaneously.

- On 8 December 1994, the widow of Nicanor, Marjorie Navidad, along with her children, filed a complaint for damages against Junelito Escartin, Rodolfo Roman, the LRTA, the Metro Transit Organization, Inc. (Metro Transit), and Prudent for the death of her husband. LRTA and Roman filed a counterclaim against Navidad and a cross-claim against Escartin and Prudent. Prudent, in its answer, denied liability and averred that it had exercised due diligence in the selection and supervision of its security guards. The LRTA and Roman presented their evidence while Prudent and Escartin, instead of presenting evidence, filed a demurrer contending that Navidad had failed to prove that Escartin was negligent in his assigned task. On 11 August 1998, the trial court rendered its decision, ordering Prudent Security and Escartin to jointly and severally pay Navidad (a) (1) Actual damages of P44,830.00; (2) Compensatory damages of P443,520.00; (3) Indemnity for the death of Nicanor Navidad in the sum of P50,000.00; (b) Moral damages of P50,000.00; (c) Attorney's fees of P20,000; and (d) Costs of suit. The court also dismissed the complaint against LRTA and Rodolfo Roman for lack of merit, and the compulsory counterclaim of LRTA and Roman.

- Prudent appealed to the Court of Appeals. On 27 August 2000, the appellate court promulgated its decision exonerating Prudent from any liability for the death of Nicanor Navidad and, instead, holding the LRTA and Roman jointly and severally liable. The appellate court modified the judgment ordering Roman and the LRTA solidarily liable to pay Navidad (a) P44,830.00 as actual damages; (b) P50,000.00 as nominal damages; (c) P50,000.00 as moral damages; (d) P50,000.00 as indemnity for the death of the deceased; and (e) P20,000.00 as and for attorney's fees. The appellate court denied LRTA's and Roman's motion for reconsideration in its resolution of 10 October 2000. Hence, this appeal.

ISSUES & ARGUMENTS

W/N LRTA liable for tort arising from contract

HOLDING & RATIO DECIDENDI

YES. The premise for employer's liability for tort (under the provisions of Article 2176 and related provisions, in conjunction with Article 2180 of the Civil Code) is negligence or fault on the part of the employee. Once such fault is established, the employer can then be made liable on the basis of the presumption juris tantum that the employer failed to exercise diligentissimi patris familias in the selection and supervision of its employees. The liability is primary and can only be negated by showing due diligence in the selection and supervision of the employee. Herein, such a factual matter that has not been shown.

- The foundation of LRTA's liability is the contract of carriage and its obligation to indemnify the victim arises from the breach of that contract by reason of its failure to exercise the high diligence required of the common carrier. In the discharge of its commitment to ensure the safety of passengers, a carrier may choose to hire its own employees or avail itself of the services of an outsider or an independent firm to undertake the task. In either case, the common carrier is not relieved of its responsibilities under the contract of carriage.
- A contractual obligation can be breached by tort and when the same act or omission causes the injury, one resulting in culpa contractual and the other in culpa aquiliana, Article 2194 of the Civil Code can well apply. In fine, a liability for tort may arise even under a contract, where tort is that which breaches the contract. Stated differently, when an act which constitutes a breach of contract would have itself constituted the source of a quasi-delictual liability had no contract existed between the parties, the contract can be said to have been breached by tort, thereby allowing the rules on tort to apply.

13 Far East Bank and Trust Co. v. CA | Vitug
G.R. No. 108164 February 23, 1995 | 241 SCRA 671

FACTS

- In October 1986 Luis Luna applied for a FAREASTCARD with Fart East Bank. A supplemental card was also issued to his wife, Clarita
- On August 1988, Clarita lost her card and promptly informed the bank of its loss for which she submitted an Affidavit of Loss. The bank recorded this loss and gave the credit card account a status of "Hot Card" and/or "Cancelled Card." Such record holds also for the principal card holder until such time that the lost card was replaced.
- On October 1988, Luis Luna used his card to purchase a despidida lunch for hi friend in the Bahia Rooftop Restaurant. His card was dishonored in the restaurant and he was forced to pay in cash, amounting to almost P600.00. He felt embarrassed by this incident.
- He then complained to Far East Bank and he found out that his account has been cancelled without informing him. Bank security policy is to tag the card as hostile when it is reported lost, however, the bank failed to inform him and an overzealous employee failed to consider that it was the cardholder himself presenting the credit card.
- The bank sent an apology letter to Mr. Luna and to the Manager of the Bahia Rooftop Restaurant to assure that Mr Luna was a very valuable client.
- Spouses Luna still felt aggrieved and thus filed this case for damages against Far East Bank.
- Far East Bank was adjudged to pay the following: (a) P300,000.00 moral damages; (b) P50,000.00 exemplary damages; and (c) P20,000.00 attorney's fees.

ISSUES & ARGUMENTS

- **W/N Far East Bank is liable for damages to the Spouses Luna amounting the above-mentioned figures?**
    - **Petitioner-Appellant:** Far East contends that the amounts to be paid to the spouses are excessive. They argue that they should not be paying moral damages because there was no bad faith on their part in breaching their contract.
    - **Respondent-Appellee:** Mr. Luna contends that he was embarrassed by the situation which was caused by the bank's failure to inform him of the cancellation of his card. thus, he is entitled to damages.

HOLDING & RATIO DECIDENDI

SPOUSES LUNA ARE ENTITLED ONLY TO NOMINAL DAMAGES BUT NOT MORAL AND EXEMPLARY DAMAGES.

- Moral damages are awarded if the defendant is to be shown to have acted in bad faith. Article 2219 states that, "Moral damages may be recovered in the following and analogous cases: (1) A criminal offense resulting in physical injuries; (2) Quasi-delicts causing physical injuries;
- It is true that the bank was remiss in indeed neglecting to personally inform Luis of his own card's cancellation. Nothing however, can sufficiently indicate any deliberate intent on the part of the Bank to cause harm to private respondents. Neither could the bank's negligence in failing to give personal notice to Luis be considered so gross as to amount to malice or bad faith.
- Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with furtive design or ill will.

- Nominal damages were awarded because of the simple fact that the bank failed to notify Mr. Luna, thus entitle him to recover a measure of damages sanctioned under Article 2221 of the Civil Code providing thusly:
    - Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

14 Natividad v. Andamo Emmanuel R. Andamo vs **IAC**| Fernan
G.R. No. 74761 November 6, 1990|

FACTS

- Spouses Andamo are the owners of a parcel of land which is adjacent to that of private respondent, Missionaries of Our Lady of La Salette, Inc., a religious corporation.
- Within the land of respondent corporation, waterpaths and contrivances, including an artificial lake, were constructed, which allegedly inundated and eroded petitioners' land, caused a young man to drown, damaged petitioners' crops and plants, washed away costly fences, endangered the lives of petitioners and their laborers during rainy and stormy seasons, and exposed plants and other improvements to destruction.
- Petitioners filed a criminal and a separate civil action for damages against the respondent.

ISSUES & ARGUMENTS

W/N the IAC erred in affirming the trial court's order dismissing the civil case as the criminal case was still unresolved

- Petitioners contend that the trial court and the Appellate Court erred in dismissing Civil Case No. TG-748 since it is predicated on a quasi-delict
- That the lower court was justified in dismissing the civil action for lack of jurisdiction, as the criminal case, which was instituted ahead of the civil case, was still unresolved

HOLDING & RATIO DECIDENDI

Yes

- A careful examination of the aforequoted complaint shows that the civil action is one under Articles 2176 and 2177 of the Civil Code on quasi-delicts. All the elements of a quasi-delict are present, to wit: (a) damages suffered by the plaintiff, (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff. [11]
- Clearly, from petitioner's complaint, the waterpaths and contrivances built by respondent corporation are alleged to have inundated the land of petitioners. There is therefore, an assertion of a causal connection between the act of building these waterpaths and the damage sustained by petitioners. Such action if proven constitutes fault or negligence which may be the basis for the recovery of damages.
- petitioners' complaint sufficiently alleges that petitioners have sustained and will continue to sustain damage due to the waterpaths and contrivances built by respondent corporation. Indeed, the recitals of the complaint, the alleged presence of damage to the petitioners, the act or omission of respondent corporation supposedly constituting fault or negligence, and the causal connection between the act and the damage, with no pre-existing contractual obligation between the parties make a clear case of a *quasi delict* or *culpa aquiliana.*
- Article 2176, whenever it refers to "fault or negligence", covers not only acts "not punishable by law" but also acts criminal in character, whether intentional and voluntary or negligent. Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, (if the tortfeasor is actually charged also criminally), to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary.

15 Castro v. People | Corona, J.
G.R. No. 180823 23 July 2008

FACTS

- Reedley International School dismissed Tan's son, Justin Albert for violating the terms of his disciplinary probation. RIS reconsidered its decision upon Tan's request but imposed "non-appealable" conditions such as excluding Justin Albert from participating in the graduation ceremonies.
- Tan filed a complaint in the Department of Education violation of the Manual of Regulation of Private Schools, Education Act of 1982 and Article 19 of the Civil Code against RIS. He alleged that the dismissal of his son was undertaken with malice, bad faith and evident premeditation. After investigation, the Dep-Ed found that RIS' code violation point system allowed the summary imposition of unreasonable sanctions. After investigation, the Dep-Ed found that RIS' code violation point system allowed the summary imposition of unreasonable sanctions. Hence, the Dep-Ed nullified it.
- The Dep-Ed ordered RIS to readmit Justin Albert without any condition. Thus, he was able to graduate from RIS and participate in the commencement ceremonies held on March 30, 2003.
- After the graduation ceremonies, Tan met Bernice C. Ching, a fellow parent at RIS. In the course of their conversation, Tan intimated that he was contemplating a suit against the officers of RIS in their personal capacities, including petitioner who was the assistant headmaster.
- Ching telephoned petitioner sometime the first week of April and told him that Tan was planning to sue the officers of RIS in their personal capacities. Before they hung up, petitioner told Ching: "***Okay, you too, take care and be careful talking to [Tan], that's dangerous."***
- Ching then called Tan and informed him that petitioner said "talking to him was dangerous." Insulted, Tan filed a complaint for grave oral defamation in the Office of the City Prosecutor of Mandaluyong City against petitioner on August 21, 2003.
- Petitioner was charged with grave oral defamation.

ISSUES & ARGUMENTS

- **W/N the petitioner is guilty of Grave Oral Defamation** (This is the pertinent issue for Torts)

HOLDING & RATIO DECIDENDI

Petitioner is NOT GUILTY of Grave Oral Defamation.

The Supreme Court held that the facts in this case does not constitute Grave Oral Defamation. It Held that at most, petitioner could have been liable for damages under Article 26 of the Civil Code:

Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

x x x x x x x x x

(3) Intriguing to cause another to be alienated from his friends;

x x x x x x x x x

The Court reminded the petitioner that as an educator, he is supposed to be a role model for the youth. As such, he should always act with justice, give everyone his due and observe honesty and good faith.

NINA MEJIA

16 Fabre vs. Court of Appeals | Mendoza
G.R. No. 111127, July 26, 1996| 259 SCRA 426

FACTS

- Petitioners Fabre and his wife were owners of a minibus being used principally in connection with a bus service for school children which they operated in Manila.
- The couple had a driver Cabil whom they hired in 1981, after trying him out for two weeks. His job was to take school children to and from the St. Scholastica's College in Manila.
- Private respondent Word for the World Christian Fellowship Inc. (WWCF) arranged with petitioners for the transportation of 33 members of its Young Adults Ministry from Manila to La Union and back. The group was scheduled to leave at 5:00 o'clock in the afternoon. However, as several members of the party were late, the bus did not leave until 8:00 o'clock in the evening. Petitioner Cabil drove the minibus.
- The bridge on the usual route was under repair so Cabil took a detour. He is unfamiliar with the route because this is his first time driving to La Union. At 11:30 that night, petitioner Cabil came upon a sharp curve on the highway. The road was slippery because it was raining, causing the bus, which was running at the speed of 50 kilometers per hour, to skid to the left road shoulder. The bus hit the left traffic steel brace and sign along the road and rammed the fence of one Escano, then turned over and landed on its left side, coming to a full stop only after a series of impacts. The bus came to rest off the road. A coconut tree which it had hit fell on it and smashed its front portion.
- Several passengers were injured. Private respondent Antonio was thrown on the floor of the bus and pinned down by a wooden seat which came down by a wooden seat which came off after being unscrewed. It took three persons to safely remove her from this portion. She was in great pain and could not move.

ISSUES & ARGUMENTS

- **W/N Cabil was negligent**
- **W/N Petitioner Spouses are liable for quasi delict making them guilty of breach of contract of carriage**

HOLDING & RATIO DECIDENDI

CABIL WAS NEGLIGENT. PETITIONER SPOUSES LIABLE.

- The finding that Cabil drove his bus negligently, while his employer, the Fabres, who owned the bus, failed to exercise the diligence of a good father of the family in the selection and supervision of their employee is fully supported by the evidence on record.
- The fact that it was raining and the road was slippery, that it was dark, that he drove his bus at 50 kilometers an hour when even on a good day the normal speed was only 20 kilometers an hour, and that he was unfamiliar with the terrain, Cabil was grossly negligent and should be held liable for the injuries suffered by private respondent Antonio.
- Pursuant to Arts. 2176 and 2180 of the Civil Code his negligence gave rise to the presumption that his employers, the Fabres, were themselves negligent in the selection and supervisions of their employee.
- Due diligence in selection of employees is not satisfied by finding that the applicant possessed a professional driver's license. The employer should also examine the applicant for his qualifications, experience and record of service. Due diligence in supervision, on the other hand, requires the formulation of rules and regulations for the guidance of employees and issuance of proper instructions as well as actual implementation and monitoring of consistent compliance with the rules.
- In the case at bar, the Fabres, in allowing Cabil to drive the bus to La Union, apparently did not consider the fact that Cabil had been driving for school children only, from their homes to the St. Scholastica's College in Metro Manila. They had hired him only after a two-week apprenticeship. They had hired him only after a two-week apprenticeship. They had tested him for certain matters, such as whether he could remember the names of the children he would be taking to school, which were irrelevant to his qualification to drive on a long distance travel, especially considering that the trip to La Union was his first. The existence of hiring procedures and supervisory policies cannot be casually invoked to overturn the presumption of negligence on the part of an employer.
- This case actually involves a contract of carriage. Petitioners, the Fabres, did not have to be engaged in the business of public transportation for the provisions of the Civil Code on common carriers to apply to them. The finding of the trial court and of the appellate court that petitioners are liable under Arts. 2176 and 2180 for *quasi delict*, fully justify findings them guilty of breach of contract of carriage under the Civil Code.

Petition DENIED. Court of Appeals decision AFFIRMED.

17 Calalas vs. CA |Mendoza
GR 122039| 31 May 2000

FACTS

- At 10 a.m. of 23 August 1989, Eliza Jujeurche G. Sunga, then a college freshman majoring in Physical Education at the Siliman University, took a passenger jeepney owned and operated by Vicente Calalas. As the jeepney was filled to capacity of about 24 passengers, Sunga was given by the conductor an "extension seat," a wooden stool at the back of the door at the rear end of the vehicle. On the way to Poblacion Sibulan, Negros Occidental, the jeepney stopped to let a passenger off. As she was seated at the rear of the vehicle, Sunga gave way to the outgoing passenger. Just as she was doing so, an Isuzu truck driven by Iglecerio Verena and owned by Francisco Salva bumped the left rear portion of the jeepney. As a result, Sunga was injured. She sustained a fracture of the "distal third of the left tibia-fibula with severe necrosis of the underlying skin." Closed reduction of the fracture, long leg circular casting, and case wedging were done under sedation. Her confinement in the hospital lasted from August 23 to September 7, 1989. Her attending physician, Dr. Danilo V. Oligario, an orthopedic surgeon, certified she would remain on a cast for a period of 3 months and would have to ambulate in crutches during said period.

- On 9 October 1989, Sunga filed a complaint for damages against Calalas before the RTC of Dumaguete City (Branch 36), alleging violation of the contract of carriage by the former in failing to exercise the diligence required of him as a common carrier. Calalas, on the other hand, filed a third-party complaint against Francisco Salva, the owner of the Isuzu truck. The lower court rendered judgment, against Salva as third-party defendant and absolved Calalas of liability, holding that it was the driver of the Isuzu truck who was responsible for the accident. It took cognizance of another case (Civil Case 3490), filed by Calalas against Salva and Verena, for quasi-delict, in which Branch 37 of the same court held Salva and his driver Verena jointly liable to Calalas for the damage to his jeepney.

- On appeal to the Court of Appeals, and on 31 March 1991, the ruling of the lower court was reversed on the ground that Sunga's cause of action was based on a contract of carriage, not quasi-delict, and that the common carrier failed to exercise the diligence required under the Civil Code. The appellate court dismissed the third-party complaint against Salva and adjudged Calalas liable for damages to Sunga. The Court ordered Calalas tro pay Sunga (1) P50,000.00 as actual and compensatory damages; (2) P50,000.00 as moral damages; (3) P10,000.00 as attorney's fees; and (4) P1,000.00 as expenses of litigation; and (5) to pay the costs. Calalas' motion for reconsideration was denied 11 September 1995. Hence, the petition for review on certiorari.

ISSUES & ARGUMENTS

W/N The CA erred in reversing the TC's ruling?

HOLDING & RATIO DECIDENDI

NO.

The Supreme Court affirmed the 31 March 1991 decision and the 11 September 1995 resolution of the Court of Appeals, with the modification that the award of moral damages is deleted.

1. Res Judicata does not apply
Sunga is not bound by the ruling in Civil Case 3490, which found the driver and the owner of the truck liable for quasi-delict, as she was never a party to that case. Further, the issues in Civil Case 3490 and in the present case are not the same. The issue in Civil Case 3490 was whether Salva and his driver Verena were liable for quasi-delict for the damage caused to Calalas' jeepney. On the other hand, the issue in the present case is whether Calalas is liable on his contract of carriage. The principle of res judicata, therefore, does not apply.

2. Distinction between culpa aquiliana or culpa extracontractual, and culpa contractual
Quasi-delict, also known as culpa aquiliana or culpa extra contractual, has as its source the negligence of the tortfeasor. On the other hand, breach of contract or culpa contractual is premised upon the negligence in the performance of a contractual obligation. In quasi-delict, the negligence or fault should be clearly established because it is the basis of the action, whereas in breach of contract, the action can be prosecuted merely by proving the existence of the contract and the fact that the obligor, in this case the common carrier, failed to transport his passenger safely to his destination.

3. Common carriers presumed at fault unless they observed extraordinary diligence; Burden of proof
In case of death or injuries to passengers, Article 1756 of the Civil Code provides that common carriers are presumed to have been at fault or to have acted negligently unless they prove that they observed extraordinary diligence as defined in Articles 1733 and 1755 of the Code. The provision necessarily shifts to the common carrier the burden of proof.

4. Doctrine of proximate cause applicable only in quasi-delict, not in breach of contract
The doctrine of proximate cause is applicable only in actions for quasi-delict, not in actions involving breach of contract. The doctrine is a device for imputing liability to a person where there is no relation between him and another party. In such a case, the obligation is created by law itself. But, where there is a pre-existing contractual relation between the parties, it is the parties themselves who create the obligation, and the

function of the law is merely to regulate the relation thus created. Herein, it is immaterial that the proximate cause of the collision between the jeepney and the truck was the negligence of the truck driver.

5. Articles 1733, 1755, and 1756 NCC

Insofar as contracts of carriage are concerned, some aspects regulated by the Civil Code are those respecting the diligence required of common carriers with regard to the safety of passengers as well as the presumption of negligence in cases of death or injury to passengers. Article 1733 of the Civil Code provides that "Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1746, Nos. 5,6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756. " On the other hand, Article 1755 of the Civil Code provides that " A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances." Article 1756 provides that "In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed by articles 1733 and 1755."

6. In violation of traffic rules; Section 54 (Obstruction of Traffic)

Herein, the jeepney was not properly parked, its rear portion being exposed about 2 meters from the broad shoulders of the highway, and facing the middle of the highway in a diagonal angle. This is a violation of the RA 4136, as amended, or the Land Transportation and Traffic Code, which provides in Section 54 (Obstruction of Traffic) that "No person shall drive his motor vehicle in such a manner as to obstruct or impede the passage of any vehicle, nor, while discharging or taking on passengers or loading or unloading freight, obstruct the free passage of other vehicles on the highway. "

7. In violation of traffic rules; Section 32(a) (Exceeding registered capacity)

Herein,the driver took in more passengers than the allowed seating capacity of the jeepney, a violation of Section 32(a) of the same law. Section 32 [a] (Exceeding registered capacity) provides that "No person operating any motor vehicle shall allow more passengers or more freight or cargo in his vehicle than its registered capacity." The fact that Sunga was seated in an "extension seat" placed her in a peril greater than that to which the other passengers were exposed.

8. Driver of jeepney did not exercise utmost diligence of very cautious persons

Upon the happening of the accident, the presumption of negligence at once arose, and it became the duty of Calalas to prove that he had to observe extraordinary diligence in the care of his passengers. The driver of jeepney did not carry Sunga "safely as far as human care and foresight could provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances" as required by Article 1755. Not only was Calalas unable to overcome the presumption of negligence imposed on him for the injury sustained by Sunga, but also, the evidence shows he was actually negligent in transporting passengers.

9. Taking of "Extension seat" cannot be considered an implied assumption of risk

Sunga's taking an "extension seat" did not amount to an implied assumption of risk. Otherwise, iIt is akin to arguing that the injuries to the many victims of the tragedies in our seas should not be compensated merely because those passengers assumed a greater risk of drowning by boarding an overloaded ferry.

18 Padua and Padua v. Robles and Bay Taxi Cab | Castro
G.R. No. L-40486, August 29, 1975

FACTS

- In the early morning of New Year's Day of 1969 a taxicab (bearing 1968 plate no. TX-9395 and driven by Romeo N. Punzalan but operated by the Bay Taxi Cab owned by Gregorio N. Robles) struck ten-year old Normandy Padua on the national road in barrio Barretto, Olongapo City. The impact hurled Normandy about forty meters away from the point where the taxicab struck him, as a result of which he died.
- Normandy's parents filed a complaint for damages (civil case 427-O) against Punzalan and the Bay Taxi Cab. The city Fiscal filed with the same court an information for homicide through reckless imprudence (criminal case 1158-O).
- TC in the civil case ordered defendant Punzalan to pay plaintiffs actual, moral, exemplary damages and attorney's fees.
- TC in the criminal case convicted Punzalan of the crime of homicide through reckless imprudence. The court in its dispositive portion stated that "the civil liability of the accused has already been determined and assessed in the civil case."
- The Paduas sought execution of the judgment. This proved futile.
- They instituted an action against Robles to enforce his subsidiary responsibility under Article 103, RPC. Robles filed a motion to dismiss.
- TC granted the motion to dismiss on the ground that the complaint states no cause of action.

ISSUES & ARGUMENTS

W/N the judgment in the criminal case includes a determination and adjudication of Punzalan's civil liability arising from his criminal act upon which Robles' subsidiary civil responsibility may be based.

HOLDING & RATIO DECIDENDI

YES. Paduas' complaint in civil case states a cause of action against Robles whose concommitant subsidiary responsibility, per the judgment in criminal case, subsists.

- The said judgment states no civil liability arising from the offense charged against Punzalan. However, a careful study of the judgment in question, the situation to which it applies, and the attendant circumstances, the court a quo, on the contrary, recognized the enforceable right of the Paduas to the civil liability arising from the offense committed by Punzalan and awarded the corresponding indemnity therefore.
- Civil liability coexists with criminal responsibility. In negligence cases the offended party (or his heirs) has the option between an action for enforcement of civil liability based on culpa criminal under article 100 of the Revised Penal Code and an action for recovery of damages based on culpa aquiliana under article 2177 of the Civil Code. The action for enforcement of civil liability based on culpa criminal section 1 of Rule 111 of the Rules of Court deems simultaneously instituted with the criminal action, unless expressly waived or reserved for a separate application by the offended party. Article 2177 of the Civil Code, however, precludes recovery of damages twice for the same negligent act or omission.
- It is immaterial that the Paduas chose, in the first instance, an action for recovery of damages based on culpa aquiliana under articles 2176, 2177, and 2180 of the Civil Code, which action proved ineffectual. Allowance of the latter application involves no violation of the proscription against double recovery of damages for the same negligent act or omission. For, as hereinbefore stated, the corresponding officer of the court a quo returned unsatisfied the writ of execution issued against Punzalan to satisfy the amount of indemnity awarded to the Paduas in the civil case.
- The substance of such statement, taken in the light of the situation to which it applies and the attendant circumstances, makes unmistakably clear the intention of the court to accord affirmation to the Paduas' right to the civil liability arising from the judgment against Punzalan in the criminal case. Indeed, by including such statement in the decretal portion of the said judgment, the court intended to adopt the same adjudication and award it made in the civil case as Punzalan's civil liability in the criminal case.

Court a quo decision set aside. Case remanded to the court a quo for further proceedings.

TIN OCAMPO-TAN

19 Atlantic Gulf and Pacific Company of Manila Inc. vs CA | Regalado
G.R. No. 114841-42 August 23, 1995

FACTS

- Atlantic Gulf commenced construction of a steel fabrication plant in Bauan, Batangas which necessitated dredging operations at the Batangas Bay, in an area adjacent to the property of private respondents.
- Two actions for damages were filed by different respondents and were consolidated as the plaintiffs therein intended to present common evidence against defendant, by reason of the virtual identity of the issues involved in both cases.
- Private respondents alleged that petitioner's personnel and heavy equipment trespassed, damaged, and made into depots and parking lots without payment of rent the land owned by the respondents.
- Moreover, the sea silt and water overflowed and were deposited upon their land. Consequently, the said property which used to be agricultural lands principally devoted to rice production and each averaging an annual net harvest of 75 cavans, could no longer be planted with palay as the soil became infertile, salty, unproductive and unsuitable for agriculture.
- Petitioner denied allegations about its personnel and heavy equipment. And it further contended that the sea silt and water was due to the floods and heavy rains of typhoon "Ruping"
- Trial court ruled in favor of respondents ordering Atlantic to pay damages. Upon appeal to the CA, judgment was affirmed with modifications increasing the amount of damages.
- Petitioner is now asking for nullification or at least partial modification on the grounds of double recovery.

ISSUES & ARGUMENTS

W/N the awards to the respondents constitute double recovery and thus, prohibited by the NCC.

Petitioners: Article 2177 of the Civil Code states that: "the plaintiff cannot recover damages twice for the same act or omission of the defendant"

W/N the CA committed grave abuse in discretion by granting excessive damages

HOLDING & RATIO DECIDENDI

SC may not reverse a judgment on a Certiorari case under Rule 45. But CA committed grave abuse of discretion when it increased the damages

- Evidence on record support findings of trial and appellate courts that petitioner was liable. The fact that the appellate court adopted the findings of the trial court, as in this case, makes the same binding upon the Supreme Court, for the factual findings of said appellate court are generally binding on the latter. For that matter the findings of the Court of Appeals by itself, and which are supported by substantial evidence, are almost beyond the power of review by the Supreme Court.
- Only questions of law may be raised on certiorari under Rule 45. It is not the function of the SC to analyze or weigh evidence all over again. Its jurisdiction is limited to reviewing errors of law that might have been committed by the lower court. Unless the findings are glaringly erroneous.
- However, CA committed reversible error when it increased damages. Only the petitioner appealed and the respondents are presumed to be satisfied with the judgment. The entrenched procedural rule in this jurisdiction is that a party who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the lower court.

Judgment modified.

MARICE PACHECO

20 Vergara vs. CA | Padilla
G.R. No. 77679, September 30, 1987 |

FACTS

- On, 5 August 1979 in Gapan, Nueva Ecija, Martin Belmonte, while driving a cargo truck belonging to Vergara, rammed "head-on" the store-residence of the Amadeo Azarcon, causing damages thereto which were inventoried and assessed at P53,024.22
- Vergara filed a third party complaint against Travellers Insurance and Surety Corporation, alleging that said cargo truck involved in the vehicular accident, belonging to the petitioner, was insured by the third party defendant insurance company and asking that he paid paid whatever the court would order him to pay to Azarcon
- The trial court and the court of appeals ordered Vergara jointly and severally with Travellers Insurance and Surety Corporation to pay to Azarcon (a) P53,024.22 as actual damages; (b) P10,000.00 as moral damages; (c) P10,000.00 as exemplary damages; and (d) the sum of P5,000.00 for attorney's fees and the costs. On the third party complaint, the insurance company was sentenced to pay to the petitioner the following: (a) P50,000.00 for third party liability under its comprehensive accident insurance policy; and (b) P3,000.00 for and as attorney's fees.

ISSUES & ARGUMENTS

W/N Vergara is liable to pay damages.

HOLDING & RATIO DECIDENDI

Yes, he is liable.

- The requisites (1) damages to the plaintiff; (2) negligence, by act or omission, of which defendant, or some person for whose acts he must respond, was guilty; and (3) the connection of cause and effect between such negligence and the damages.
- The acts which caused the damages to Azarcon can be attributed to Vergara. The fact that the vehicular accident occurred was well established by the police report describing the same. The contention of Vergara that the accident occurred because of mechanical failure of the brakes cannot be considered fortuitous and could have been prevented. Also, Vergara failed to adduce evidence to dispute the presumption of negligence in the selection of his driver.

21 Natividad V. Andamo Emmanuel R. Andamo vs **IAC**| Fernan
G.R. No. 74761 November 6, 1990|

FACTS

- Spouses Andamo are the owners of a parcel of land which is adjacent to that of private respondent, Missionaries of Our Lady of La Salette, Inc., a religious corporation.
- Within the land of respondent corporation, waterpaths and contrivances, including an artificial lake, were constructed, which allegedly inundated and eroded petitioners' land, caused a young man to drown, damaged petitioners' crops and plants, washed away costly fences, endangered the lives of petitioners and their laborers during rainy and stormy seasons, and exposed plants and other improvements to destruction.
- Petitioners filed a criminal and a separate civil action for damages against the respondent.

ISSUES & ARGUMENTS

W/N the IAC erred in affirming the trial court's order dismissing the civil case as the criminal case was still unresolved

- Petitioners contend that the trial court and the Appellate Court erred in dismissing Civil Case No. TG-748 since it is predicated on a quasi-delict
- That the lower court was justified in dismissing the civil action for lack of jurisdiction, as the criminal case, which was instituted ahead of the civil case, was still unresolved

HOLDING & RATIO DECIDENDI

Yes

- A careful examination of the aforequoted complaint shows that the civil action is one under Articles 2176 and 2177 of the Civil Code on quasi-delicts. All the **elements of a quasi-delict are present, to wit: (a) damages suffered by the plaintiff, (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff.**
- Clearly, from petitioner's complaint, the waterpaths and contrivances built by respondent corporation are alleged to have inundated the land of petitioners. There is therefore, an assertion of a causal connection between the act of building these waterpaths and the damage sustained by petitioners. Such action if proven constitutes fault or negligence which may be the basis for the recovery of damages.
- petitioners' complaint sufficiently alleges that petitioners have sustained and will continue to sustain damage due to the waterpaths and contrivances built by respondent corporation. Indeed, the recitals of the complaint, the alleged presence of damage to the petitioners, the act or omission of respondent corporation supposedly constituting fault or negligence, and the causal connection between the act and the damage, with no pre-existing contractual obligation between the parties make a clear case of a *quasi delict* or *culpa aquiliana.*
- Article 2176, whenever it refers to "fault or negligence", covers not only acts "not punishable by law" but also acts criminal in character, whether intentional and voluntary or negligent. Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, (if the tortfeasor is actually charged also criminally), to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary.

22 FGU Insurance vs. CA|Bellosillo
G.R. No. 118889, March 23, 1998 | 287 SCRA 718

FACTS

- On 21 April 1987, two Mitsubishi Colt Lancers collided along EDSA at around 3AM. At that time, the car owned by Soriano was being driven by Jacildone. The other car was owned by FILCAR Transport, Inc. and was being driven by Dahl-Jansen, as lessee. Said Dahl-Jensen, being a Danish tourist, did not have Philippine driver's license. Dahl-Jensen had swerved to his right lane, thereby hitting the left side of the car of Soriano.
- Petitioner FGU Insurance paid Soriano P25,382.20 pursuant to the insurance contract it had with the latter. After which, it sued Dahl-Jensen, FILCAR, and FORTUNE Insurance for quasi-delict before the RTC of Makati.
- Summons was not served on Dahl-Jensen; and upon motion of the petitioner, he was later dropped from the complaint. The RTC dismissed the complaint on the ground that petitioner had failed to substantiate its claim for subrogation.
- The CA affirmed the RTC decision, although on a different ground, i.e. that only the fault and negligence of Dahl-Jensen was proved, and not that of FILCAR. Hence this appeal.

ISSUES & ARGUMENTS

W/N FILCAR and FORTUNE are liable for damages suffered by a third person even though the vehicle was leased to another.

HOLDING & RATIO DECIDENDI

FILCAR AND FORTUNE ARE NOT LIABLE. (please focus on the underlined doctrines for: our concern for this case is PRIMARY LIABILITY)

- Art. 2176 of the Civil Code which states: "*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 . . . .* "
- To sustain a claim based thereon, the following requisites must concur: (a) damage suffered by the plaintiff; (b) fault or negligence of the defendant; and, (c) connection of cause and effect between the fault or negligence of the defendant and the damage incurred by the plaintiff. [6]
- The Supreme Court agreed with the holding of the CA in saying that only the fault and negligence of Dahl-Jensen had been proved, since the only cause of the damage was due to his swerving to the right lane, in which FILCAR had no participation.
- Art. 2184 of the NCC provides: "***In motor vehicle mishap, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have by the use of due diligence, prevented the misfortune . . . . If the owner was not in the motor vehicle, the provisions of article 2180 are applicable.***" Obviously, this provision of Art. 2184 is neither applicable because of the absence of master-driver relationship between respondent FILCAR and Dahl-Jensen. Clearly, petitioner has no cause of action against respondent FILCAR on the basis of *quasi-delict*; logically, its claim against respondent FORTUNE can neither prosper.
- ***Article 2180, par 5 Civil Code: "…Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry…."***
- The liability imposed by Art. 2180 arises by virtue of a presumption *juris tantum* of negligence on the part of the persons made responsible thereunder, derived from their failure to exercise due care and vigilance over the acts of subordinates to prevent them from causing damage. [7] Yet, Art. 2180 is hardly applicable because FILCAR, being engaged in a rent-a-car business was only the owner of the car leased to Dahl-Jensen. As such, there was no *vinculum juris* between them as employer and employee.

Petition denied. CA affirmed.

23 Equitable Leasing Corp v Lucita Suyom et al | Panganiban
GR NO. 143360, September 5, 2002 |

FACTS

- June 4, 1991: Equitable Leasing Corp had a lease agreement with for a Fuso Road Tractor with Ecatine (as the lessee), who according to the agreement will eventually own the tractor, upon full payment by Edwin Lim of Ecatine.
- December 9, 1992: Lim completed the payment, and thus a Deed of Sale was drawn between Ecatine and Equitable, however the deed was not registered in the LTO.
- July 17, 1994: the said Tractor, driven by Raul Tutor, employee of Ecatine, rammed into the house cum store of Myrna Tamayo in Tondo Manila. A portion of the house was destroyed, 2 died while 4 more were injured.
- Tutor was charged and convicted of reckless imprudence resulting to homicide and multiple physical injuries in the MTC.
- Upon verification with the LTO, Equitable was found to be the registered owner of the tractor. Equitable then received a complaint for damages, but they denied liability claiming the tractor was already sold to Ecatine back in 1992.
- RTC and CA held: Equitable is liable, hence this appeal.

ISSUES & ARGUMENTS

- **W/N Equitable remains liable based on quasi-delict for the negligent act of a driver who was not the employee of the petitioner**

HOLDING & RATIO DECIDENDI

EQUITABLE IS LIABLE

- The negligent employee's civil liability is based on Art 2176 (NCC) and/or Art 100 (RPC), while employer's liability is based on Art 103 of the RPC: where employers are held subsidiary liable for felonies committed by their employees in the discharge of latter's duties. This liability attaches when the convicted employee turns out to be insolvent.
- Art 2176 in relation to 2180, an action predicated on quasi-delict maybe instituted against the employer for an employee's act or omission. This liability for the negligent conduct of a subordinate is direct and primary (meaning SOLIDARY), with the possible defense of due diligence in the selection and supervision of employees. In the case at bar, Tutors criminal liability has been established, but since Tutor cannot be found, the victims recourse is to file damage claims against Tutor's employer. Unfortunately for Equitable, they are the registered owners of the tractor and jurisprudence provides, the registered owners are deemed to be the employer of the erring driver and thus civilly liable. The sale between Ecatine and Equitable, being unregistered, will not bind/prejudice, a third person, in this case the victim-respondents. Equitable cannot use the defense that Tutor was not his employee. As to a third person, the registered owner is the employer, and Ecatine, although the actual employer of Tutor, is deemed to be merely an agent of Equitable. Non-registration is the fault of the petitioner, thus they cannot escape liability to prejudice the rights (to damages) of the respondents.
- Side note: (on Moral Damages) The SC also justified that there was causal connection between the factual basis of the respondent's claim and Tutor's wrongful act. *(3 element to sustain a claim on quasi-delict: a)damage suffered by the plaintiff b)fault or negligence of the defendant c)causal connection between the fault or negligence of the defendant and the damage incurred by the plaintiff)* This case falls squarely under 2219(2) which provides for payment of moral damages in cases of quasi-delict. Moral damages are paid to alleviate the moral suffering/mental anguish caused by the act or omission of the defendant. Having established the liability of Tutor and the Equitable as an employer, respondents have successfully shown the existence of the factual basis for the award (injury to plaintiffs) and its causal connection to the tortious acts of Tutor. No proof of pecuniary loss is needed to justify the moral damages. The amount of indemnity will be left to the discretion of the court.

DIANE LIPANA

24 Cinco vs. Canonoy |Melencio-Herera, G.R. No. L-33171 May 31, 1979|

FACTS

- Petitioner Cinco herein filed a Complaint for the recovery of damages on account of a vehicular accident involving his automobile and a jeepney driven by Romeo Hilot and operated by Valeriana Pepito and Carlos Pepito, the last three being the private respondents in this suit. Subsequent thereto, a criminal case was filed against the driver, Romeo Hilot, arising from the same accident. At the pre-trial in the civil case, counsel for private respondents moved to suspend the civil action pending the final determination of the criminal suit, invoking Rule 111, Section 3 (b) of the Rules of Court, which provides: (b) After a criminal action has been commenced. no civil action arising from the same offense can be prosecuted, and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered;
- The City Court of Mandaue City ordered the suspension of the civil case. Petitioner's Motion for Reconsideration thereof, having been denied, petitioner elevated the matter on certiorari to the Court of First Instance of Cebu, alleging that the City Judge had acted with grave abuse of discretion in suspending the civil action for being contrary to law and jurisprudence.
- Respondent Judge Cannony dismissed the Petition for certiorari on the ground that there was no grave abuse of discretion on the part of the City Court in suspending the civil action inasmuch as damage to property is not one of the instances when an independent civil action is proper; that petitioner has another plain, speedy, and adequate remedy under the law, which is to submit his claim for damages in the criminal case; that the resolution of the City Court is interlocutory and, therefore, certiorari is improper; and that the Petition is defective inasmuch as what petitioner actually desires is a Writ of mandamus. Petitioner's Motion for Reconsideration was denied by respondent Judge.

ISSUES & ARGUMENTS

- W/N RESPONDENT JUDGE MATEO CANONOY, ERRED IN HOLDING THAT THE TRIAL OF THE CIVIL CASE NO. 189 FILED IN THE CITY COURT OF MANDAUE SHOULD BE SUSPENDED UNTIL AFTER A FINAL JUDGMENT IS RENDERED IN THE CRIMINAL CASE.

HOLDING & RATIO DECIDENDI

The respondent judge erred in holding that the civil case should be suspended until after the final judgment is rendered in the criminal case.

Liability being predicated on quasi-delict the civil case may proceed as a separate and independent civil action, as specifically provided for in Article 2177 of the Civil Code.

Art. 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. (n)

Sec. 2. Independent civil action. — In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, Are independent civil action entirely separate and distinct from the c action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shag proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

In the light of the foregoing disquisition, we are constrained to hold that respondent Judge gravely abused his discretion in upholding the Decision of the City Court of Mandaue City, Cebu, suspending the civil action based on a quasi-delict until after the criminal case is finally terminated. Having arrived at this conclusion, a discussion of the other errors assigned becomes unnecessary.

VP PADILLA

25 Virata vs. Ochoa | Fernandez
G.R. No. L-46179, January 31, 1978

FACTS

- Arsenio Virata died as a result of having been bumped while walking along Taft Avenue by a passenger jeepney driven by Maximo Borilla and registered in the name of Victoria Ochoa.
- An action for homicide through reckless imprudence was instituted against Maximo Borilla in the CFI of Rizal.
- Atty. Francisco, the private prosecutor, made a reservation to file separately the civil action for damages against the driver for his criminal liability, which he later on withdrew and presented evidence on the damages.
- The Heirs of Arsenio Virata again reserved their right to institute a separate civil action.
- They commenced an action for damages based on quasi-delict against the driver Maximo Borilla and the registered owner of the vehicle, Victoria Ochoa.
- Private respondents filed a motion to dismiss on the ground that there is another action pending for the same cause.
- The CFI acquitted Borilla on the ground that he caused the injury by accident. The motion to dismiss was granted.

ISSUES & ARGUMENTS

- **W/N the Heirs of Arsenio Virata can prosecute an action for damages based on quasi-delict against Maximo Borilla and Victoria Ochoa, driver and owner, respectively on the passenger jeepney that bumped Arsenio Virata?**

HOLDING & RATIO DECIDENDI

YES. IT IS AN EQUITABLE MORTGAGE.

- In negligence cases, the aggrieved parties may choose between an action under the Revised Penal Code or of quasi-delict under Article 2176 of the Civil Code. What is prohibited by Article 2177 of the Civil Code is to recover twice for the same negligent act.
- In this case, the petitioners are not seeking to recover twice for the same negligent act. Before the Criminal Case was decided, they manifested in the said case that they were filing a separate civil action for damages against the owner and driver of the passenger jeepney based on quasi-delict.
- Acquittal from an accusation of criminal negligence, whether on reasonable doubt or not, shall not be a bar to a subsequent civil action, not for civil liability arising from criminal negligence, but for damages due to a quasi-delict or 'culpa aquiliana'.
- The source of damages sought to be enforced in the Civil Case is quasi-delict, not an act or omission punishable by law. Under Art. 1157 of the Civil Code, quasi-delict and an act or omission punishable by law are two different sources of obligation.
- Moreover, for petitioners to prevail in the Civil Case, they have only to establish their cause of action by preponderance of evidence.

26 Jarantilla vs. CA | Regalado
G.R. No. 80194, March 21, 1989 | 171 SCRA 429

FACTS

- Jose Kuan Sing was side-swiped by a vehicle in the evening of July 7, 1971 in lznart Street, Iloilo City**.** Said vehicle which figured in the mishap, a Volkswagen car, was then driven by petitioner Edgar Jarantilla and that private respondent sustained physical injuries as a consequence.
- Jarantilla was accordingly charged before the then City Court of Iloilo for serious physical injuries thru reckless imprudence in Criminal Case No. 47207. Sing, as the complaining witness therein, did not reserve his right to institute a separate civil action and he intervened in the prosecution of said criminal case through a private prosecutor.
- Jarantilla was acquitted in said criminal case "on reasonable doubt".
- Sing filed another complaint against the petitioner in the former CFI of Iloilo, docketed therein as Civil Case No. 9976, and which civil action involved the same subject matter and act complained of in Criminal Case No. 47027
- Jarantilla alleged as defenses that the Sing had no cause of action and, , that the latter's cause of action, if any, is barred by the prior judgment in Criminal Case No. 47207 inasmuch as when said criminal case was instituted the civil liability was also deemed instituted since therein plaintiff failed to reserve the civil aspect.
- After trial, the court below rendered judgment on May 23, 1977 in favor of Sing. Hence, this appeal by Jarantilla.

ISSUES & ARGUMENTS

- **W/N Sing can institute a separate action for civil damages based on the same act without reserving such right to institute such action in the criminal case**

HOLDING & RATIO DECIDENDI

Sing can file a separate civil action for damages despite failure to reserve such right in the previous criminal case

- Apropos to such resolution is the settled rule that the same act or omission can create two kinds of liability on the part of the offender, that is, civil liability *ex delicto* and civil liability *ex quasi delicto*. Since the same negligence can give rise either to a delict or crime or to a quasi-delict or tort, either of these two types of civil liability may be enforced against the culprit, subject to the caveat under Article 2177 of the Civil Code that the offended party cannot recover damages under both types of liability.
- In the case under consideration, Sing participated and intervened in the prosecution of the criminal suit against Jarantilla. Under the present jurisprudential milieu, where the trial court acquits the accused on reasonable doubt, it could very well make a pronounce ment on the civil liability of the accused and the complainant could file a petition for mandamus to compel the trial court to include such civil liability in the judgment of acquittal.
- Sing, filed a separate civil aciton after such acquittal. This is allowed under Article 29 of the Civil Code. In *Lontoc vs. MD Transit & Taxi Co., Inc., et al.*: "In view of the fact that the defendant-appellee de la Cruz was acquitted on the ground that *'his guilt was not proven beyond reasonable doubt'* the plaintiff-appellant has the right to institute a separate civil action to recover damages from the defendants-appellants. The well-settled doctrine is that a person, while not criminally liable may still be civilly liable. 'The judgment of acquittal extinguishes the civil liability of the accused only when it includes a declaration that the facts from which the civil liability might arise did not exist'. 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 .
- The civil liability sought to be recovered through the application of Article 29 is no longer that based on or arising from the criminal offense. Under such circumstances, the acquittal of the accused foreclosed the civil liability based on Article 100 of the Revised Penal Code which presupposes the existence of criminal liability or requires a conviction of the offense charged. Divested of its penal element by such acquittal, the causative act or omission becomes in effect a quasi-delict, hence only a civil action based thereon may be instituted or prosecuted thereafter, which action can be proved by mere preponderance of evidence. Complementary to such considerations, Article 29 enunciates the rule, as already stated, that a civil action for damages is not precluded by an acquittal on reasonable doubt for the same criminal act or omission.
- **Since this action is based on a quasi-delict, the failure of the respondent to reserve his right to file a separate civil case and his intervention in the criminal case did not bar him from filing such separate civil action for damages.**

GINO CAPATI

27 Atlantic Gulf and Pacific Co. of Manila, Inc. vs. CA, Carlito Castillo and Heirs of Castillo | Regalado
G.R. No. 114841-42, October 20, 1995 |

FACTS

- Sometime in 1982, petitioner company commenced the construction of a steel fabrication plant in the Municipality of Bauan, Batangas, necessitating dredging operations at the Batangas Bay in an area adjacent to the real property of private respondents.
- Private respondents alleged that during the on-going construction of its steel and fabrication yard, petitioner's personnel and heavy equipment trespassed into the adjacent parcels of land belonging to private respondents without their consent. These heavy equipment damaged big portions of private respondents' property which were further used by petitioner as a depot or parking lots without paying any rent therefor, nor does it appear from the records that such use of their land was with the former's conformity.
- Respondents further alleged that as a result of the dredging operation of petitioner company, the sea silt and water overflowed and were deposited upon their land. Consequently, the said property which used to be agricultural lands principally devoted to rice production and each averaging an annual net harvest of 75 cavans, could no longer be planted with palay as the soil became infertile, salty, unproductive and unsuitable for agriculture.
- Petitioner now moves for the reconsideration of the judgment promulgated in this case on August 23, 1995 contending that private respondents are permitted thereunder to recover damages twice for the same act of omission contrary to Article 2177 of the Civil Code.

ISSUES & ARGUMENTS

- **W/N RESPONDENTS WERE PERMITTED TO RECOVER DAMAGES TWICE FOR THE SAME ACT?**
  Petitioner: Affirmance of the judgment of the trial court granting damages for both the "damage proper to the land" and "rentals for the same property" runs afoul of the proscription in Article 2177.

HOLDING & RATIO DECIDENDI

NO, THERE WAS NO RECOVERY OF DAMAGES TWICE FOR THE SAME ACT.

- Petitioner overlooks the fact that private respondents specifically alleged that as a result of petitioner's dredging operations the soil of the former's property "became infertile, salty, unproductive and unsuitable for agriculture." They further averred that petitioner's heavy equipment "used to utilize respondents' land as a depot or parking lot of these equipment without paying any rent therefor."
- **It is therefore clearly apparent that petitioner was guilty of two culpable transgressions on the property rights of respondents, that is:**
  - **1. For the ruination of the agricultural fertility or utility of the soil of their property**
  - **2. For the unauthorized use of said property as a dump rile or depot for petitioner's heavy equipment and trucks**
- Consequently, both courts correctly awarded damages both for the destruction of the land and for the unpaid rentals, or more correctly denominated, for the reasonable value of its use and occupation of the premises.

28 CANCIO Jr. vs ISIP

FACTS

- Cancio filed three cases of violation of BP 22 and three cases of Estafa against Isip for issuing the following checks without funds.
- The first case was dismissed by the Provincial Prosecutor on the ground that the check was deposited with the drawee bank after 90 days from the date of the check. The other two cases were dismissed by the MTC of Pampanga for failure to prosecute.
- For the three pending estafa cases, the prosecution moved to dismiss the estafa cases after failing to present its second witness.
- The prosecution reserved its right to file a separate civil action arising from the said criminal cases. The MTC granted the motions.
- Cancio filed a case for collection of sum of money, seeking to recover the amount of the checks.
- Isip filed a motion to dismiss on the ground that the action is barred by the doctrine of Res Judicata. Isip also prayed to have Cancio in contempt for forum shopping.
- The trial court ruled in favor of Isip by stating that the action is barred by Res Judicata and the filing of said civil case amounted to forum shopping.

ISSUES & ARGUMENTS

Whether the dismissal of the estafa cases against the respondents bars the institution of a civil action for collection of the value of the checks subject of the estafa cases.

HOLDING & RATIO DECIDENDI

No.

The trial court erred in dismissing Cancio's complaint for collection of the value of the checks issued by respondent. Being an independent civil action which is separate and distinct from any criminal prosecution and which require no prior reservation for its institution, the doctrine of Res Judicata and forum shopping will not operate to bar the same.

29 Picart vs. Smith| Street
March 15, 1918 | 37 Phil 809

FACTS

- Amando Picart seeks to recover from the defendant Frank Smith the sum of Php 31,100 as damages alleged to have been caused by an automobile driven by Smith. The incident happened on Dec 12, 1912, at the Carlatan Bridge, San Fernando, La Union.
- Picart was riding on his pony aver the said bridge. Before he had gotten half way across, Smith approached from the opposite direction driving his vehicle at 10 to 12 miles per hour.
- Smith blew his horn to give warning as he observed that the man was not observing rules of the road. Smith continued his course and made two more blasts.
- Picart was perturbed by the rapidity of the approach that he pulled his pony to the right side of the railing.
- As the automobile approached, Smith guided the automobile to its left, that being the proper side of the road for the machine.
- Smith noticed that the pony was not frightened so he continued without diminution of speed.
- When he learned that there was no possibility for the pony to go on the other side, Smith drove his car to the right to avoid hitting the pony, but in so doing the vehicle passed in a close proximity to the horse that it became frightened and turned its belly across the bridge with its head towards the railing.
- The horse was struck on the hock of the left hind leg by the flange of the car and the limb was broken.
- The horse fell and its rider was thrown off with some violence.
- It showed that the free space where the pony stood between the automobile and the railing was probably less than one half meters.
- The horse died and Picart received contusions which caused temporary unconsciousness and required medical attention for several days.

ISSUES & ARGUMENTS

Whether or not Smith was guilty of negligence that gives rise to a civil obligation to repair the damage done to Picart and his pony.

HOLDING & RATIO DECIDENDI

Yes, the court ruled that Smith that he is liable to pay Picart the amount of P200. The sum is computed to include the value of the horse, medical expenses of the plaintiff, the loss or damage occasioned to articles of his apparel.

- In the nature of things, this change in situation occurred while the automobile was still some distance away. From this moment it was no longer possible for Picart to escape being run down by going to a place for greater safety.
- The control of the situation had then passed entirely to Smith, and it was his duty to bring his car to an immediate stop or seeing no other persons on the bridge, to take the other side and pass sufficiently far away from the horse to avoid collision. There was an appreciable risk that a horse not acquainted with vehicles would react that way.
- The Test to Determine the Existence of Negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used the same situation? If not then he is guilty of negligence.
- The law in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman Law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy or negligent in the man of ordinary intelligence and prudence and determines liability by that.
- A prudent man, placed in the position of Smith in the Court's opinion would have recognized that the course which he was pursuing was fraught with risk and would therefore have foreseen harm to the horse and the rider as a reasonable consequence of that course.

30 Citytrust Banking Corp. vs. IAC and Emme Herrero | Vitug
G.R. No. 84281, May 27, 1994 | 232 SCRA 559

FACTS

- Complaint filed by private respondent Emme Herrero for damages against petitioner Citytrust.
- In her complaint, respondent averred that she a businesswoman, made regular deposits. On May 15, 1980, she deposited the amount of P31,500 to cover 6 postdated checks.
- However, in filling up the deposit slip, she omitted a zero in her account number but she did write her full name. Subsequently her checks were dishonored due to insufficient funds.
- The trial court dismissed the complaint and the CA reversed and awarded nominal and temperate damages and attorney's fees.

ISSUES & ARGUMENTS

W/N CITYTRUST WAS NEGLIGENT AND THUS LIABLE FOR DAMAGES?

HOLDING & RATIO DECIDENDI

YES, CITYTRUST NEGLIGENT

- Banking is a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. The teller should have noticed that there were only seven numbers instead of eight. Besides, the use of numbers is simply for the convenience of the bank and the depositor's name should still be controlling.
- To post a deposit in somebody else's name despite the name of the depositor clearly written on the deposit slip is indeed sheer negligence which could have easily been avoided if defendant bank exercised due diligence and circumspection in the acceptance and posting of plaintiff's deposit.
- Petitioner bank cannot disclaim liability for the negligence of its employees, because it failed to prove not only that it exercised due diligence to prevent damage but it was not negligent in the selection and supervision of its employees. (Go vs. IAC)
- The CA however erred in awarding nominal and temperate damages concurrently, the two are incompatible. Nominal damages are merely to recognize the violation of a right and not to indemnify. Temperate damages are designed to indemnify one for pecuniary loss the amount of which cannot be proved with reasonable certainty. Only nominal damages are warranted in this case.

31 Metrobank vs. CA | Romero
G.R. No. 112756 October 26, 1994 | 237 SCRA 761

FACTS

- Katigbak is the president and director of RBPG, which maintain an account in Metrobank (MBTC)
- MBTC received from the Central Bank a credit memo for 304k, to be credited to RBPG's account
- Due to the negligence of the bank's messenger, such was not credited promptly
- Katigbak issued checks in the amount of 300k payable to Dr. Felipe Roque and Mrs. Eliza Roque for 25k
- Checks bounced as funds were insufficient to cover checks
- Was berated by Roque's for issuing bum checks so Katigbak had to cut short her HK vacation to settle matters with MBTC
- RBPG and Isabel Katigbak filed a civil case against the MBTC for damages

ISSUES & ARGUMENTS

Whether or not private respondents RBPG and Isabel Rodriguez are l egally entitled to moral damages and attorney's fees

Assuming that they are so entitled, whether or not the amounts awarded are excessive and unconscionable

HOLDING & RATIO DECIDENDI

There is no merit in MBTC's argument that it should not be considered negligent, much less be held liable for damages on account of the inadvertence of its bank employee as Article 1173 of the Civil Code only requires it to exercise the diligence of a good *pater familias*

- The dishonoring of the RBPG checks committed through negligence by the petitioner bank and was rectified only nine days after receipt of the credit memo.
- Clearly, petitioner bank was remiss in its duty and obligation to treat private respondent's account with the highest degree of care, considering the fiduciary nature of their relationship. The bank is under obligation to treat the accounts of its depositors with meticulous care, whether such account consists only of a few hundred pesos or of millions.
- **Responsibility arising from negligence in the performance of every kind of obligation is demandable**
- While the bank's negligence may not have been attended with malice and bad faith, nevertheless, it caused serious anxiety, embarrassment and humiliation to private respondents for which they are entitled to recover reasonable moral damages.
- The damage to private respondents' reputation and social standing entitles them to moral damages. **Moral damages** include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.
- **Temperate or moderate damages** which are more than nominal but less than compensatory 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 proved with certainty.
- The carelessness of petitioner bank, aggravated by the lack of promptness in repairing the error and the arrogant attitude of the bank officer handling the matter, justifies the grant of moral damages, which are clearly not excessive and unconscionable.

GINO CAPATI

32 Far East Bank and Trust Company vs. Estrella O. Querimit
GR 148582, January 163, 2002/ Mendoza

FACTS

- Estrella Querimit (Respondent) opened a dollar savings account in FEBTC's Harison branch for which she was issued 4 $15,000 Certificates of Deposit. It all valued $60,000.
    - These certificates were to mature in 60 days and payable to bearer at 4.5% per annum.
- In 1989, she accompanied her husband Dominador to the United States for medical treatment. In January 2 January 1993, her husband died and she returned to the Philippines.
- She went to FEBTC and tried to withdraw her dollar deposit.
- **She was told though by FEBTC that her husband had withdrawn the money in the deposit**

ISSUES & ARGUMENTS

Is FEBTC guilty of Negligence and liable for the amount in the deposit?

HOLDING & RATIO DECIDENDI

Yes failed to act due diligence.

- A Certificate of Deposit is defined as a written acknowledgment by a bank or banker of the receipt of a sum in money on deposit which the bank or banker promises to pay the depositor to the order of the depositor (NEGO!!!)
    - A relation of debtor-creditor is created.
- The bank alleges that it paid the husband and **did not ask for the surrender of the said certificate of deposit for Mr. Querimit was one of the senior managers of the bank.**
    - Even though after Mr. Querimit retired, the bank did not show effort to collect the said certificates from him.
    - This accommodation as well was mad ein violation if the bank's policies and procedure.
- FEBTC thus failed to exercise the degree of diligence required by the nature of its business
    - Since the business of banking is impressed with public interest, it should exercise the degree of diligence **MORE than that of a good father of a family.**
- **They fiduciary nature of their relationship with their depositors requires them to treat the accounts with the highest degree of care.**

Wherefore the decision of the CA is affirmed that they pay the $60,000 deposit plus P50,000 moral damages.

33 Reyes vs. CA | De Leon, Jr.
G.R. No. 118492, August 15, 2001 | 363 SCRA 51

FACTS

- In view of the 20th Asian Racing Conference in Sydney, Australia, the Philippine Racing Club, Inc. sent four delegates to the said conference.
- Petitioner Reyes, as vice-president for finance, racing manager, treasurer, and director of PRCI, sent Godofredo Reyes, the club's chief cashier, to the respondent Far East Bank and Trust Company to apply for a foreign exchange demand draft in Australian dollars.
- Godofredo went to respondent's Buendia Branch to apply for a demand draft, which was initially denied because FEBTC did not have an Australian dollar account in any bank in Sydney.
- The bank's assistant cashier informed Godofredo of a roundabout way of effecting the requested remittance to Sydney by having FEBTC draw a demand draft against Westpac Bank in Sydney and have the latter reimburse itself from the US dollar account of FEBTC in Westpac Bank in New York.
- Reyes, acting through Godofredo, agreed to this arrangement, which was approved by FEBTC.
- However, upon due presentment of the foreign exchange demand draft, the same was dishonored, with the notice of dishonor stating the following: No account held with Westpac.
- Petitioners filed a complaint for damages against respondent FEBTC, claiming that they were exposed to unnecessary shock, social humiliation, and deep mental anguish in a foreign country, and in the presence of an international audience.

ISSUES & ARGUMENTS

W/N respondent FEBTC should have exercised a higher degree of diligence than that expected of an ordinary prudent person in the handling of its affairs?

HOLDING & RATIO DECIDENDI

NO. THAT HIGHER DEGREE OF DILIGENCE IS NOT EXPECTED TO BE EXERTED BY BANKS IN COMMERCIAL TRANSACTIONS THAT DO NOT INVOLVE THEIR FIDUCIARY RELATIONSHIP WITH THEIR DEPOSITORS.

- The degree of diligence required of banks, is more than that of a good father of a family where the fiduciary nature of their relationship with their depositors is concerned. But this only applies to cases where the banks act under their fiduciary capacity, as depositary of the deposits of their depositors.
- The case at bar does not involve the handling of petitioners' deposit with respondent bank. The relationship involved was that of a buyer and seller, that is, between the respondent bank as the seller of the subject foreign exchange demand draft, and PRCI as the buyer of the same, with the 20th Asian Racing Conference Secretariat as the payee thereof.

THE EVIDENCE SHOWS THAT FEBTC DID EVERYTHING WITHIN ITS POWER TO PREVENT THE DISHONOR OF THE SUBJECT FOREIGN EXCHANGE DEMAND DRAFT.

- FEBTC did not cause an erroneous transmittal of its SWIFT cable message to Westpac-Sydney. It was the erroneous decoding of the cable message on the part of Westpac-Sydney that caused the dishonor of the subject foreign exchange demand draft. As a result, Westpac-Sydney construed the said cable message as a format for a letter credit and not for a demand draft.
- The erroneous reading of its cable message to Westpac-Sydney by an employee of the latter could have been foreseen by the respondent bank.
- Prior to the first dishonor, FEBTC advised Westpac-New York to honor the reimbursement claim of Westpac-Sydney.
- After the dishonor, FEBTC reconfirmed the authority of Westpac-New York to debit its dollar account and also sent two more cable messages inquiring why the demand draft was dishonored.

34 Adzuara vs. Court of Appeals | Bellosillo
G.R. No. 125134, January 22, 1999 | 657 SCRA 301

FACTS

- On Dec 17, 1990, 1:30 am, Xerxes Adzuara, then a law student, and his friends Rene Gonzalo and Richard Jose were cruising along Quezon Ave from EDSA towards Delta circle in a Colt Galant sedan at approx 40 kph.
- Upon reaching the intersection of 4th West St their car collided w/ a 1975 Toyota Corolla owned and driven by Gregorio Martinez.
- Martinez was w/ his daughter Sahlee and was coming from the eastern portion of Quezon Ave near Delta Circle and executing a U-turn at 5kph.
- The collision flung the Corolla 20 meters southward from the point of impact and landed on top of the center island of Q.Ave.
- Sahlee Martinez sustained injuries because of the accident and caused her to miss classes.
- On July 12 1991, petitioner Adxuara was charged before QC RTC w/ reckless imprudence resulting in damage to property w/ less physical injuries.
- On Dec 11, 1991, before the presentation of evidence, Martinez manifested is intention to institute a separate civil action for damages.
- RTC convicted Adzuara, CA affirmed but deleted the fine of P50K.

ISSUES & ARGUMENTS

W/N Adzuara was guilty of negligence?

HOLDING & RATIO DECIDENDI

YES.

- It was satisfactorily proved that the accident occurred because of Adzuara's reckless imprudence consisting of his paying no heed to the red light and proceeding fast as it was approaching an intersection.
- Gregorio testified that when the traffic light turned green, he turned left at the speed of 5kph, this was corroborated by the testimony of Sahlee.
- Adzuara testified that he was driving at the speed of 40kph but this was belied by the fact that the vehicle of Martinez was thrown off 20 meters away from the point of impact.
- The appreciation of Adzuara's post-collision behavior serves only as a means to emphasize the finding of negligence which is readily established by the admission of Adzuara and his friend that they saw the car of MArtines making a U-turn but could not avoid the collision by the mere application of the brakes.
- NEGLIGENCE – the want of care required by the circumstances, it is a relative or comparative, not an absolute, term and its application depends upon the situation of the parties and the degree of care and vigilance which the circumstance reasonably require. (ex: keeping a watchful eye on the road, observe traffic rules on speed, right of way)
- The speed at which Adzuara drove appears to be the prime cause for his inability to stop his car and avoid collision.
- It is a rule that motorists crossing a thru-stop street has the right of way over the one making a U-turn. But if the person making a U-turn has already negotiated half of the turn and is almost on the other side so that he is already visible to the person on the thru-street, the latter must give way to the former.
- Adzuara should have stopped when he saw the car of Martinez making a U-turn.
- Adzuara claims that Martinez was guilty of contributory negligence but his has not been satisfactorily shown.

PAT FERNANDEZ

35 Bayne Adjuster and Surveyor Inc v CA, Insurance Company of North America| Gonzaga-Reyes
G.R. No. 116332 January 25, 2000 |323 SCRA 231

FACTS

- Bayne Adjuster had a contract with consignee, Colgate-Palmolive Philippines, to supervise the proper handling and discharge of their import liquid alkyl benzene (from Japan, totally amounting to USD 255,802.88) from the chemical tanker to a receiving barge until the cargo is pumped into consignee's shore tank.
- Such arrangement was insured by Col-Pal to Private Respondent (PR), Insurance of NA, against all risks for its full value.
- June 27, 1987, 1020pm: the said pumping commenced. Due to a mechanical failure, pump broke down several times.
- June 29, 1987, 1pm: pump broke down again. At that time, petitioner's surveyor already left the premises without leaving any instruction with the barge foreman on what to do in the event that the pump becomes operational again. Later that say, consignee asked petitioner to send a surveyor to conduct tank sounding. Petitioner sent Amado Fontillas, a cargo surveyor, not a liquid bulk surveyor to check. Fontillas wanted to inform the bargemen and the assigned surveyor to resume pumping, but they were nowhere, so he left.
- Bargemen arrived in the evening, found the valves of the tank open and resumed pumping in absence of any instruction. The following morning, an undetermined amount of alkyl benzene was lost due to overflow. Consignee, surveyor and a marine surveyor had a conference to determine the amount of loss. A compromise quantity of 67.649MT was lost, amounting to PHP811,609,53. Private respondent instituted a collection suit as subrogee of consignee after their failure to extra judicially settle with petitioners.
- RTC, CA: Bayne must pay! Hence this petition.

ISSUES & ARGUMENTS

W/N Bayne's failure to supervise is the proximate cause of the loss, thus making them liable for damages?

HOLDING & RATIO DECIDENDI

YES!

- According to the Standard Operating Procedure (SOP) for Handling Liquid Bulk Cargo, it is the duty of the surveyor that he closes the valves of the tank when pumping operations are suspended due to pump break down. The petitioner did not deny such failure. Their failure to comply is the proximate cause of the loss. This failure enabled bargemen , without any instruction or supervision, to resume pumping, leading to the overflow of liquid cargo from the tank.
- Bayne even argued that TC and CA misappreciated the facts because PR's own witness admits that the bargemen continued pumping operation without authorization from the surveyor. They also raised that the change in the testimony of the PR's expert witness should overthrow the claim of PR. Expert witness initially said that consignee and surveyor has a **protective survey agreement**, but he later corrected his statement that, it was only a **superintendent survey agreement.** Bayne was banking that under the latter, the SOP wouldn't apply. However, the SC held that the SOP was for **handling liquid bulk**, while the subject cargo is liquid alkyl benzene and thus the applicability of the SOP cannot be denied.
- SC found that facts and findings of the TC and CA need not be disturbed in absence of exceptional grounds. The mistake of the expert witness is not by itself sufficient to overthrow neither the credibility nor the weight accorded to it by the trial court since it was promptly corrected.
- DOCTRINE:
    - Negligence of the obligor in the performance of his obligation renders him liable for damages for the resulting loss suffered by the obligee. Fault or negligence of the obligor consists of the failure to exercise due care and prudence in the performance of the obligation as the nature of the obligation demands. The factual findings and conclusions of the TC and CA when supported by substantial evidence are entitled to great respect and will not be disturbed on appeal except on very strong and cogent grounds.

TC and CA decision affirmed. Petition dismissed.

DIANE LIPANA

36 Samson, Jr. vs. BPI | Panganiban
G.R. No. 150487, July 10, 2003 | 405 SCRA 607

FACTS

- Samson, Jr. filed an action for damages against BPI. As a client/depositor of the bank, he deposited a Prudential Bank check into his savings account worth P3,500.00. Later, he asked his daughter to withdraw P2,000, but declined due to insufficient funds. As a result, he suffered embarrassment as he could not produce the required cash to fulfill an obligation towards a creditor who had waited at his residence.
- Subsequently, Samson deposited P5,500.00. Here, he discovered that hi balance remained P342.38, and that the earlier deposit of P3,500.00 had not been credited.
- When Samson asked about the discrepancy, BPI confirmed the deposited check but could not account for the same. Upon investigation, it was found out that their security guard had encashed the check and that, despite knowledge of the irregularity, BPI had not informed Samson. Moreover, manager Cayanga allegedly displayed arrogance, indifference, and discourtesy towards Samson.
- The trial court rendered a decision in favor of Samson. CA affirmed by reducing the amount of damages from P200,000.00 to P50,000.00. Hence this petition.

ISSUES & ARGUMENTS

W/N the reduction of moral damages by the trial court was proper.

HOLDING & RATIO DECIDENDI

PETITION IS PARTLY MERITORIOUS.

- Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused.
- Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted. Moral damages are not punitive in nature and were never intended to enrich the claimant at the expense of the defendant.
- No hard-and-fast rule in determining moral damages; each case must be governed by its own peculiar facts. Trial courts are given discretion in determining the amount, with the limitation that it "should not be palpably and scandalously excessive."
- Moral damages are awarded to achieve a "spiritual *status quo*", i.e. to enable the injured party to obtain means, diversions, amusements that will serve to alleviate the moral suffering undergone.
- The social standing of the aggrieved party is essential to the determination of the proper amount of the ward. Otherwise, the goal of enabling him restore the spiritual status quo may not be achieved.
- Award should be increased to P100,000.00 since a) petitioner is a businessman and the highest lay person in the United Methodist Church; b) was regarded with arrogance and a condescending manner, and c) BPI successfully postponed compensating him for more than a decade. His alleged delay in reporting the matter did not at all contribute to his injury.

Petition partly granted. Decision modified. Award increased to P100,000.00

CHRISSIE MORAL

37 UCPB v. Teofilo C. Ramos / Callejo, Sr.
G.R. No. 147800. November 11, 2003

FACTS

- The petitioner United Coconut Planters Bank (UCPB) granted a loan of P2,800,000 to Zamboanga Development Corporation (ZDC) with Venicio Ramos and the Spouses Teofilo Ramos, Sr. and Amelita Ramos as sureties. Teofilo Ramos, Sr. was the Executive Officer of the Iglesia ni Cristo.
- ZDC failed to pay its account despite repeated demands so petitioner brought the matter to the RTC, which ruled in its favor and granted the writ of execution applied for.
- Petitioner, requested Reniva, an appraiser of the petitioner's Credit and Appraisal Investigation Department to ascertain if the defendants had any leviable real and personal property, and reported that there was a property belonging to Teofilo C. Ramos, President and Chairman of the Board of Directors of the Ramdustrial Corporation, married to Rebecca F. Ramos
- Thereafter, the sheriff sent a notice of levy to Teofilo Ramos and caused an annotation thereof by the Register of Deeds on the said title.
- Because of this, Ramdustrial's loan with UCPB was delayed as its property was initially denied as security because of the annotation, which caused Ramdustrial to fail to join a bidding at the San Miguel Corporation. This ultimately caused its business to weaken.

ISSUES & ARGUMENTS

W/N UCPB was negligent in causing the annotation on the title of Teofilo C. Ramos when he is not even a party to the loan entered into by ZDC, with Teofilo Ramos Sr as surety

HOLDING & RATIO DECIDENDI

Yes

- "Did the defendant in doing the negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence." Considering the testimonial and documentary evidence on record, we are convinced that the petitioner failed to act with the reasonable care and caution which an ordinarily prudent person would have used in the same situation
- It should have acted more cautiously, especially since some uncertainty had been reported by the appraiser whom the petitioner had tasked to make verifications.
- It appears that the petitioner treated the uncertainty raised by appraiser Eduardo C. Reniva as a flimsy matter. It placed more importance on the information regarding the marketability and market value of the property, utterly disregarding the identity of the registered owner thereof.
- It behooved the petitioner to ascertain whether the defendant Teofilo Ramos, in the civil case was the same person who appeared as the owner of the property covered by the said title. If the petitioner had done so, it would have surely discovered that the respondent was not the surety and the judgment debtor in the civil case. The petitioner failed to do so, and merely assumed that the respondent and the judgment debtor Teofilo Ramos, Sr. were one and the same person.
- In sum, the court found that the petitioner acted negligently in causing the annotation of notice of levy in the title of the herein respondent, and that its negligence was the proximate cause of the damages sustained by the respondent.

38 FEBTC vs. Marquez | Panganiban, J.:
G.R. No. 147964, Jan. 20, 2004 | 420 SCRA 349

FACTS

- Arturo Marquez entered into a Contract to Sell with Transamerican Sales and Expositions (TSE) whereby Marquez is to buy a 52.5 sq.m. lot in Diliman, QC with a 3-story townhouse unit denominated as Unit No. 10 for a total consideration of P800,000
- On May 22, 1989, TSE obtained a loan from FEBTC for P7,650,000 and mortgaged the property covered by TCT No. 156254 (which includes in it Unit No. 10)
    - *FEBTC relied on TSE's representation that all requisite permits and licenses from the government agencies concerned were complied with*
- TSE failed to pay the loan and FEBTC foreclosed the REM
- FEBTC won as the highest bidder (P15.7 M) in the auction sale
- Marquez has already paid P600,000 when he stopped payment since the construction of his townhouse slackened
- Marquez instituted a case with the Office of Appeals, Adjudication, and Legal Affairs (OAALA) of the HLURB and he won
    - The mortgage was deemed unenforceable
    - Ordered FEBTC to compute and allow Marquez to continue payment of amortizations
    - Ordered RD of QC to cancel the annotations of the mortgage indebtedness
    - Ordered RD of QC to cancel the annotation of the Certificate of Sale in favor of FEBTC
- FEBTC filed a Petition for Review but was denied
- FEBTC appealed the decision to the Office of the President but was denied
- FEBTC filed a Petition for review to CA under Rule 43 but was denied
- Hence this Petition for Review under Rule 45

ISSUES & ARGUMENTS

W/N the mortgage contract violated Sec. 18 of PD 957, hence, void insofar as third persons are concerned

HOLDING & RATIO DECIDENDI

YES Sec. 18 of PD 957 provides:

- 'No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereof'

- That the subject of the mortgage loan was the entire land and not the individual subdivided lots, does not take the loan beyond the coverage of Sec. 18. Undeniably, the lot was also mortgaged when the entire parcel of land, of which it was a part, was encumbered.
- The case of PNB vs. Office of the President provides that PD 957 was intended to protect innocent lot buyers from scheming subdivision developers.
- As between the small lot owners and the gigantic financial institutions, which the developers deal with, it is obvious that the law, as an instrument of social justice, must favor the weak.
    - Banks are presumed to have conducted the usual 'due diligence' checking and ascertaining
    - Small lot owners are powerless to discover the attempt of the land developer to hypothecate the property being sold tot hem
- **Petitioner's argument that it was an innocent mortgagee lacks merit**
    - As a general rule, when there is nothing on the certificate of title to indicate any cloud or vice in the ownership of the property, the purchase is not required to go beyond the title
    - However, where the purchaser or mortgagee has knowledge of a defect or lack of title in the vendor, or that he was aware of sufficient facts to induce a reasonably prudent man to inquire into the status of the property in litigation, he must go beyond the title
- Petitioner should have considered that it was dealing with a town hose project that was already in progress
    - A reasonable person should have been aware that, to finance the project, sources of funds could have been used other than the loan, which was intended to serve the purpose only partially
    - Hence, there was a need to verify whether any party of the property was already the subject of any other contract involving buyers or potential buyers
- In granting the loan, the bank should not have been content merely with a clean title, considering the presence of circumstances indicating the need for a thorough investigation of the existence of buyers like respondent
- Having been wanting in care and prudence, the bank cannot be deemed to be an innocent mortgagee
- The bank should not have relied on TSE's representations and it must have required the submission of certified true copies of those documents and verified their authenticity through its own independent effort.

CEO OCAMPO

39 Cusi v. PNR| Guerrero J.
G.R. No. L-29889 May 31, 1979

FACTS

- Spouses Cusi attended a birthday party in Paranaque, Rizal. After the party which broke up at about 11 o'clock that evening, the spouses proceeded home in their Vauxhall car with Victorino Cusi at the wheel. Upon reaching the railroad tracks, finding that the level crossing bar was raised and seeing that there was no flashing red light, and hearing no whistle from any coming train, Cusi merely slack ened his speed and proceeded to cross the tracks. At the same time, a train bound for Lucena traversed the crossing, resulting in a collision between the two.
- This accident caused the spouses to suffer deformities and to lose the earnings they used to enjoy as successful career people.
- The defense is centered on the proposition that the gross negligence of Victorino Cusi was the proximate cause of the collision; that had he made a full stop before traversing the crossing as required by section 56(a) of Act 3992 (Motor Vehicle Law), he could have seen and heard the approach of the train, and thus, there would have been no collision.

ISSUES & ARGUMENTS

W/N Victorino Cusi was negligent and such was the proximate cause of the collision

HOLDING & RATIO DECIDENDI

No.

- Negligence has been defined by Judge Cooley in his work on Torts as "the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury."
- All that the law requires is that it is always incumbent upon a person to use that care and diligence expected of reasonable men under similar circumstances.
- Undisputably, the warning devices installed at the railroad crossing were manually operated; there were only 2 shifts of guards provided for the operation thereof — one, the 7:00 A.M. to 3:00 P. M. shift, and the other, the 3:00 P.M. to 11:00 P.M. shift. On the night of the accident, the train for Lucena was on an unscheduled trip after 11:00 P.M. During that precise hour, the warning devices were not operating for no one attended to them. Also, as observed by the lower court, the locomotive driver did not blow his whistle, thus: "... he simply sped on without taking an extra precaution of blowing his whistle. That the train was running at full speed is attested to by the fact that notwithstanding the application of the emergency brakes, the train did not stop until it reached a distance of around 100 meters."
- Victorino Cusi had exercised all the necessary precautions required of him as to avoid injury to -himself and to others. We find no need for him to have made a full stop; relying on his faculties of sight and hearing, Victorino Cusi had no reason to anticipate the impending danger
- The record shows that the spouses Cusi previously knew of the existence of the railroad crossing, having stopped at the guardhouse to ask for directions before proceeding to the party. At the crossing, they found the level bar raised, no warning lights flashing nor warning bells ringing, nor whistle from an oncoming train. They safely traversed the crossing. On their return home, the situation at the crossing did not in the least change, except for the absence of the guard or flagman. Hence, on the same impression that the crossing was safe for passage as before, plaintiff-appellee Victorino Cusi merely slackened his speed and proceeded to cross the tracks, driving at the proper rate of speed for going over railroad crossings

40 Gan vs. CA | Fernan, C.J.:
G.R. No. L-44264, Sept. 19, 1988 | 165 SCRA 378

FACTS

- July 4, 1972 (8am): Hedy Gan was driving a Toyota Crown Sedan along North Bay Boulevard, Tondo, Manila
- While driving two vehicles, a truck and a jeepney, are parked at the right side of the road
- While driving, there was a vehicle coming from the opposite direction and another one who overtakes the first vehicle
- To avoid a head-on collision, the Gan served to the right and as a consequence:
    - The front bumper of the Toyota Crown Sedan hit an old man pedestrian (Isidoro Casino) ~ DOA to Jose Reyes Memorial Hospital
        - Casino was pinned against the rear of the parked jeepney and the jeepney moved forward hitting the truck
    - Sedan was damaged on its front
    - The jeep suffered damages
    - The truck sustained scratches
- Gan was convicted of Homicide thru Reckless Imprudence
- On appeal, the conviction was modified to Homicide thru Simple Imprudence
- Petitioner now appeals to the said ruling

ISSUES & ARGUMENTS

- **W/N Gan is criminally liable for the accident**

HOLDING & RATIO DECIDENDI

NO

- TEST for determining negligence:
    - Would a prudent man in the position of the person to whom negligence is attributed foresee harm to the person injured as a reasonable consequence of the course about to be pursued?
    - If so, the law imposes the duty on the doer to take precaution against its mischievous results and the failure to do so constitutes negligence
- However a corollary rule must be understood, that is the 'Emergency Rule' which provides that:
    - One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence
    - It presupposes sufficient time to analyze the situation and to ponder on which of the different courses of action would result to the least possible harm to herself and to others
- The CA, in its decision, said that Gan should have stepped on the brakes when she saw the car going in the opposite direction. And that she should not only have swerved the car she was driving to the right but should have also tried to stop or lessen her speed so that she would not bump into the pedestrian.
- The SC held that the appellate court is asking too much from a mere mortal like the petitioner who in the blink of an eye had to exercise her best judgment to extricate herself from a difficult and dangerous situation caused by the driver of the overtaking vehicle.
    - The danger confronting Gan was real and imminent, threatening her very existence
    - She had no opportunity for rational thinking but only enough time to head the very powerful instinct of self-preservation

WHEREFORE, Gan is acquitted.

CEO OCAMPO

41 Valenzuela vs. CA| Kapunan
G.R. No. 115024, February 7, 1996 | 362 SCRA 56

FACTS

- At around 2:00 in the morning of June 24, 1990, plaintiff Ma. Lourdes Valenzuela was driving a blue Mitsubishi lancer with Plate No. FFU 542 along Aurora Blvd. with a companion, Cecilia Ramon, heading towards the direction of Manila. Before reaching A. Lake Street, she noticed she had a flat tire and stopped at a lighted place to solicit help if needed. She parked along the sidewalk, about 1½ feet away, put on her emergency lights, alighted from the car, and went to the rear to open the trunk. She was standing at the left side of the rear of her car when she was suddenly bumped by a 1987 Mitsubishi Lancer driven by defendant Richard Li and registered in the name of defendant Alexander Commercial, Inc. Because of the impact plaintiff was thrown against the windshield of the car of the defendant and then fell to the ground. She was pulled out from under defendant's car. She was brought to the UERM Medical Memorial Center where she was found to have a "traumatic amputation, leg, left up to distal thigh (above knee)." She was confined in the hospital for twenty (20) days and was eventually fitted with an artificial leg. The expenses for the hospital confinement (P 120,000.00) and the cost of the artificial leg (P27,000.00) were paid by defendants from the car insurance.

- Defendant Richard Li denied that he was negligent. He said he was travelling at 55 kph; considering that it was raining, visibility was affected and the road was wet. Traffic was light. He testified that he was driving along the inner portion of the right lane of Aurora Blvd. towards the direction of Araneta Avenue, when he was suddenly confronted, in the vicinity of A. Lake Street, San Juan, with a car coming from the opposite direction, travelling at 80 kph, with "full bright lights." Temporarily blinded, he swerved to the right to avoid colliding with the oncoming vehicle, and bumped plaintiff's car, which he did not see because it was midnight blue in color, with no parking lights or early warning device, and the area was poorly lighted. He alleged in his defense that the left rear portion of plaintiff's car was protruding as it was then "at a standstill diagonally" on the outer portion of the right lane towards Araneta Avenue (par. 18, Answer). He confirmed the testimony of plaintiff's witness that after being bumped the car of the plaintiff swerved to the right and hit another car parked on the sidewalk. Defendants counterclaimed for damages, alleging that plaintiff was reckless or negligent, as she was not a licensed driver.

ISSUES & ARGUMENTS

- **W/N the court should sustain the version of plaintiff or defendant**
- **W/N there was contributory negligence on the part of Valenzuela**
- **W/N Alexander Commercial Inc. can be held solidarily liable with Li**

HOLDING & RATIO DECIDENDI

Sustain Plaintiff

- The version presented by defendant could not be sustained as witnesses in the area testified that he was driving very fast and zigzagging. Also the facts as he narrated are highly unprobable seeing as the street was actually well lighted. Had he been traveling at a slow speed, he would have been able to stop in time so as not to hit the plaintiff even if the road was wet. The only reason why he would not have been able to do so would be if he was intoxicated which slows down reactions.

No

- Li contends that Valenzuela should not have parked on the side of the road and looked for a parking space.
- The court rationalized using the emergency rule which states "An individual who suddenly finds himself in a situation of danger and is required to act without much time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence if he fails to undertake what subsequently and upon reflection may appear to be a better solution, unless the emergency was brought by his own negligence." Valenzuela could not have been expected to go to a side street where the chances of finding help would have been lower.

No

- Although the Li was an employee of American, no proof was adduced as Li claimed, that he was out late that night on a social call in the exercise of his functions as assistant manager.

42 Prudential Bank v. CA | Quisumbing
G.R. No. 125536, March 16, 2000| 328 SCRA 264

FACTS

- Leticia Tupasi-Valenzuela had a current account with Prudential Bank, the balance of which on 21 June 1988 was about P36K.
- She issued a post-dated check (20 June 1997) for P11,500, drawn upon her account in Prudential Bank, in favor of Legaspi for payment of jewelry.
- The check was indorsed to Philip Lhuiller. Lhullier subsequently deposited the check but it was dishonored for having insufficient funds.
- Leticia went to Prudential Bank to clarify the matter because it was her belief that she had the sufficient funds to cover the amount of the check since she deposited into her account a check for P35K on 1 June 1988.
- She presented her passbook to the bank officer as evidence, but the same was set aside because according to the officer the best evidence of sufficiency of funds was the ledger furnished by the bank which did, in fact, show an insufficiency.
- Leticia found out that the check she deposited on 1 June had been cleared only on 24 June, 23 days after the deposit. The P11,500.00 check was redeposited by Lhuillier on June 24, 1988, and properly cleared on June 27, 1988.

ISSUES & ARGUMENTS

- **W/N Leticia is entitled to Moral Damages amounting to P`100,000.**
  - **Petitioner's Argument:** Bank acted in good faith and that is was an honest mistake, therefore moral damages cannot be asked of them.
  - **Respondent's Argument:** while it may be true that the bank's negligence in dishonoring the properly funded check of Leticia might not have been attended with malice and bad faith, it is the result of lack of due care and caution expected of an employee of a firm engaged in so sensitive and accurately demanding task as banking
- **W/N Leticia is entitled to Exemplary Damages amounting to P 50,000.**
  - **Petitioner's Argument:** Bank acted with due diligence.
  - **Respondent's Argument:** The Bank did not practice due diligence and the public relies on the banks' sworn profession of diligence and meticulousness in giving irreproachable service.

HOLDING & RATIO DECIDENDI

LETICIA IS ENTITLED TO P100,000 as MORAL DAMAGES

- The bank's negligence was the result of lack of due care and caution required of managers and employees of a firm engaged in so sensitive and demanding business as banking. Accordingly, the award of moral damages by the respondent Court of Appeals could not be said to be in error nor in grave abuse of its discretion

LETICIA IS ONLY ENTITLED TO P20,000 (NOT P50,000)

- The law allows the grant of exemplary damages by way of example for the public good.
- The level of meticulousness must be maintained at all times by the banking sector. Hence, the Court of Appeals did not err in awarding exemplary damages. In our view, however, the reduced amount of P20,000.00 is more appropriate.

43 Subido vs. Custodio
G.R. No. 129329, July 31, 2001 | 17 SCRA 1088

FACTS

- Petitioner Subido owned a 6x6 truck which was driven by Lagunda. Laguna-Tayabas Bus Company on the other hand owned a bus driven by Mudales had Agripino Custodio, respondent Belen Makabuhay Custodio's husband, as one of its passengers.
- On June 9, 1955 at around 9:30 AM, the LTB bus was negotiating a sharp curve in Barrio Halang, Municipality of Lumban, Laguna. The bus was full and Agripino was hanging on the left side of the bus.
- At the same time but at the opposite direction, Subido's truck was climbing up at a fast speed. Despite having seen Agripino hanging from the side of the bus 5 to 7 meters away, Lagunda did not swerve to the shallow canal on the right side of the road.
- Agripino was sideswiped and this led to his death.

ISSUES & ARGUMENTS

W/N Subido and Lagunda can be held solidarily liable with LTB and Mudales.

HOLDING & RATIO DECIDENDI

Yes

- The negligence of LTB and Muidales would not have caused the death of Agripino had Lagunda not been negligent himself. It can be said that the negligence of the drivers of both vehicles were the proximate causes for the accident
- Also, Lagunda had the last clear chance to avoid the accident.
- The parties are solidarily liable for, although their acts were independent, it cannot be determined as to what proportion of the negligence of each contributed to the damage.

44 Ridjo Tape and Chemical Corp. v. CA| Romero
G.R. No. 126074, February 24, 1998| 286 SCRA 544

FACTS

- MERALCO demanded payment from Ridjo Tape & Chemical Corp for their unregistered electric consumption from November 1990 – February 1991 amounting to P415K.
- MERALCO also demanded that Ridjo Paper Corp pay their unregistered electric consumption for the period of July 1991 – April 1992 in the amount of P89K
- MERALCO sent them notices to settle their account or it would be forced to disconnect their electricity.
- The unregistered electric consumption charges was due to the defects Ridjo Corp's electric meter.

ISSUES & ARGUMENTS

W/N Ridjo must their unregistered electric consumption

- **Petitioners:** Their contract provides: In the event of the stoppage or the failure by any meter to register the full amount of energy consumed, the Customer shall be billed for such period on an estimated consumption based upon his use of energy in a similar period of like use"
- **Respondent:** To follow the interpretation advanced by petitioners would constitute an unjust enrichment in favor of its customers

HOLDING & RATIO DECIDENDI

RIDJO IS PARTLY LIABLE FOR THE UNREGISTERED ELECTRIC CONSUMPTION

- MERALCO was negligent for which it must bear the consequences. Its failure to make the necessary repairs and replacement of the defective electric meter installed within the premises of petitioners was obviously the proximate cause of the instant dispute between the parties.
- Public utilities should be put on notice, as a deterrent, that if they completely disregard their duty of keeping their electric meters in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers.
- The Court cannot sanction a situation wherein the defects in the electric meter are allowed to continue indefinitely until suddenly the public utilities concerned demand payment for the unrecorded electricity utilized when, in the first place, they should have remedied the situation immediately. If we turn a blind eye on MERALCO's omission, it may courage negligence on the part of public utilities, to the detriment of the consuming public.
- However, it is to be expected that the Ridjo Corporations were consciously aware that these devices or equipment are susceptible to defects and mechanical failure. It is difficult to believe that the Ridjo Corporations were ignorant of the fact that stoppages in electric meters can also result from inherent defects or flaws and not only from tampering or intentional mishandling. Since they were also negligent in failing to check their meters, it is only fair that they pay for the electricity that they used.

CHESKA RESPICIO

45 Raynera v. Hiceta| Pardo
(G.R. No. 120027) (21 April 1999)

FACTS:

- On March 23, 1989, at about 2:00 in the morning, Reynaldo Raynera was on his way home. He was riding a motorcycle traveling on the southbound lane of East Service Road, Cupang, Muntinlupa. The Isuzu truck was travelling ahead of him at 20 to 30 kilometers per hour. The truck was loaded with two (2) metal sheets extended on both sides, two (2) feet on the left and three (3) feet on the right. There were two (2) pairs of red lights, about 35 watts each, on both sides of the metal plates. The asphalt road was not well lighted.
- At some point on the road, Reynaldo Raynera crashed his motorcycle into the left rear portion of the truck trailer, which was without tail lights. Due to the collision, Reynaldo sustained head injuries and he was rushed to the hospital where he was declared dead on arrival.
- Edna Raynera, widow of Reynaldo, filed with the RTC a complaint for damages against respondents Hiceta and Orpilla, owner and driver of the Isuzu truck.
- At the trial, petitioners presented Virgilio Santos. He testified that at about 1:00 and 2:00 in the morning of March 23, 1989, he and his wife went to Alabang, market, on board a tricycle. They passed by the service road going south, and saw a parked truck trailer, with its hood open and without tail lights. They would have bumped the truck but the tricycle driver was quick in avoiding a collision. The place was dark, and the truck had no early warning device to alert passing motorists.
- Trial court: respondent's negligence was the immediate and proximate cause of Raynera's death.
- CA: The appellate court held that Reynaldo Raynera's bumping into the left rear portion of the truck was the proximate cause or his death, and consequently, absolved respondents from liability.

ISSUE & ARGUMENTS

(a) whether respondents were negligent, and if so,
(b) whether such negligence was the proximate cause of the death of Reynaldo Raynera.

HOLDING & RATIO DECIDENDI

We find that the direct cause of the accident was the negligence of the victim. Traveling behind the truck, he had the responsibility of avoiding bumping the vehicle in front of him. He was in control of the situation. His motorcycle was equipped with headlights to enable him to see what was in front of him. He was traversing the service road where the prescribed speed limit was less than that in the highway.

Traffic investigator Cpl. Virgilio del Monte testified that two pairs of 50-watts bulbs were on top of the steel plates, which were visible from a distance of 100 meters Virgilio Santos admitted that from the tricycle where he was on board, he saw the truck and its cargo of iron plates from a distance of ten (10) meters. In light of these circumstances, an accident could have been easily avoided, unless the victim had been driving too fast and did not exercise dues care and prudence demanded of him under the circumstances. Virgilio Santos' testimony strengthened respondents' defense that it was the victim who was reckless and negligent in driving his motorcycle at high speed. The tricycle where Santos was on board was not much different from the victim's motorcycle that figured in the accident. Although Santos claimed the tricycle almost bumped into the improperly parked truck, the tricycle driver was able to avoid hitting the truck.

It has been said that drivers of vehicles "who bump the rear of another vehicle" are presumed to be "the cause of the accident, unless contradicted by other evidence". The rationale behind the presumption is that the driver of the rear vehicle has full control of the situation as he is in a position to observe the vehicle in front of him.

We agree with the Court of Appeals that the responsibility to avoid the collision with the front vehicle lies with the driver of the rear vehicle.

46 Ermitaño VS CA | QUISUMBING, J
G.R. No. 127246 April 21, 1999

FACTS

- Petitioner Luis Ermitaño applied for a credit card from BPI Express Card Corp. (BECC) on October 8, 1986 with his wife, Manuelita, as extension cardholder. The spouses were given credit cards with a credit limit of P10,000.00. They often exceeded this credit limit without protest from BECC.
- On August 29, 1989, **Manuelita's bag was snatched** from her as she was shopping at the Greenbelt Mall in Makati. Among the items inside the bag was her BECC credit card.
- That same night she informed, by telephone, BECC of the loss. The call was received by BECC offices through a certain Gina Banzon. This was followed by a letter dated August 30, 1989. She also surrendered Luis' credit card and requested for replacement cards. In her letter, Manuelita stated that she "shall not be responsible for any and all charges incurred [through the use of the lost card] after August 29, 1989.
- However, when Luis received his monthly billing statement from BECC dated September 20, 1989, the charges included amounts for purchases made on August 30, 1989 through Manuelita's lost card. Manuelita again wrote BECC disclaiming responsibility for those charges, which were made after she had served BECC with notice of the loss of her card.
- Despite the spouses' refusal to pay and the fact that they repeatedly exceeded their monthly credit limit, BECC sent them a notice dated December 29, 1989 stating that their cards had been renewed until March 1991. However, BECC continued to include in the spouses' billing statements those purchases made through Manuelita's lost card. Luis protested this billing in his letter dated June 20, 1990.
- However, BECC, in a letter dated July 13, 1990, pointed out to Luis the following stipulation in their contract:
- "In the event the card is lost or stolen, the cardholder agrees to immediately report its loss or theft in writing to BECC . . . purchases made/incurred arising from the use of the lost/stolen card shall be for the exclusive account of the cardholder and the cardholder continues to be liable for the purchases made through the use of the lost/stolen BPI Express Card until after such notice has been given to BECC **and the latter has communicated such loss/theft to its member establishments."**
- When Luis used his "new" card on a Caltex station, the card was denied. Apparently, BECC carried over the unauthorized charges to the new cards and their limits were exceeded.
- He reiterated that the unauthorized charges should not be billed to their cards, but BECC claimed that the said stipulation is valid and that the two requisites were not met for the cardholder to escape liability.

ISSUES & ARGUMENTS

- **W/N the Ermitaños should be billed the unauthorized purchases.**
  - **Petitioner's Argument:** Contract of adhesion… we did our part by informing BECC immediately of the loss.
  - **Respondent's Argument:** There are two requisites for cardholder to escape liability: (1) Prompt notice to BECC of loss, and (2) BECC informs its member establishments. Not all of these were complied with.

HOLDING & RATIO DECIDENDI

Ermitaños should NOT be billed the unauthorized purchases.

- For the cardholder to be absolved from liability for unauthorized purchases made through his lost or stolen card, two steps must be followed: (1) the cardholder must give written notice to BECC, and (2) BECC must notify its member establishments of such loss or theft, which, naturally, it may only do upon receipt of a notice from the cardholder. Both the cardholder and BECC, then, have a responsibility to perform, in order to free the cardholder from any liability arising from the use of a lost or stolen card.
- BECC states that, "between two persons who are negligent, the one who made the wrong possible should bear the loss." We take this to be an admission that negligence had occurred.
- From one perspective, it was not petitioners who made possible the commission of the wrong. It could be BECC for its failure to immediately notify its members-establishments, who appear lacking in care or instruction by BECC in proper procedures, regarding signatures and the identification of card users at the point of actual purchase of goods or services. For how else could an unauthorized person succeed to use Manuelita's lost card?
- The cardholder was no longer in control of the procedure after it has notified BECC of the card's loss or theft. It was already BECC's responsibility to inform its member-establishments of the loss or theft of the card at the soonest possible time.
- Prompt notice by the cardholder to the credit card company of the loss or theft of his card should be enough to relieve the former of any liability occasioned by the unauthorized use of his lost or stolen card. The questioned stipulation in this case, which still requires the cardholder to wait until the credit card company has notified all its member-establishments, puts the cardholder at the mercy of the credit card company which may delay indefinitely the notification of its members to minimize if not to eliminate the possibility of incurring any loss from unauthorized purchases. Or, as in this case, the credit card company may for some reason fail to promptly notify its members through absolutely no fault of the cardholder. To require the cardholder to still pay for unauthorized purchases after he has given prompt notice of the loss or theft of his card to the credit card company would simply be unfair and unjust. The Court cannot give its assent to such a stipulation which could clearly run against public policy

47 BPI Express Card Corporation v Olalia | Quisumbing
G.R. No. 131086 December 14, 2001 | 372 SCRA 338

FACTS

- Respondent Eddie C. Olalia (Olalia) applied for and was granted membership and credit accommodation with BPI Express Card Corporation (BECC) with a credit limit of P5,000. In January 1991, Olalia's card expired and a renewal card was issued. BECC also issued an extension card in the name of Cristina G. Olalia, Olalia's ex-wife. BECC alleges that the extension card was delivered and received by Olalia at the same time as the renewal card. However, Olalia denies ever having applied for, much less receiving, the extension card.
- As evidenced by charge slips presented and identified in court, it was found that the extension card in the name of Cristina G. Olalia was used for purchases made from March to April 1991, particularly in the province of Iloilo and the City of Bacolod. Total unpaid charges from the use of this card amounted to P101,844.54.
- BECC sent a demand letter to Olalia, to which the latter denied liability saying that said purchases were not made under his own credit card and that he did not apply for nor receive the extension card in the name of his wife. He has likewise not used or allowed anybody in his family to receive or use the extension card. Moreover, his wife, from whom he was already divorced, left for the States in 1986 and has since resided there. In addition, neither he nor Cristina was in Bacolod or Iloilo at the time the questioned purchases were made. She was dropped as defendant by the trial court, in an Order dated September 29, 1995.
- A case for collection was filed by BECC before the RTC but Olalia only admits responsibility for the amount of P13,883.27, representing purchases made under his own credit card.
- RTC initially ruled in favor of Olalia, making him liable only for P13,883.27. But on motion for reconsideration by BECC, the RTC reversed its initial resolution and made Olalia liable for P136,290.97.
- On appeal to the CA, the latter decision was sustained

ISSUES & ARGUMENTS

- **W/N an extension card in the name of Cristina Olalia was validly issued and in fact received by respondent Eddie Olalia?**
- **W/N Olalia should be made liable for the purchases made using the extension card?**

HOLDING & RATIO DECIDENDI

NO. Under the terms and condition governing the issuance and use of BPI Express Credit Card there are TWO REQUIREMENTS FOR THE ISSUANCE OF AN EXTENSION CARD: (1) PAYMENT OF THE NECESSARY FEE AND (2) SUBMISSION OF AN APPLICATION FOR THAT PURPOSE. Both RTC and CA found that in Olalia's applications for the original as well as the renewal card, HE NEVER APPLIED FOR AN EXTENSION CARD in the name of his wife. BECC also failed to show any receipt for any fee given in payment for the purpose of securing an extension card.

- We have previously held that contracts of this nature are contracts of adhesion, so-called because their terms are prepared by only one party while the other merely affixes his signature signifying his adhesion thereto. As such, their terms are construed strictly against the party who drafted it. In this case, it was BECC who made the foregoing stipulation, thus, they are now tasked to show vigilance for its compliance.
- BECC failed to explain who a card was issued without accomplishment of the requirements. Moreover, BECC did not even secure the specimen signature of the purported extension cardholder, such that it cannot now counter Eddie C. Olalia's contention that the signatures appearing on the charge slips of the questioned transactions were not that of his former wife, Cristina G. Olalia.
- We note too that respondent Eddie C. Olalia did not indicate nor declare that he had a spouse when he applied for a credit card with BECC. In fact, at the time the extension card was issued and allegedly received by respondent, Cristina had long left the Philippines.

NO. BECC's negligence absolves respondent Olalia from liability.

48 Benguet Electric Cooperative, Inc vs. CA, Caridad O. Bernardo Jojo, Jeffrey and Jo-An, all surnamed Bernardo, And Guillermo Canave, Jr.
G.R. No. 127326 December 23, 1999

FACTS

- Jose Bernardo suffered from an epileptic seizure when he grasped the handlebars of the rear entrance of a parked vehicle. Bernardo shortly died. It was discovered that the antenna of the jeepney was entangled with an open electric wire at the top of the roof of a meat stall.

- The spouse and children of the victim filed a claim against Benguet Electric Cooperative (BENECO), who then filed a third-party complaint against the owner of the jeep.

ISSUE & ARGUMENTS

Which party is liable for damages in the instant case?

HOLDING & RATIO DECIDENDI

- BENECO was grossly negligent in leaving unprotected and uninsulated the splicing point between the service drop line and the service entrance conductor, which connection was only eight (8) feet from the ground level, in violation of the Philippine Electrical Code.

- By leaving an open live wire unattended for years, BENECO demonstrated its utter disregard for the safety of the public. Indeed, Jose Bernardo's death was an accident that was bound to happen in view of the gross negligence of BENECO.

- On the other hand, the owner of the jeep, Canave is not liable since he was well within his right to park the vehicle in the said area, and there was no showing that any municipal law or ordinance was violated nor that there was any foreseeable danger posed by his act.

- In conclusion, the proximate cause of the accident was the negligence of BENECO, and it should be solely liable for damages to the heirs of Bernardo.

49 St. Mary's Academy vs Carpitanos | Pardo
G.R. No. 143363 February 6, 2002|

FACTS

- The case is about St. Mary's liability for damages arising from an accident that resulted in the death of a student who had joined a campaign to visit the public schools in Dipolog City to solicit enrollment.
- Sherwin Capistranos was part of the campaigning group.
- On the day of the incident, Sherwin rode a Mitsubishi Jeep owned by Vicencio Villanueva. It was driven by James Daniel II then 15 years old and a student of the same school.
- James Daniel was driving the car recklessly so it turned turtle.
- Actually it was the detachment of the steering that caused it.
- Sherwin Capistranos died as a result of the injuries he sustained from the accident.
- William Carpitanos and Lucia Carpitanos filed on June 9, 1995 a case claiming damages for their son Sherwin Carpitanos against James Daniel Sr. and Guada Daniel, the vehicle owner, Vivencio Villanueva and St. Mary's Academy before the RTC of Dipolog City.
- St. Mary's Academy was ordered to pay the complainants for damages.
- In case of the insolvency of St. Mary's Academy, James Daniel and Guada Daniel were also ordered to pay Capistrano. Daniel is only subsidiarily liable.
- James Daniel was a minor during the commission of the tort and was under the special parental authority of James Daniel II. He was adjudged to have subsidiary liability with his parents.

ISSUES & ARGUMENTS

Whether the St. Mary's should be liable for damages for the death of Sherwin Capistranos.

Whether the Capistranos are entitled to the award of moral damages.

HOLDING & RATIO DECIDENDI

No to both issues.

- Under Article 218 of the Family Code, the following shall have special parental authority over a minor child while under their supervision, instruction or custody: 1. The school, its administrators and teachers. 2. the individual, entity or institution engaged in child care. This special parental authority and responsibility applies to all authorized activities inside or outside the premises of the school, entity or institution.
- Under Article 219 of the Family Code, if the person under custody is a minor, those exercising special parental authority are principally and solidarily liable for damages caused by the acts or omissions of the unemancipated minor under their supervision, instruction or custody.
- In this case, there was no finding that the act or omission considered negligent was the proximate cause of the injury caused because the negligence, must have a causal connection to the accident.
- Daniel spouses and Villanueva admitted that the immediate cause of the accident was not the negligence of the petitioner or the reckless driving of James Daniel II, but the detachment of the steering wheel guide of the Jeep.
- There was no evidence that the petitioner school allowed the minor James Daniel II to drive the Jeep of respondent Vicencio Villanueva. IT was Ched Villanueva who had custody, control and possession of the Jeep.
- The negligence of petitioner St. Mary's Academy was only a remote cause of the accident. Between the remote cause and the injury, there intervened the negligence of the minor's parents or the detachment of the steering wheel guide of the jeep.
- St. Mary's cannot be held liable for moral damages. Though incapable of pecuniary estimation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission. In this case the cause was not attributable to St. Mary's Academy.

50 Adriano vs. Pangilinan| Panganiban
G.R. No. 137471, January 16, 2002| 373 SCRA 544

FACTS

- Petitioner Guillermo Adriano is the registered owner of a parcel of land with an area of 304 square meters situated at Montalban, Rizal and covered by TCT No. 337942.
- Petitioner entrusted the original owner's copy of the aforesaid TCT to Angelina Salvador, a distant relative, for the purpose of securing a mortgage loan.
- Without the knowledge and consent of petitioner, Angelina Salvador mortgaged the subject property to respondent Romulo Pangilinan, an architect and businessman.
- After a time, petitioner verified the status of his title with the Registry of Deeds of Marikina to find out that upon the said TCT was already annotated a first Real Estate Mortgage purportedly executed by one Guillermo Adriano over the aforesaid parcel of land in favor or respondent Pangilinan in consideration of the sum of P60,000.
- Petitioner denied that he ever executed the Deed of Mortgage and denounced his signature thereon as a forgery. He also denied having received the consideration of P60,000 stated therein.

ISSUES & ARGUMENTS

W/N petitioner was negligent in entrusting and delivering his tct to a relative?

Was such negligence sufficient to deprive him of his property?

HOLDING & RATIO DECIDENDI

NO, RESPONDENT MUST BEAR THE LOSS

- The negligence of petitioner is not enough to offset the fault of respondent himself in granting the loan.
- Respondent is not an "innocent mortgagee for value" for he failed to exert due diligence in the grant of the loan and the execution of the real estate mortgage. Respondent testified that he was engaged in the real estate business including the grant of loans secured by real property mortgages. Thus, he is expected to ascertain the status and condition of the properties offered to him as collateral, as well as verify the identities of the persons he transacts business with.
- **Equity dictates that a loss brought about by the concurrent negligence of two persons shall be borne by one who was in the immediate, primary and overriding position to prevent it.**

51 Vda. De Bataclan v. Mariano Medina | Montemayor

G.R. No. 12106, October 22, 1957|

FACTS

Shortly after midnight, on September 13, 1952 bus no. 30 of the Medina Transportation, operated by its owner defendant Mariano Medina under a certificate of public convenience, left the town of Amadeo, Cavite, on its way to Pasay City, driven by its regular chauffeur, Conrado Saylon. There were about eighteen passengers, including the driver and conductor. Among the passengers were Juan Bataclan, seated beside and to the right of the driver, Felipe Lara, sated to the right of Bataclan, another passenger apparently from the Visayan Islands whom the witnesses just called Visaya, apparently not knowing his name, seated in the left side of the driver, and a woman named Natalia Villanueva, seated just behind the four last mentioned. At about 2:00 o'clock that same morning, while the bus was running within the jurisdiction of Imus, Cavite, one of the front tires burst and the vehicle began to zig-zag until it fell into a canal or ditch on the right side of the road and turned turtle. Some of the passengers managed to leave the bus the best way they could, others had to be helped or pulled out, while the three passengers seated beside the driver, named Bataclan, Lara and the Visayan and the woman behind them named Natalia Villanueva, could not get out of the overturned bus. Some of the passengers, after they had clambered up to the road, heard groans and moans from inside the bus, particularly, shouts for help from Bataclan and Lara, who said they could not get out of the bus. There is nothing in the evidence to show whether or not the passengers already free from the wreck, including the driver and the conductor, made any attempt to pull out or extricate and rescue the four passengers trapped inside the vehicle, but calls or shouts for help were made to the houses in the neighborhood. After half an hour, came about ten men, one of them carrying a lighted torch made of bamboo with a wick on one end, evidently fueled with petroleum. These men presumably approach the overturned bus, and almost immediately, a fierce fire started, burning and all but consuming the bus, including the four passengers trapped inside it. It would appear that as the bus overturned, gasoline began to leak and escape from the gasoline tank on the side of the chassis, spreading over and permeating the body of the bus and the ground under and around it, and that the lighted torch brought by one of the men who answered the call for help set it on fire.

That same day, the charred bodies of the four deemed passengers inside the bus were removed and duly identified that of Juan Bataclan.

The widow instituted a suit to recover damages from Medina. The trial court ruled in favor of the widow of Bataclan. But the trial court contends that the overturning of the bus was not the proximate cause of bataclan's death.

ISSUES & ARGUMENTS

- **Whether** the overturning of the bus was the proximate cause of Bataclan's death or the fire that burned the bus

HOLDING & RATIO DECIDENDI

in the present case under the circumstances obtaining in the same, we do not hesitate to hold that the proximate cause was the overturning of the bus, this for the reason that when the vehicle turned not only on its side but completely on its back, the leaking of the gasoline from the tank was not unnatural or unexpected; that the coming of the men with a lighted torch was in response to the call for help, made not only by the passengers, but most probably, by the driver and the conductor themselves, and that because it was dark (about 2:30 in the morning), the rescuers had to carry a light with them, and coming as they did from a rural area where lanterns and flashlights were not available; and what was more natural than that said rescuers should innocently approach the vehicle to extend the aid and effect the rescue requested from them. In other words, the coming of the men with a torch was to be expected and was a natural sequence of the overturning of the bus, the trapping of some of its passengers and the call for outside help. What is more, the burning of the bus can also in part be attributed to the negligence of the carrier, through is driver and its conductor. According to the witness, the driver and the conductor were on the road walking back and forth. They, or at least, the driver should and must have known that in the position in which the overturned bus was, gasoline could and must have leaked from the gasoline tank and soaked the area in and around the bus, this aside from the fact that gasoline when spilled, specially over a large area, can be smelt and directed even from a distance, and yet neither the driver nor the conductor would appear to have cautioned or taken steps to warn the rescuers not to bring the lighted torch too near the bus. Said negligence on the part of the agents of the carrier come under the codal provisions above-reproduced, particularly, Articles 1733, 1759 and 1763.

52 TEODORO C. UMALI vs. ANGEL BACANI | ESGUERRA, *J*
G.R. No. L-40570 January 30, 1976

FACTS

- **Quick Version:** Bumagyo. Natangay big and small banana plants on an elevated ground. Tumama sa electric wire ng Alcala Electric Plant. Naputol wire. Sinabihan si tao ng corp na ayusin. Bago pa man ma ayos, may pumuntang bata sa live wire. Nakuryente. Patay.

- **Detailed Version:**
- A storm with strong rain hit the Alcala Pangasinan, from 2:00 o'clock in the afternoon and lasted up to about midnight of the same day. During the storm, the banana plants standing **on an elevated ground** along the road of said municipality and near the transmission line of the Alcala Electric Plant were blown down and fell on the electric wire.
- As a result, the live electric wire was cut, one end of which was left hanging on the electric post and the other fell to the ground under the fallen banana plants.
- On the following morning, at about 9:00 o'clock barrio captain Luciano Bueno of San Pedro Iii who was passing by saw the broken electric wire and so he warned the people in the place not to go near the wire for they might get hurt. He also saw Cipriano Baldomero, a laborer of the Alcala Electric Plant near the place and notified him right then and there of the broken line and asked him to fix it, but the latter told the barrio captain that he could not do it but that he was going to look for the lineman to fix it.
- Sometime after the barrio captain and Cipriano Baldomero had left the place, a small boy of 3 years and 8 months old by the name of Manuel P. Saynes, whose house is just on the opposite side of the road, went to the place where the broken line wire was and got in contact with it. The boy was electrocuted and he subsequently died. It was only after the electrocution of Manuel Saynes that the broken wire was fixed at about 10:00 o'clock on the same morning by the lineman of the electric plant.

ISSUES & ARGUMENTS

- **W/N the Alcala Electric Company can be liable for TORT.**
    - **<Alcala Electric>** I am not be liable under the concept of quasi-delict or tort as owner and manager of the Alcala Electric Plant because the proximate cause of the boy's death electrocution could not be due to any negligence on my part, but rather to a fortuitous event-the storm that caused the banana plants to fall and cut the electric line-pointing out the absence of negligence on the part of his employee Cipriano Baldomero who tried to have the line repaired and the presence of negligence of the parents of the child in allowing him to leave his house during that time.

HOLDING & RATIO DECIDENDI

Alcala Electric is LIABLE under TORT

- First, by the very evidence of the defendant, there were big and tall banana plants at the place of the incident standing on an elevated ground which were about 30 feet high and which were higher than the electric post supporting the electric line, and yet the employees of the defendant who, with ordinary foresight, could have easily seen that even in case of moderate winds the electric line would be endangered by banana plants being blown down, did not even take the necessary precaution to eliminate that source of danger to the electric line.
- Second, even after the employees of the Alcala Electric Plant were already aware of the possible damage the storm of May 14, 1972, could have caused their electric lines, thus becoming a possible threat to life and property, they did not cut off from the plant the flow of electricity along the lines, an act they could have easily done pending inspection of the wires to see if they had been cut.
- Third, employee Cipriano Baldomero was negligent on the morning of the incident because even if he was already made aware of the live cut wire, he did not have the foresight to realize that the same posed a danger to life and property, and that he should have taken the necessary precaution to prevent anybody from approaching the live wire; instead Baldomero left the premises because what was foremost in his mind was the repair of the line, obviously forgetting that if left unattended to it could endanger life and property.
- On defendants' argument that the proximate cause of the victim's death could be attributed to the parents' negligence in allowing a child of tender age to go out of the house alone, We could readily see that because of the aforementioned series of negligence on the part of defendants' employees resulting in a live wire lying on the premises without any visible warning of its lethal character, anybody, even a responsible grown up or not necessarily an innocent child, could have met the same fate that befell the victim. It may be true, as the lower Court found out, that the contributory negligence of the victim's parents in not properly taking care of the child, which enabled him to leave the house alone on the morning of the incident and go to a nearby place cut wire was very near the house (where victim was living) where the fatal fallen wire electrocuted him, might mitigate respondent's liability, but we cannot agree with petitioner's theory that the parents' negligence constituted the proximate cause of the victim's death because **the real proximate cause was the fallen live wire** which posed a threat to life and property on that morning due to the series of negligence adverted to above committed by defendants' employees and which could have killed any other person who might by accident get into contact with it. Stated otherwise, even if the child was allowed to leave the house unattended due to the parents' negligence, he would not have died that morning where it not for the cut live wire he accidentally touched.
- Art. 2179 of the Civil Code provides that if the negligence of the plaintiff (parents of the victim in this case) was only contributory, the immediate and

proximate cause of the injury being the defendants' lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. This law may be availed of by the petitioner but does not exempt him from liability. Petitioner's liability for injury caused by his employees negligence is well defined in par. 4, of Article 2180 of the Civil Code, which states:

- The owner and manager of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on tile occasion of their functions.
- The negligence of the employee is presumed to be the negligence of the employer because the employer is supposed to exercise supervision over the work of the employees. This liability of the employer is primary and direct (Standard Vacuum Oil Co. vs. Tan and Court of Appeals, 107 Phil. 109). In fact the proper defense for the employer to raise so that he may escape liability is to prove that he exercised, the diligence of the good father of the family to prevent damage not only in the selection of his employees but also in adequately supervising them over their work. This defense was not adequately proven as found by the trial Court, and We do not find any sufficient reason to deviate from its finding.

53 Bacarro v Castaño | Relova
No. L-34597 November 5, 1982 | 118 SCRA 187

FACTS

- In the afternoon of April 1, 1960, Castaño boarded a jeepney as a paying passenger at Oroquieta bound for Jimenez, Misamis Occidental. It was then filled to capacity, with twelve (12) passengers in all. 'The jeep was running quite fast and the jeep while approaching the Sumasap bridge there was a cargo truck which blew its horn for a right of way. The jeep gave way but did not change speed such that when the jeep gave way it turned to the right and continued running with the same speed. In so doing the driver was not able to return the jeep to the proper place instead, it ran obliquely towards the canal; that is why, the jeep, with its passengers fell to the ditch. When the jeep was running in the side of the road for few meters, naturally, the jeep was already inclined and he was pushed by the two passengers beside him; when he was clinging, his leg and half of his body were outside the jeep when it reached the canal. His right leg was sandwiched by the body of the jeep and the right side of the ditch, thus his right leg was broken.
- On appeal, petitioners alleged that respondent Court of Appeals erred (1) in finding contributory negligence on the part of jeepney driver appellant Montefalcon for having raced with the overtaking cargo truck to the bridge instead of slackening its speed, when the person solely responsible for the sideswiping is the unlicensed driver of the overtaking cargo truck; (2) in finding the jeepney driver not to have exercised extraordinary diligence, human care, foresight and utmost. diligence of very cautious persons, when the diligence required pursuant to Article 1763 of the New Civil Code is only that of a good father of a family since the injuries were caused by the negligence of a stranger; and (3) in not considering that appellants were freed from any liability since the accident was due to fortuitous event - the sideswiping of the jeepney by the overtaking cargo truck..

ISSUES & ARGUMENTS

W/N the petitioners should be held liable for injury of Castaño?

HOLDING & RATIO DECIDENDI

YES. As there was a contract of carriage between the Castaño and the herein petitioners in which case the Court of Appeals correctly applied Articles 1733, 1755 and 1766 of the Civil Code which require the exercise of extraordinary diligence on the part of petitioner Montefalcon, as the driver.

- The fact is, petitioner-driver Montefalcon did not slacken his speed but instead continued to run the jeep at about forty (40) kilometers per hour even at the time the overtaking cargo truck was running side by side for about twenty (20) meters and at which time he even shouted to the driver of the truck.
- Had Montefalcon slackened the speed of the jeep at the time the truck was overtaking it, instead of running side by side with the cargo truck, there would have been no contact and accident. He should have foreseen that at the speed he was running, the vehicles were getting nearer the bridge and as the road was getting narrower the truck would be to close to the jeep and would eventually sideswiped it. Otherwise stated, he should have slackened his jeep when he swerved it to the right to give way to the truck because the two vehicles could not cross the bridge at the same time

The hazards of modern transportation demand extraordinary diligence. A common carrier is vested with public interest. Under the new Civil Code, instead of being required to exercise mere ordinary diligence a common carrier is exhorted to carry the passengers safely as far as human care and foresight can provide "using the utmost diligence of very cautious persons." (Article 1755). Once a passenger in the course of travel is injured, or does not reach his destination safely, the carrier and driver are presumed to be at fault.

TEL VIRTUDEZ

54 Phoenix Construction v IAC| Feliciano
G.R. No. L-65295 March 10, 1987 |

FACTS

- Early morning of November 15, 1975 at about 1:30am, Leonardo Dionisio was on his way home from a cocktails-and-dinner meeting with his boss. During the cocktails phase of the evening, Dionisio had taken "a shot or two" of liquor. Dionisio was driving his Volkswagen car and had just crossed the intersection of General Lacuna and General Santos Streets at Bangkal, Makati, not far from his home, and was proceeding down General Lacuna Street, when his car headlights (in his allegation) suddenly failed. He switched his headlights on "bright" and thereupon he saw a Ford dump truck looming some 2-1/2 meters away from his car. The dump truck, owned by and registered in the name of petitioner Phoenix Construction Inc., was parked on the right hand side of General Lacuna Street facing the oncoming traffic. The dump truck was parked askew (not parallel to the street curb) in such a manner as to stick out onto the street, partly blocking the way of oncoming traffic. There were no lights nor any so-called "early warning" reflector devices set anywhere near the dump truck, front or rear. The dump truck had earlier that evening been driven home by petitioner Armando U. Carbonel, its regular driver, with the permission of his employer Phoenix, in view of work scheduled to be carried out early the following morning, Dionisio claimed that he tried to avoid a collision by swerving his car to the left but it was too late and his car smashed into the dump truck. As a result of the collision, Dionisio suffered some physical injuries including some permanent facial scars, a "nervous breakdown" and loss of two gold bridge dentures.
- Dionisio commenced an action for damages in the Court of First Instance of Pampanga which rendered judgment in his favor.
- On appeal to IAC, the decision was affirmed with modification as to the amount of damages awarded.

ISSUES & ARGUMENTS

W/N Phoenix should be held liable for the damage incurred by Dionisio, notwithstanding the allegation that the latter had no curfew pass and thus drove speedily with his headlights off?

HOLDING & RATIO DECIDENDI

YES. The collision between the dump truck and the Dionisio's car would in all probability not have occurred had the dump truck not been parked askew without any warning lights or reflector devices. The improper parking of the dump truck created an unreasonable risk of injury for anyone driving down General Lacuna Street and for having so created this risk, the truck driver must be held responsible.

- Dionisio's negligence was not of an independent and overpowering nature as to cut, as it were, the chain of causation in fact between the improper parking of the dump truck and the accident, nor to sever the juris vinculum of liability.
- We hold that Dionisio's negligence was "only contributory," that the "immediate and proximate cause" of the injury remained the truck driver's "lack of due care" and that consequently respondent Dionisio may recover damages though such damages are subject to mitigation by the courts (Art. 2179 Civil Code of the Philippines)
- Petitioner Carbonel's proven negligence creates a presumption of negligence on the part of his employer Phoenix in supervising its employees properly and adequately. The respondent appellate court in effect found, correctly in our opinion, that Phoenix was not able to overcome this presumption of negligence.
- Turning to the award of damages and taking into account the comparative negligence of private respondent Dionisio on one hand and petitioners Carbonel and Phoenix upon the other hand, we believe that the demands of substantial justice are satisfied by allocating most of the damages on a **20-80 ratio**. Thus, 20% of the damages awarded by the respondent appellate court, except the award of P10,000.00 as exemplary damages and P4,500.00 as attorney's fees and costs, shall be borne by private respondent Dionisio; only the balance of 80% needs to be paid by petitioners Carbonel and Phoenix who shall be solidarity liable therefor to the former. The award of exemplary damages and attorney's fees and costs shall be borne exclusively by the petitioners. Phoenix is of course entitled to reimbursement from Carbonel. We see no sufficient reason for disturbing the reduced award of damages made by the respondent appellate court.

TEL VIRTUDEZ

55 Smith Bell and Company v CA | Feliciano
G.R. No. L-56294, May 20, 1991 |

FACTS

- In the early morning of 3 May 1970—at exactly 0350 hours, on the approaches to the port of Manila near Caballo Island, a collision took place between the M/V "Don Carlos," an inter-island vessel owned and operated by private respondent Carlos A. Go Thong and Company ("Go Thong"), and the M/S "Yotai Maru," a merchant vessel of Japanese registry.
- The "Don Carlos" was then sailing south bound leaving the port of Manila for Cebu, while the "Yotai Maru" was approaching the port of Manila, coming in from Kobe, Japan.
- The bow of the "Don Carlos" rammed the portside (left side) of the "Yotai Maru" inflicting a three (3) cm. gaping hole on her portside near Hatch No. 3, through which seawater rushed in and flooded that hatch and her bottom tanks, damaging all the cargo stowed therein.
- The consignees of the damaged cargo got paid by their insurance companies. The insurance companies in turn, having been subrogated to the interests of the consignees of the damaged cargo, commenced actions against private respondent Go Thong for damages sustained by the various shipments.
- 2 Civil Cases were filed against Go Thong. In Case No.1, the SC ruled through JBL Reyes that the "Don Carlos" to have been negligent rather than the "Yotai Maru". This was contrary to the findings of the CA.
- This is Case No. 2. The parties agreed that the cases be tried under the same issues and that the evidence presented in one case would be simply adopted in the other.

ISSUES & ARGUMENTS

W/N Don Carlos is the proximate cause of the collision.

HOLDING & RATIO DECIDENDI

"*Don Carlos*" had been negligent and that its negligence was the sole proximate cause of the collision and of the resulting damages.

Three factors were considered in determining who the proximate cause is:

The first of these factors was the failure of the "*Don Carlos*" to comply with the requirements of Rule 18 (a) of the International Rules of the Road
This has something to do with foresight and safety measure which the captain should observe another ship is approaching.

- **The second circumstance constitutive of negligence on the part of the "*Don Carlos*" was its failure to have on board that night a "proper look-out" as required by Rule I (B) Under Rule 29 of the same set of Rules, all consequences arising from the failure of the "*Don Carlos*" to keep a "proper look-out" must be borne by the "*Don Carlos*."**
- **The third factor constitutive of negligence on the part of the "*Don Carlos*" relates to the fact that Second Mate Benito German was, immediately before and during the collision, in command of the "*Don Carlos*."**
- Second Mate German simply did not have the level of experience, judgment and skill essential for recognizing and coping with the risk of collision as it presented itself that early morning when the "*Don Carlos*," running at maximum speed and having just overtaken the "Don Francisco" then approximately one mile behind to the starboard side of the "*Don Carlos*," found itself head-on or nearly head on *vis-a-vis* the "*Yotai Maru.* " It is essential to point out that this situation was created by the "*Don Carlos*" itself.

56 Fernando v CA |Medialdea
G.R. No. L-92087, May 8, 1992 |

FACTS

- On November 7, 1975, Bibiano Morta, market master of the Agdao Public Market filed a requisition request with the Chief of Property of the City Treasurer's Office for the re-emptying of the septic tank in Agdao.
- An invitation to bid was issued to Aurelio Bertulano, Lito Catarsa, Feliciano Bascon, Federico Bolo and Antonio Suñer, Jr. Bascon won the bid.
- On November 26, 1975 Bascon was notified and he signed the purchase order.
- However, before such date, specifically on *November 22, 1975*, bidder Bertulano with four other companions namely Joselito Garcia, William Liagoso, Alberto Fernando and Jose Fajardo, Jr. were found dead inside the septic tank.
- The bodies were removed by a fireman. One body, that of Joselito Garcia, was taken out by his uncle, Danilo Garcia and taken to the Regional Hospital but he expired there.
- The City Engineer's office investigated the case and learned that the five victims entered the septic tank without clearance neither from it nor with the knowledge and consent of the market master.
- In fact, the septic tank was found to be almost empty and the victims were presumed to be the ones who did the re-emptying.
- Dr. Juan Abear of the City Health Office autopsied the bodies and in his reports, put the cause of death of all five victims as "asphyxia" caused by the diminution of oxygen supply in the body working below normal conditions. The lungs of the five victims burst, swelled in hemmorrhagic areas and this was due to their intake of toxic gas, which, in this case, was sulfide gas produced from the waste matter inside the septic tank.
- Petitioners, children of the deceased, file a complaint for damages.
- TC: Dismissed.
- CA: In favor of petitioners, based on social justice.
- CA on MR: Reversed, in favor of Davao City.

ISSUES & ARGUMENTS

W/N Davao City is the proximate cause.

- Petitioners fault the city government of Davao for failing to clean a septic tank for the period of 19 years resulting in an accumulation of hydrogen sulfide gas which killed the laborers. They contend that such failure was compounded by the fact that there was no warning sign of the existing danger and no efforts exerted by the public respondent to neutralize or render harmless the effects of the toxic gas. They submit that the public respondent's gross negligence was the proximate cause of the fatal incident.

HOLDING & RATIO DECIDENDI

We find no compelling reason to grant the petition. We affirm.

We do not subscribe to this view. While it may be true that the public respondent has been remiss in its duty to re-empty the septic tank annually, such negligence was not a continuing one. Upon learning from the report of the market master about the need to clean the septic tank of the public toilet in Agdao Public Market, the public respondent immediately responded by issuing invitations to bid for such service. Thereafter, it awarded the bid to the lowest bidder, Mr. Feliciano Bascon . The public respondent, therefore, lost no time in taking up remedial measures to meet the situation. It is likewise an undisputed fact that despite the public respondent's failure to re-empty the septic tank since 1956, people in the market have been using the public toilet for their personal necessities but have remained unscathed.

In view of this factual milieu, it would appear that an accident such as toxic gas leakage from the septic tank is unlikely to happen unless one removes its covers. The accident in the case at bar occurred because the victims on their own and without authority from the public respondent opened the septic tank. Considering the nature of the task of emptying a septic tank especially one which has not been cleaned for years, an ordinarily prudent person should undoubtedly be aware of the attendant risks. The victims are no exception; more so with Mr. Bertulano, an old hand in this kind of service, who is presumed to know the hazards of the job. His failure, therefore, and that of his men to take precautionary measures for their safety was the proximate cause of the accident.

To be entitled to damages for an injury resulting from the negligence of another, a claimant must establish the relation between the omission and the damage. He must prove under Article 2179 of the New Civil Code that the defendant's negligence was the immediate and proximate cause of his injury. Proximate cause has been defined as that cause, which, in natural and continuous sequence unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. Proof of such relation of cause and effect is not an arduous one if the claimant did not in any way contribute to the negligence of the defendant. However, where the resulting injury was the product of the negligence of both parties, there exists a difficulty to discern which acts shall be considered the proximate cause of the accident.

57 Austria vs. CA | Quisumbing
G.R. No. 133323, March 9,2000 | 327 SCRA 668

FACTS

- The accused Alberto Austria was driving a Ford Fiera owned by Noceda along the Olongapo-Gapan road in Pampanga coming from the Airport headed for Bataan. There were 10 passengers aboard. The information stated that Austria was speeding.
- The vehicle's tire hit a stone lying on the road which caused Austria to lose control of the vehicle and subsequently collided with the rear of an improperly parked cargo truck trailer driven by Rolando Flores, his co-accused.
- The accident caused injuries to 4 of Austria's passengers and caused the death of another passenger Virginia Lapid. Flores, remained at large during the course of the trial.
- The lower court found Austria guilty of Reckless Imprudence resulting in Homicide and Serious Physical Injuries. The CA affirmed the LC's decision.

ISSUES & ARGUMENTS

W/N Austria is guilty of Negligence?

- Austria contends that he was driving at a moderate speed and on the lane properly belonging to him and that Flores, by parking his vehicle improperly without any warning device, caused the collision.

HOLDING & RATIO DECIDENDI

YES

- The findings of the CA concerning Austria's negligence are factual in nature and hence cannot be reviewed by the SC in a petition for review on certiorari and this case does not come within the exceptions.
- The case of Phoenix Construction vs IAC, although similar in facts with the case at bar is not applicable in this case. In Phoenix, the SC held that the driver of the improperly parked vehicle was the liable and the colliding vehicle was contributorily liable.
- The SC however agreed with the CA in the latter's observation that " That Austria had no opportunity to avoid the collision is his own making and this should not relieve him of liability." Patently, the negligence of Austria as the driver is the immediate and proximate cause of the collision.
- Austria's contention that the award of damages was error on the part of the CA since the medcerts and receipts presented did not directly reveal the relation of the documents to the accident is flawed. SC said that these docments are amply supported by the evidence on record and again factual findings are binding on the SC.

58 Consolidated Bank vs CA | Carpio
G.R. No. 138569, Sept. 11, 2003 | 410 SCRA 562

FACTS

- Consolidated bank(now known as Solidbank), is a corp engaged in banking and private respondent LC diaz and Co. CPA's is a an accounting partnership. Sometime in March 1976, Diaz opened a savings account with the bank.
- In 1991, Diaz, through its cashier, Macaraya, filled up a savings (cash) deposit slip for 900Php and check deposit slip for 50Php. Macarya instructed the messenger Calapre to deposit it and even gave the latter the passbook.
- Calapre deposited the money with Solidbank but since he had to make another deposit at another bank, he left the passbook. When he came back, the teller (no. 6) already gave the passbook to someone else.
- Macaraya went to Solidbank and deposited another 200,000 peso check and the teller told Macaraya that she did not remember to whom she gave the passbook. This teller gave Macaraya a deposit slip dated on that very same day for a deposit of a 90,000 peso PBC check of Diaz. This PBC account had been "long closed".
- The next day, CEO luis Diaz called up the bank to stop any transaction involving the stolen passbook. Diaz also learned of the unauthorized withdrawal of 300,000 the same day the passbook was stolen. The withdrawal slip bore the signatures of Luis and Murillo. They however denied signing the said withdrawal slip. A certain Noel Tamayo received the 300k.
- Diaz charged its messenger Ilagan and one Mendoza with Estafa through falsification of commercial docs but the charges were dismissed.
- In 1992, Diaz asked Solidbank to give its money back, the latter refused. The collection case was ruled in favor of Solidbank. The TC used the rules written on the passbook in absolving the bank saying that "possession of this book(passbook) shall raise the presumption of ownership and any payments made by the bank upon the production of the book…shall have the same effect as if made to the depositor personally." Tamayo had possession of the passbook at the time of the withdrawal and also had the withdrawal slip with the needed signatures. The signatures matched those of the specimen signatures in the bank.
- TC said that the bank acted with care and observed the rules on savings account when it allowed the withdrawal and that Diaz's negligence was the proximate cause of the loss. The CA reversed saying that the teller of the bank should have been more careful in allowing the withdrawal. She should have called up Diaz since the amount was substantial. Thus the CA said that although Diaz was also negligent in allowing a messenger to make its deposits and said messenger left the passbook, the proximate cause of the loss was the bank. CA applied the "last clear chance rule".

ISSUES & ARGUMENTS

W/N Solidbank was Negligent

HOLDING & RATIO DECIDENDI

- The TC used the rules on contractual obligations while the CA used the rules on quasi-delict. SC held that the bank was liable for breach of contract due to negligence. The rules on simple loan apply in this case. The law imposes on banks a high standard in view of the fiduciary nature of its business. This fiduciary relationship is deemed written into every deposit agreement and imposes a higher degree of diligence than "a good father of a family". However this does not convert the contract into a trust agreement. The law merely requires the bank a higher standard of integrity and performance in complying with its obligations under the contract.
- When the passbook was in the bank's hands, the law imposes that high degree of diligence in safeguarding the passbook. The tellers' must also exercise that degree of diligence. They must return the passbook only to the depositor or his authorized representative.
- In culpa contractual, once the plaintiff proves breach on the part of the defendant, there is the presumption that the latter was negligent or at fault. The burden is on the defendant to prove that he was not negligent. While in culpa aquiliana, the plaintiff has the burden of proving the defendant's negligence.
- Solidbank is bound by the negligence of its employees under respondeat superior principle. The defense of exercising the diligence in the selection and supervision of employees is not a complete defense in culpa contractual unlike in culpa aquiliana.
- Had the passbook not fallen into the hands of the impostor, the loss would not have occurred. Hence the proximate cause of the loss to Diaz was the bank's negligence in not returning the passbook to Calapre and not the CA's contention that the teller should have called up Diaz first.
- Last clear chance doctrine is not applicable because this is culpa contractual.
- However, the SC mitigated the damages due to Diaz because he was contributorily liable in allowing the deposit slip to fall into the hands of an impostor.

59 Philippine National Railway vs. CA | Nachura
G.R. No. 1576568 October 15, 2007 | 536 SCRA 147

FACTS

- In the early afternoon of April 27, 1992, Jose Amores was traversing the railroad tracks in Kahilum street, Pandacan, Manila. Before crossing the railroad track, he stopped for a while then proceeded accordingly. Unfortunately, just as Amores was crossing the intersection, a PNR train turned up and collided with the car. After the impact, the car was dragged 10 meters beyond the center crossing. Amores died as a consequence thereof.
- At the time of the mishap, there was neither a signal nor a crossing bar in the intersection to warn the motorists of the incoming train. Aside for the railroad track, the only visible sign was a defective standard sign board " STOP, LOOK and LISTEN. No whistle blow from the train was likewise heard before it finally bumped the car of Amores.
- The heir of Amores filed a complaint for damages against PNR and Virgilio Borja, PNR's locomotive driver at the time of the incident. In the complaint, they avvered that the train's speedometer was defective and that the negligence of PNR and Borja was the proximate cause of the mishap for their failure to take proper precautions to prevent injury.
- In their answer, PNR denied the allegations, stating that the train was railroad worthy and without any defect. According to them, the proximate cause of Amores' death was his own carelessness and negligence, and his wanton disregard for traffic rules and regulations in crossing tracks and trying to beat the approaching train.
- RTC ruled in favor of PNR and BORJA. CA reversed the RTC decision. CA awarded the cost of damage and moral damages in favor of the heirs of Amores.

ISSUES & ARGUMENTS

W/N the appellate court was correct in ascribing negligence on the part of PNR and Borja

HOLDING & RATIO DECIDENDI

THE APPELLATE COURT WAS CORRECT IN ASCRIBING NEGLIGENCE ON THE PART OF PNR AND BORJA.

- Negligence has been defined as "the failure to observe for the protection of the interests of another person that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury."
- It is the responsibility of the railroad company to use reasonable care to keep signal devices in working order. Failure to do so is an indication of negligence. The failure of PNR to put a cross bar, flagman or switchman, or a semaphore is an evidence of negligence and disregard of the safety of the public even if there is no law or ordinance requiring it.
- It is true that one driving an automobile must use his faculties of seeing and hearing when nearing a railroad crossing. However, the obligation to bring to a full stop vehicles moving in public highways before traversing any "through street" only accrues from the time the said "through street" or crossing is so designated and sign-posted. From the records, it can be inferred that Amores exercised all the necessary precautions required of him to avoid injury to himself and others.

VP PADILLA

60 PLDT vs. CA | Regalado
G.R. No. L-57079 September 29, 1989 | 178 SCRA 94

FACTS

- The Esteban's jeep ran over a mound of earth and fell into an open trench, an excavation undertaken by PLDT for the installation of its underground conduit system.
- Esteban failed to notice the open trench which was left uncovered because of the darkness and the lack of any warning light or signs
- The Estebans allegedly sustained injuries
- PLDT, denies liability on the contention that the injuries sustained by respondent spouses were the result of their own negligence and that the entity which should be held responsible, Barte an independent contractor which undertook the construction
- LC ruled in favor of Estebans
- However, the CA found that that the relationship of Barte and PLDT should be viewed in the light of the contract between them and, under the independent contractor rule, PLDT is not liable for the acts of an independent contractor. Still, CA affirmed LC decision.

ISSUES & ARGUMENTS

W/N PLDT is liable for the injuries sustained by the Estebans

HOLDING & RATIO DECIDENDI

The accident which befell the Estebans was due to the lack of diligence of respondent Antonio Esteban and was not imputable to negligent omission on the part of petitioner PLDT

- The accident was not due to the absence of warning signs, but to the **unexplained abrupt swerving of the jeep from the inside lane**. That may explain plaintiff-husband's insistence that he did not see the ACCIDENT MOUND for which reason he ran into it.
- The jeep was not running at 25 kilometers an hour. At that speed, he could have braked the vehicle the moment it struck the ACCIDENT MOUND. The jeep would not have climbed the ACCIDENT MOUND several feet as indicated by the tiremarks. The jeep must have been running quite fast.
- Plaintiff-husband **had not exercised the diligence of a good father of a family to avoid the accident**.
- The negligence of Antonio Esteban was **not only contributory to his injuries and those of his wife but goes to the very cause of the occurrence of the accident**, as one of its determining factors, and thereby precludes their right to recover damages
- The presence of warning signs could not have completely prevented the accident; the only purpose of said signs was to inform and warn the public of the presence of excavations on the site. The private respondents already knew of the presence of said excavations. It was not the lack of knowledge of these excavations which caused the jeep of respondents to fall into the excavation but the unexplained sudden swerving of the jeep from the inside lane towards the accident mound
- Furthermore, Antonio Esteban **had the last clear chance** or opportunity to avoid the accident
- A person claiming damages for the negligence of another has the **burden of proving the existence of such fault or negligence causative thereof. The facts constitutive of negligence must be affirmatively established by competent evidence**. Whosoever relies on negligence for his cause of action has the burden in the first instance of proving the existence of the same if contested, otherwise his action must fail.

BYRON PEREZ

61 Food Terminal Inc. vs. CA and Basic Foods
GR 108397, January 21, 2000/ Pardo

FACTS

- Basic Foods (basic) is engaged in the business of manufacturing foos and allied products. One of which is Red Star compressed yeast which should be refrigerated in a space to avoid spoiling.
- Food Terminal Inc. (FTI) was engaged in he storing of goods and merchandise for compensation at its refrigerated warehouses in Taguig.
- During the period for June 10, 1987 to June 23, 1987, Basic deposited FTI's warehouse 1,770 cartons of the said yeast. But due to the failure to control the temperature, a total of 383.6 cartons of the said yeast were spoiled. The monetary value of which amounted to at least P16,112.00.
- FTC contends that eventhough it failed to maintain the said temperature, they should not compensate for the yeast due to stipulations of the party in the contract that if certain situations arise (which the failure to control the temperature is one of them), then they are not liable for the damage.

ISSUES & ARGUMENTS

Was FTC Negligent?

HOLDING & RATIO DECIDENDI

Yes (Duh!!)

- Petitioner **practically admitted** that it failed to maintain the agreed temperature of the cold storage area to 2-4 degrees centigrade at all times.
- Since Negligence has been established, petitioners liability from damages is inescapable.

62 German Marine Agencies, Inc. vs. NLRC | Gonzaga-Reyes
G.R. No. 142049, January 30, 2001 | 350 SCRA 629

FACTS

- Froilan de Lara was hired by German Marine Agencies, Inc. to work as a radio officer on board its vessel, M/V T.A. VOYAGER.
- While the vessel was docked at the port of New Zealand, de Lara was taken ill which was brought to the attention of the master of the vessel.
- However, instead of disembarking him so he may receive immediate medical attention, the master of the vessel proceeded to Manila, a voyage of ten days.
- Upon arrival in Manila, he was not immediately disembarked but was made to wait for several hours until a vacant slot in the Manila pier was available.
- It was only upon the insistence of de Lara's relatives that petitioners were compelled to disembark him and finally commit him to a hospital.
- He was confined in the Manila Doctors Hospital, where he was treated.
- After being discharged from the hospital, he demanded from German Marine the payment of his disability benefits and unpaid balance of his sickness wages, pursuant to the Standard Employment Contract of the parties.
- De Lara filed a complaint with the NLRC for payment of disability benefits and the balance of his sickness wages.
- Labor Arbiter and NLRC ruled in favor of de Lara.

ISSUES & ARGUMENTS

- **W/N German Marine is guilty of negligence thereby liable for damages?**

HOLDING & RATIO DECIDENDI

YES. (Just repeat the facts.)

- There is no doubt that the failure of petitioners to provide private respondent with the necessary medical care caused the rapid deterioration and inevitable worsening of the latter's condition, which eventually resulted in his sustaining a permanent disability.
- Negligence not only exists but was deliberately perpetrated by petitioners by its arbitrary refusal to commit the ailing de Lara to a hospital in New Zealand or at any nearest port. Such deprivation of immediate medical attention appears deliberated by the clear manifestation from petitioner's own words which states that, "*the proposition of the complainant that respondents should have taken the complainant to the nearest port of New Zealand is easier said than done. The deviation from the route of the vessel will definitely result to loss of a fortune in dollars*."

NOTE: Main issue of this case is whether German Marine is liable for disability benefits and sickness wages which hinges on the question of who must declare the disability of the employee, whether an accredited doctor/hospital or not. Court affirmed the decision of the labor arbiter to give more weight to the doctors who treated de Lara, even if they were not accredited with the POEA.

AYEN QUA

63 Tan vs. Northwest Airlines | Pardo
G.R. No. 102358, March 3, 2000 | 263 SCRA 327

FACTS

- On May 31, 1994, Priscilla Tan(petitioner) and Connie Tan boarded NWA Flight 29 in Chicago USA bound for Manila, Phils. It had a stop-over in Detroit.
- They arrived at the NAIA on June 1, 1994.
- Petitioner and her companion found out that their luggage was missing.
- They went back the next day and were informed that their luggage were still in another plane in Tokyo.
- On June 3, 1994, they recovered their baggage but discovered that some of its contents were destroyed and soiled.
- On June 15 and 22, 1994, petitioner sent demand letters to Northwest but the latter did not respond.
- Hence, petitioner filed the case against respondents.
- RTC ruled in favor of petitioner and ordered respondents to pay petitioner: 1. Actual damages – P 15k; 2. Moral damages – P100k; 3. Exemplary Damages – 30k; atty's fees and costs.
- CA affirmed but deleted the award of moral and exemplary damages.
-

ISSUES & ARGUMENTS

- **W/N Northwest Airlines was liable for moral and exemplary damages for willful misconduct and breach of the contract of carriage?**

HOLDING & RATIO DECIDENDI

NO. NWA not guilty of willful misconduct.

- For willful misconduct to exist, there must be a showing that he acts complained of were impelled by an intention to violate the law, or were in persistent disregard of one's rights. It must be evidenced by a flagrantly or shamefully wrong or improper conduct.
- Nothing in the conduct of respondent which showed that they were motivated by malice or bad faith.
- NWA did not deny that baggages of petitioner were not loaded in Flight 29. The baggages could not be carried on the same flight due to weight and balance restrictions.
- However, the baggage were loaded in another NWA flight.
- When petitioner received her soiled baggages, NWA offered to either: 1. Reimburse the cost or repair of the bags or 2. Reimburse the cost for the purchase of new bags upon submission of receipts.
- BAD FAITH – does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill-will that partakes of the nature of fraud.

64 Collin Morris and Thomas Whittier v CA, Scandinavian Airlines System (SAS) | Pardo
G.R. No. 127957 February 21, 2001 |

FACTS

- Petitioners Collin A. Morris and Thomas P. Whittier were American citizens; the vice-president for technical service and the director for quality assurance, respectively, of Sterling Asia, a foreign corporation with regional headquarters at No. 8741 Paseo de Roxas, Makati City. Respondent Scandinavian Airline System (SAS for brevity) has been engaged in the commercial air transport of passengers globally.
- Petitioners had a series of business meetings in Japan from Feb 14-22 1978, thus they made travel arrangements with their agent in Staats Travel Service. They were book in 1st class, SAS Flight SK893, Manila-Tokyo for Feb 14, 3:50 pm.
- On the day of the flight, the limo service agency fetched Morris at Urdaneta and Whittier in Merville. They arrived at MIA at 230pm. They were at the counter around 310pm and gave their travel documents to Erlinda Ponce at the reception desk. Later they realized that their travel documents is not being processed. They called their agent to find out the problem. They learned that they were bumped off the flight. They insisted to get their flight from Ponce and her supervisor, Mr. Basa.
- Later, they learned the economy section was overbooked, and those who came early were given the option to upgrade to 1st class. Their seats were given away and the flight manifest marked NOSH (no show) after their name, because the check-in counter closed already 40mins before departure. Petitioners were advised to be at the airport an hour before the flight. They came late, and SAS simply followed company policies.
- Petitioners filed a complaint for damages. RTC awarded:
  Moral damages: Morris, 1M; Whittier, 750K exemplary: 200K atty's fees: 300K
- Petitioners filed an MR to the RTC to increase award, moral damages increased to 1.5M and 1M. CA reversed, hence this petition.

ISSUES & ARGUMENTS

- **W/N SAS is liable for damages for breach of contract of carriage?**

HOLDING & RATIO DECIDENDI

NO.

- To begin with, it must be emphasized that a contract to transport passengers is quite different kind and degree from any other contractual relations, and this is because relation, which an air carrier sustains with the public. Its business is mainly with the traveling public. It invites people business is mainly with the traveling public. It invites people to avail [themselves] of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended wit h a pubic duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages."
- In awarding **moral damages** for **breach of contract of carriage**, the breach must be **wanton and deliberately injurious or the one responsible acted fraudulently or with malice or bad faith.**Where in breaching the contract of carriage the defendant airline is **no**t shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of obligation which the parties had foreseen or could have reasonably foreseen. In that case, such liability does not include moral and exemplary damages. Moral damages are generally not recoverable in **culpa contractual** except when bad faith had been proven. However, the same damages may be recovered when reach of contract of carriage results in the death of a passenger. *(Ganto, simply put, the GR: no moral damages kapag arising from contract of carriage, 1191 remedy mo diba sa breach of contract? EXCEPT: if BF attendant or may nachugi sa plane)*
- The award of **exemplary damages** has likewise no factual basis. It is **requisite that the act must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner**—circumstances which are absent in this case. In addition, exemplary damages cannot be awarded as the requisite element of compensatory damages was not present.
- In the instant case, assuming *arguendo* that breach of contract of carriage may be attributed to respondent, petitioners' travails were directly traceable to their failure to check-in on time, which lewd to respondent's refusal to accommodate them on the flight.

CA decision affirmed. Petition dismissed.

DIANE LIPANA

65 Crisostomo vs. CA | Ynares-Santiago
G.R. No. 138334, August 25, 2003 | 409 SCRA 528

FACTS

- Petitioner Crisostomo contracted the services of respondent Caravan Travel and Tours International, to arrange and facilitate her booking, ticketing, and accommodation in a tour called "Jewels of Europe." She was given a 5% discount and a waived booking fee because her niece, Meriam Menor, was the company's ticketing manager.
- Menor went to her aunt's residence to deliver Crisostomo's travel documents and plane tickets and get her payment. Menor told her to be in NAIA on Saturday.
- When Crisostomo got to the airport on Saturday, she discovered that the filight she was supposed to take had already departed the previous day. She complained to Menor, and was urged by the latter to take another tour, instead → "British Pageant."
- Upon returning from Europe, Crisostomo demanded P61,421.70 from Caravan Tours, representing the difference between the sun she paid for Jewels and the amount she owed the company for British Pageant. Caravan refused.
- Thus, Crisostomo filed a complaint against Caravan for breach of contract of carriage and damages. The trial court held in favor of Crisostomo, and ordered Caravan to pay her, because it was negligent in erroneously advising Crisostomo of her departure. However, Crisostmo is also guilty of contributory negligence (for failing to verify the exact date and time of departure). CA declared that Crisostomo is more negligent. As a lawyer and well-travelled person, she should have known better. MR of Crisostomo was also denied. Hence this petition.

ISSUES & ARGUMENTS

- **W/N respondent Caravan is guilty of negligence and is liable to Crisostomo for damages.**
    - **Crisostomo**: Respondent did not observe the standard of care required of a common carrier, i.e. extraordinary diligence in the fulfillment of its obligation.
    - **Caravan:** Menor was not negligent. The date and time of departure was legibly written on the plane ticket and the travel papers were given 2 days before the flight. It performed all obligations to enable Crisostomo to join the group and exercised due diligence in its dealings with the latter.

HOLDING & RATIO DECIDENDI

CARVAN NOT LIABLE FOR DAMAGES.

- A contract of carriage or transportation is one whereby a certain person or association of persons obligate themselves to transport persons, things, or news from one place to another for a fixed price.
- Respondent is not engaged in the business of transporting either passengers of goods and is therefore not a common carrier. Respondent's services as a travel agency include procuring tickets and facilitating travel permits or visas as well as booking customers for tours.
- A common carrier is bound by law to carry as far as human care and foresight can provide using the utmost diligence of very cautious persons and with due regard for all circumstances. But since Caravan is a travel agency, it is not bound to observe extraordinary diligence in the performance of its obligations.
- For them, the standard of care required is that of a good father of a family. This connotes reasonable care consistent with that which an ordinarily prudent person would have observed when confronted with a similar situation.
- We do not concur with the finding that Menor's negligene concurred with that of Crisostomo. No evidence to prove Menor's negligence.
- The negligence of the obligor in the performance of the obligations renders him liable for damages for the resulting loss suffered by the obligee. Fault or negligence of an obligor consists in the his failure to exercise due care and prudence in the performance of the obligation. The degree of diligence required depends on the circumstances of the specific obligation and whether one has been negligent is a question of fact that is to be determined in the case.

Petition denied. CA affirmed.

CHRISSIE MORAL

66 Africa vs. Caltex, Boquiren and the CA| Makalintal
G.R. No. L-12986, March 31, 1966 | 16 SCRA 448

FACTS

- A fire broke out at the Caltex service station in Manila. It started while gasoline was being hosed from a tank truck into the underground storage, right at the opening of the receiving truck where the nozzle of the hose was inserted The fire then spread to and burned several neighboring houses, including the personal properties and effects inside them.
- The owners of the houses, among them petitioners here, sued Caltex (owner of the station) and Boquiren (agent in charge of operation).
- Trial court and CA found that petitioners failed to prove negligence and that respondents had exercised due care in the premises and with respect to the supervision of their employees. Both courts refused to apply the doctrine of *res ipsa loquitur* on the grounds that "as to its applicability xxx in the Philippines, there seems to be nothing definite," and that while the rules do not prohibit its adoption in appropriate cases, "in the case at bar, however, we find no practical use for such docrtrine."

ISSUES & ARGUMENTS

W/N without proof as to the cause and origin of the fire, the doctrine of *res ipsa loquitur* should apply as to presume negligence on the part of the appellees.

HOLDING & RATIO DECIDENDI

DOCTRINE OF *RES IPSA LOQUITUR* APPLIES. CALTEX LIABLE.

- *Res ipsa Loquitur* is a rule to the effect that "where the thing which caused the injury complained of is shown to be under the management of defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have its management or control use proper care, it affords reasonable evidence, in absence of explanation of defendant, that the incident happened because of want of care.
- The aforesaid principle enunciated in *Espiritu vs. Philippine Power and Development Co.* is applicable in this case. The gasoline station, with all its appliances, equipment and employees, was under the control of appellees. A fire occurred therein and spread to and burned the neighboring houses. The person who knew or could have known how the fire started were the appellees and their employees, but they gave no explanation thereof whatsoever. It is fair and reasonable inference that the incident happened because of want of care.
- The report by the police officer regarding the fire, as well as the statement of the driver of the gasoline tank wagon who was transferring the contents thereof into the underground storage when the fire broke out, strengthen the presumption of negligence. Verily, (1) the station is in a very busy district and pedestrians often pass through or mill around the premises; (2) the area is used as a car barn for around 10 taxicabs owned by Boquiren; (3) a store where people hang out and possibly smoke cigarettes is located one meter from the hole of the underground tank; and (4) the concrete walls adjoining the neighborhood are only 2 ½ meters high at most and cannot prevent the flames from leaping over it in case of fire.

Decision REVERSED. Caltex liable.

DANI BOLONG

67 F.F. Cruz vs. CA| Cortes
G.R. No. L-52732 August 29, 1988 |SCRA

FACTS

- The furniture manufacturing shop of F.F. Cruz in Caloocan City was situated adjacent to the residence of the Mables.
- Sometime in August 1971, private respondent **Gregorio Mable** first approached **Eric Cruz**, petitioner's plant manager, to request that a firewall be constructed between the shop and **Mable's** residence. The request was repeated several times but they fell on deaf ears.
- In the early morning of September 6, 1974, fire broke out in **Cruz's** shop. **Cruz's** employees, who slept in the shop premises, tried to put out the fire, but their efforts proved futile. The fire spread to the **Mables'** house. Both the shop and the house were razed to the ground.
- The **Mables** collected P35,000.00 on the insurance on their house and the contents thereof.
- The **Mables** filed an action for damages against the Cruz's.
- The TC ruled in favor of the **Mables**. CA affirmed but reduced the award of damages.

ISSUES & ARGUMENTS

W/N the doctrine of *res ipsa loquitor* is applicable to the case.

HOLDING & RATIO DECIDENDI

Yes. The doctrine of *res ipsa loquitor* is applicable to the case. The CA, therefore, had basis to find Cruz liable for the loss sustained by the Mables'.

- The doctrine of *res ipsa loquitur*, may be stated as follows:
  - Where the thing which caused the injury complained of is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have its management or control use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. [Africa v. Caltex (Phil.), Inc., G.R. No. L-12986, March 31, 1966, 16 SCRA 448.]
- The facts of the case likewise call for the application of the doctrine, considering that in the normal course of operations of a furniture manufacturing shop, combustible material such as wood chips, sawdust, paint, varnish and fuel and lubricants for machinery may be found thereon.
- It must also be noted that negligence or want of care on the part of petitioner or its employees was not merely presumed.
  - Cruz failed to construct a firewall between its shop and the residence of the Mables as required by a city ordinance
  - that the fire could have been caused by a heated motor or a lit cigarette
  - that gasoline and alcohol were used and stored in the shop; and
  - that workers sometimes smoked inside the shop
- Even without applying the doctrine of *res ipsa loquitur*, Cruz's failure to construct a firewall in accordance with city ordinances would suffice to support a finding of negligence.
  - Even then the fire possibly would not have spread to the neighboring houses were it not for another negligent omission on the part of defendants, namely, their failure to provide a concrete wall high enough to prevent the flames from leaping over it. *Defendant's negligence, therefore, was not only with respect to the cause of the fire but also with respect to the spread thereof to the neighboring houses.*
  - In the instant case, with more reason should petitioner be found guilty of negligence since it had failed to construct a firewall between its property and private respondents' residence which sufficiently complies with the pertinent city ordinances. The failure to comply with an ordinance providing for safety regulations had been ruled by the Court as an act of negligence [Teague v. Fernandez, G.R. No. L-29745, June 4, 1973, 51 SCRA 181.]

NICO CRISOLOGO

68 Ma-ao Sugar Central Co., Inc. vs Court of Appeals | Cruz, J.
G.R. No. 834491, August 27, 1990 | 189 SCRA 88

FACTS

- On March 22, 1980, Famoso was riding with a co-employee in the caboose or "carbonera" of Plymouth No. 12, a cargo train of the petitioner, when the locomotive was suddenly derailed. He and his companion jumped off to escape injury, but the train fell on its side, caught his legs by its wheels and pinned him down. He was declared dead on the spot. [1]
- The claims for death and other benefits having been denied by the petitioner, the herein private respondent filed suit in the Regional Trial Court of Bago City. Judge Marietta Hobilla-Alinio ruled in her favor but deducted from the total damages awarded 25% thereof for the decedent's contributory negligence and the total pension of P41,367.60 private respondent and her children would be receiving from the SSS for the next five years
- The widow appealed, claiming that the deductions were illegal. So did the petitioner, but on the ground that it was not negligent and therefore not liable at all.
- In its own decision, the Court of Appeals [2] sustained the rulings of the trial court except as to the contributory negligence of the deceased and disallowed the deductions protested by the private respondent.

ISSUES & ARGUMENTS

- **W/N** the respondent court is at fault for finding the petitioner guilty of negligence notwithstanding its defense of due diligence under Article 2176 of the Civil Code and for disallowing the deductions made by the trial court.

HOLDING & RATIO DECIDENDI

To say the least, the Court views with regret the adamant refusal of petitioner Ma-ao Sugar Central to recompense the private respondent for the death of Julio Famoso, their main source of support, who was killed in line of duty while in its employ. It is not only a matter of law but also of compassion on which we are called upon to rule today. We shall state at the outset that on both counts the petition must fail.

- Investigation of the accident revealed that the derailment of the locomotive was caused by protruding rails which had come loose because they were not connected and fixed in place by fish plates. Fish plates are described as strips of iron 8" to 12" long and 3 1/2" thick which are attached to the rails by 4 bolts, two on each side, to keep the rails aligned. Although they could be removed only with special equipment, the fish plates that should have kept the rails aligned could not be found at the scene of the accident.
- There is no question that the maintenance of the rails, for the purpose *inter alia* of preventing derailments, was the responsibility of the petitioner, and that this responsibility was not discharged. According to Jose Treyes, its own witness, who was in charge of the control and supervision of its train operations, cases of derailment in the milling district were frequent and there were even times when such derailments were reported every hour. [3] The petitioner should therefore have taken more prudent steps to prevent such accidents instead of waiting until a life was finally lost because of its negligence.
- The argument that no one had been hurt before because of such derailments is of course not acceptable. And neither are we impressed by the claim that the brakemen and the conductors were required to report any defect in the condition of the railways and to fill out prescribed forms for the purpose. For what is important is that the petitioner should act on these reports and not merely receive and file them. The fact that it is not easy to detect if the fish plates are missing is no excuse either. Indeed, it should stress all the more the need for the responsible employees of the petitioner to make periodic checks and actually go down to the railroad tracks and see if the fish plates were in place.
- It is argued that the locomotive that was derailed was on its way back and that it had passed the same rails earlier without accident. The suggestion is that the rails were properly aligned then, but that does not necessarily mean they were still aligned afterwards. It is possible that the fish plates were loosened and detached during its first trip and the rails were as a result already mis-aligned during the return trip. But the Court feels that even this was unlikely, for, as earlier noted, the fish plates were supposed to have been bolted to the rails and could be removed only with special tools. The fact that the fish plates were not found later at the scene of the mishap may show they were never there at all to begin with or had been removed long before.
- At any rate, the absence of the fish plates – whatever the cause or reason – is by itself alone proof of the negligence of the petitioner. *Res ipsa loquitur*. The doctrine was described recently in *Layugan v. Intermediate Appellate* Court, [4] thus:

> Where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care.

JAY DUHAYLONGSOD

69 Batiquin v. Court of Appeals | Davide, Jr.
G.R. No. 118231 July 5, 1996| 258 SCRA 334

FACTS

- On Sept 1988, Petitioner Dr. Batiquin performed a simple caesarean section on Respondent Mrs. Villegas when the latter gave birth. Soon after leaving the hospital, respondent began to suffer abdominal pains and complained of being feverish.
- The abdominal pains and fever kept on recurring and this prompted respondent to consult with another doctor, Dr. Kho (not Hayden). When Dr. Kho opened the abdomen of respondent to check her out respondent's infection, she discovered that a piece of rubber material, which looked like a piece of rubber glove and was deemed a foreign body, was the cause of the respondent's infection.
- Respondent then sued petitioner for damages. RTC held in favor of petitioner. CA reversed, ruling for the respondent.

ISSUES & ARGUMENTS

- **W/N petitioner is liable to respondent.**

HOLDING & RATIO DECIDENDI

YES, UNDER THE RULE OF RES IPSA LOQUITUR, DR. BATIQUIN IS LIABLE.

- *Res ipsa loquitur*. The thing speaks for itself. Rebuttable presumption or inference that defendant was negligent, which arises upon proof that the instrumentality causing injury was in defendant's exclusive control, and that the accident was one which ordinary does not happen in absence of negligence. Res ipsa loquitur is a rule of evidence whereby negligence of the alleged wrongdoer may be inferred from the mere fact that the accident happened provided the character of the accident and circumstances attending it lead reasonably to belief that in the absence of negligence it would not have occurred and that thing which caused injury is shown to have been under the management and control of the alleged wrongdoer. Under this doctrine the happening of an injury permits an inference of negligence where plaintiff produces substantial evidence that the injury was caused by an agency or instrumentality under the exclusive control and management of defendant, and that the occurrence was such that in the ordinary course of things would not happen if reasonable care had been used.
- The doctrine of *res ipsa loquitur* as a rule of evidence is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence. The doctrine is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. The rule, when applicable to the facts and circumstances of a particular case, is not intended to and does not dispense with the requirement of proof of culpable negligence on the party charged. It merely determines and regulates what shall be *prima facie* evidence thereof and facilitates the burden of plaintiff of proving a breach of the duty of due care. The doctrine can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available.
- In the instant case, all the requisites for recourse to the doctrine are present. First, the entire proceedings of the caesarean section were under the exclusive control of Dr. Batiquin. In this light, the private respondents were bereft of direct evidence as to the actual culprit or the exact cause of the foreign object finding its way into private respondent Villegas's body, which, needless to say, does not occur unless through the intersection of negligence. Second, since aside from the caesarean section, private respondent Villegas underwent no other operation which could have caused the offending piece of rubber to appear in her uterus, it stands to reason that such could only have been a by-product of the caesarean section performed by Dr. Batiquin. The petitioners, in this regard, failed to overcome the presumption of negligence arising from resort to the doctrine of *res ipsa loquitur*. Dr. Batiquin is therefore liable for negligently leaving behind a piece of rubber in private respondent Villegas's abdomen and for all the adverse effects thereof.

70 Reyes v Sisters of Mercy Hospital
G.R. 130547 October 3, 2000

FACTS

Petitioner Leah Alesna Reyes is the wife of the late Jorge Reyes. The other petitioners, namely, Rose Nahdja, Johnny, Lloyd, and Kristine, all surnamed Reyes, were their children. Five days before his death on January 8, 1987, Jorge had been suffering from a recurring fever with chills. After he failed to get relief from some home medication he was taking, which consisted of analgesic, antipyretic, and antibiotics, he decided to see the doctor.

On January 8, 1987, he was taken to the Mercy Community Clinic by his wife. He was attended to by respondent Dr. Marlyn Rico, resident physician and admitting physician on duty, who gave Jorge a physical examination and took his medical history. She noted that at the time of his admission, Jorge was conscious, ambulatory, oriented, coherent, and with respiratory distress. Typhoid fever was then prevalent in the locality, as the clinic had been getting from 15 to 20 cases of typhoid per month Suspecting that Jorge could be suffering from this disease, Dr. Rico ordered a Widal Test, a standard test for typhoid fever, to be performed on Jorge. Blood count, routine urinalysis, stool examination, and malarial smear were also made After about an hour, the medical technician submitted the results of the test from which Dr. Rico concluded that Jorge was positive for typhoid fever. As her shift was only up to 5:00 p.m., Dr. Rico indorsed Jorge to respondent Dr. Marvie Blanes.

Dr. Marvie Blanes attended to Jorge at around six in the evening. She also took Jorge's history and gave him a physical examination. Like Dr. Rico, her impression was that Jorge had typhoid fever. Antibiotics being the accepted treatment for typhoid fever, she ordered that a compatibility test with the antibiotic chloromycetin be done on Jorge. Said test was administered by nurse Josephine Pagente who also gave the patient a dose of triglobe. As she did not observe any adverse reaction by the patient to chloromycetin, Dr. Blanes ordered the first five hundred milligrams of said antibiotic to be administered on Jorge at around 9:00 p.m. A second dose was administered on Jorge about three hours later just before midnight.

At around 1:00 a.m. of January 9, 1987, Dr. Blanes was called as Jorge's temperature rose to 41°C. The patient also experienced chills and exhibited respiratory distress, nausea, vomiting, and convulsions. Dr. Blanes put him under oxygen, used a suction machine, and administered hydrocortisone, temporarily easing the patient's convulsions. When he regained consciousness, the patient was asked by Dr. Blanes whether he had a previous heart ailment or had suffered from chest pains in the past. Jorge replied he did not After about 15 minutes, however, Jorge again started to vomit, showed restlessness, and his convulsions returned. Dr. Blanes re-applied the emergency measures taken before and, in addition, valium was administered. Jorge, however, did not respond to the treatment and slipped into cyanosis, a bluish or purplish discoloration of the skin or mucous membrane due to deficient oxygenation of the blood. At around 2:00 a.m., Jorge died. He was forty years old. The cause of his death was "Ventricular Arrythemia Secondary to Hyperpyrexia and typhoid fever."

ISSUE & ARGUMENTS

Whether or not petitioner is entitled to damage applying res ipsa loquitur?

HOLDING & RATION DECIDENDI

No. There is a case when expert testimony may be dispensed with, and that is under the doctrine of res ipsa loquitur. Thus, courts of other jurisdictions have applied the doctrine in the following situations: leaving of a foreign object in the body of the patient after an operation, injuries sustained on a healthy part of the body which was not under, or in the area, of treatment, removal of the wrong part of the body when another part was intended, knocking out a tooth while a patient's jaw was under anesthetic for the removal of his tonsils, and loss of an eye while the patient was under the influence of anesthetic, during or following an operation for appendicitis, among others.

Petitioners now contend that all requisites for the application of res ipsa loquitur were present, namely: (1) the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person in charge; and (3) the injury suffered must not have been due to any voluntary action or contribution of the person injured.
The contention is without merit. We agree with the ruling of the Court of Appeals. In the Ramos case, the question was whether a surgeon, an anesthesiologist, and a hospital should be made liable for the comatose condition of a patient scheduled for cholecystectomy. In that case, the patient was given anesthesia prior to her operation. Noting that the patient was neurologically sound at the time of her operation, the Court applied the doctrine of res ipsa loquitur as mental brain damage does not normally occur in a gallblader operation in the absence of negligence of the anesthesiologist. Taking judicial notice that anesthesia procedures had become so common that even an ordinary person could tell if it was administered properly, we allowed the testimony of a witness who was not an expert. In this case, while it is true that the patient died just a few hours after professional medical assistance was rendered, there is really nothing unusual or extraordinary about his death. Prior to his admission, the patient already had recurring fevers and chills for five days unrelieved by the analgesic, antipyretic, and antibiotics given him by his wife. This shows that he had been suffering from a serious illness and professional medical help came too late for him.
Respondents alleged failure to observe due care was not immediately apparent to a layman so as to justify application of res ipsa loquitur. The question required expert opinion on the alleged breach by respondents of the standard of care required by the circumstances. Furthermore, on the issue of the correctness of her diagnosis, no presumption of negligence can be applied to Dr. Marlyn Rico.

J.C. LERIT

71 Ramos v CA | Kapunan
G.R. No. 124354 December 29, 1999|

FACTS

- Erlinda Ramos underwent an operation known as cholecystectomy (removal of stone in her gallbladder) under the hands of Dr. Orlino Hosaka. He was accompanied by Dr. Perfecta Gutierrez, an anesthesiologist which Dr. Hosaka recommended since Ramos (and her husband Rogelio) did not know any.
- The operation was schedule at 9am of June 17, 1985 but was however delayed for three hours due to the late arrival of Dr. Hosaka.
- Dr. Gutierrez subsequently started trying to intubate her. And at around 3pm, Erlinda was seen being wheeled to the Intensive Care Unit (ICU). The doctors explained to petitioner Rogelio that his wife had bronchospasm. Erlinda stayed in the ICU for a month. She was released from the hospital only four months later or on November 15, 1985. Since the ill-fated operation, Erlinda remained in comatose condition until she died on August 3, 1999.
- RTC ruled in favor of the petitioners, holding the defendants guilty of, at the very least, negligence in the performance of their duty to plaintiff-patient Erlinda Ramos.
- On appeal to CA, the said decision was reversed – dismissing the complaint against the defendants. Hence this petition.

ISSUES & ARGUMENTS

W/N the private respondents should be held liable for the injury caused to Erlinda and her family?

HOLDING & RATIO DECIDENDI

YES.

- Res ipsa loquitur is a Latin phrase which literally means "the thing or the transaction speaks for itself." The phrase "res ipsa loquitur" is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's prima facie case, and present a question of fact for defendant to meet with an explanation.
- The doctrine of res ipsa loquitur is simply a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the defendant who is charged with negligence.
- However, much has been said that res ipsa loquitur is not a rule of substantive law and, as such, does not create or constitute an independent or separate ground of liability. Instead, it is considered as merely evidentiary or in the nature of a procedural rule. It is regarded as a mode of proof, or a mere procedural of convenience since it furnishes a substitute for, and relieves a plaintiff of, the burden of producing specific proof of negligence. Hence, mere invocation and application of the doctrine does not dispense with the requirement of proof of negligence. It is simply a step in the process of such proof, permitting the plaintiff to present along with the proof of the accident, enough of the attending circumstances to invoke the doctrine, creating an inference or presumption of negligence, and to thereby place on the defendant the burden of going forward with the proof. Still, before resort to the doctrine may be allowed, the following requisites must be satisfactorily shown:
    1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
    2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
    3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.
- **Although generally, expert medical testimony is relied upon in malpractice suits to prove that a physician has done a negligent act or that he has deviated from the standard medical procedure, when the doctrine of res ipsa loquitur is availed by the plaintiff, the need for expert medical testimony is dispensed with because the injury itself provides the proof of negligence. The reason is that the general rule on the necessity of expert testimony applies only to such matters clearly within the domain of medical science, and not to matters that are within the common knowledge of mankind which may be testified to by anyone familiar with the facts.** When the doctrine is appropriate, all that the patient must do is prove a nexus between the particular act or omission complained of and the injury sustained while under the custody and management of the defendant without need to produce expert medical testimony to establish the standard of care. Resort to res ipsa loquitur is allowed because there is no other way, under usual and ordinary conditions, by which the patient can obtain redress for injury suffered by him.
- **We find the doctrine of res ipsa loquitur appropriate in the case at bar. As will hereinafter be explained, the damage sustained by Erlinda in her brain prior to a scheduled gall bladder operation presents a case for the application of res ipsa loquitur.**
- In the present case, Erlinda submitted herself for cholecystectomy and expected a routine general surgery to be performed on her gall bladder. On that fateful day she delivered her person over to the care, custody and control of private respondents who exercised complete and exclusive control over her. At the time of submission, Erlinda was neurologically sound and, except for a few minor discomforts, was likewise physically fit in mind and body. However, during the administration of anesthesia and prior to the performance of cholecystectomy she suffered irreparable damage to her brain. Thus, without undergoing surgery, she went out of the operating room already decerebrate and totally incapacitated. Obviously, brain damage, which Erlinda sustained, is an injury which does not normally occur in the

process of a gall bladder operation. In fact, this kind of situation does not in the absence of negligence of someone in the administration of anesthesia and in the use of endotracheal tube. Normally, a person being put under anesthesia is not rendered decerebrate as a consequence of administering such anesthesia if the proper procedure was followed. Furthermore, the instruments used in the administration of anesthesia, including the endotracheal tube, were all under the exclusive control of private respondents, who are the physicians-in-charge. Likewise, petitioner Erlinda could not have been guilty of contributory negligence because she was under the influence of anesthetics which rendered her unconscious.

- **We disagree with the findings of the Court of Appeals. We hold that private respondents were unable to disprove the presumption of negligence on their part in the care of Erlinda and their negligence was the proximate cause of her piteous condition.**
- **Dr. Gutierrez (anesthesiologist) is held liable for failure to perform the necessary pre-operative evaluation which includes taking the patient's medical history, review of current drug therapy, physical examination and interpretation of laboratory data. This physical examination performed by the anesthesiologist is directed primarily toward the central nervous system, cardiovascular system, lungs and upper airway. A thorough analysis of the patient's airway normally involves investigating the following: cervical spine mobility, temporomandibular mobility, prominent central incisors, diseased or artificial teeth, ability to visualize uvula and the thyromental distance.**
- In the case at bar, respondent Dra. Gutierrez admitted that she saw Erlinda for the first time on the day of the operation itself, on 17 June 1985. Before this date, no prior consultations with, or pre-operative evaluation of Erlinda was done by her. Until the day of the operation, respondent Dra. Gutierrez was unaware of the physiological make-up and needs of Erlinda. She was likewise not properly informed of the possible difficulties she would face during the administration of anesthesia to Erlinda. Respondent Dra. Gutierrez' act of seeing her patient for the first time only an hour before the scheduled operative procedure was, therefore, an act of exceptional negligence and professional irresponsibility. The measures cautioning prudence and vigilance in dealing with human lives lie at the core of the physician's centuries-old Hippocratic Oath. Her failure to follow this medical procedure is, therefore, a clear indicia of her negligence.
- Having failed to observe common medical standards in pre-operative management and intubation, respondent Dra. Gutierrez' negligence resulted in cerebral anoxia and eventual coma of Erlinda.
- **Dr. Hosaka, being the head of the surgical team ("captain of the ship"), it was his responsibility to see to it that those under him perform their task in the proper manner. Respondent Dr. Hosaka's negligence can be found in his failure to exercise the proper authority (as the "captain" of the operative team) in not determining if his anesthesiologist observed proper anesthesia protocols. In fact, no evidence on record exists to show that respondent Dr. Hosaka verified if respondent Dra. Gutierrez properly intubated the patient. Furthermore, it does not escape us that respondent Dr. Hosaka had scheduled another procedure in a different hospital at the same time as Erlinda's cholecystectomy, and was in fact over three hours late for the latter's operation. Because of this, he had little or no time to confer with his anesthesiologist regarding the anesthesia delivery. This indicates that he was remiss in his professional duties towards his patient. Thus, he shares equal responsibility for the events which resulted in Erlinda's condition.**
- Notwithstanding the general denial made by respondent hospital to the effect that the respondent doctors (referred to as "consultants") in this case are not their employees, there is a showing that the hospital exercises significant control in the hiring and firing of consultants and in the conduct of their work within the hospital premises.
- The basis for holding an employer solidarily responsible for the negligence of its employee is found in Article 2180 of the Civil Code which considers a person accountable not only for his own acts but also for those of others based on the former's responsibility under a relationship of patria potestas. **Such responsibility ceases when the persons or entity concerned prove that they have observed the diligence of a good father of the family to prevent damage.** In other words, while the burden of proving negligence rests on the plaintiffs, once negligence is shown, the burden shifts to the respondents (parent, guardian, teacher or employer) who should prove that they observed the diligence of a good father of a family to prevent damage.
- **In the instant case, respondent hospital, apart from a general denial of its responsibility over respondent physicians, failed to adduce evidence showing that it exercised the diligence of a good father of a family in the hiring and supervision of the latter.** It failed to adduce evidence with regard to the degree of supervision which it exercised over its physicians. In neglecting to offer such proof, or proof of a similar nature, respondent hospital thereby failed to discharge its burden under the last paragraph of Article 2180. Having failed to do this, **respondent hospital is consequently solidarily responsible with its physicians for Erlinda's condition.**

The CA decision and resolution are hereby modified so as to award in favor of petitioners, and solidarily against private respondents the following: 1) P1,352,000.00 as actual damages computed as of the date of promulgation of this decision plus a monthly payment of P8,000.00 up to the time that petitioner Erlinda Ramos expires or miraculously survives; 2) P2,000,000.00 as moral damages, 3) P1,500,000.00 as temperate damages; 4) P100,000.00 each as exemplary damages and attorney's fees; and, 5) the costs of the suit.

TEL VIRTUDEZ

72 Ramos v CA | Kapunan
G.R. No. 124354 April 11, 2002| 380 SCRA 467

FACTS

- Erlinda Ramos underwent an operation known as cholecystectomy (removal of stone in her gallbladder) under the hands of Dr. Orlino Hosaka. He was accompanied by Dr. Perfecta Gutierrez, an anesthesiologist which Dr. Hosaka recommended since Ramos (and her husband Rogelio) did not know any.
- The operation was schedule at 9am of June 17, 1985 but was however delayed for three hours due to the late arrival of Dr. Hosaka.
- Dr. Gutierrez subsequently started trying to intubate her. And at around 3pm, Erlinda was seen being wheeled to the Intensive Care Unit (ICU). The doctors explained to petitioner Rogelio that his wife had bronchospasm. Erlinda stayed in the ICU for a month. She was released from the hospital only four months later or on November 15, 1985. Since the ill-fated operation, Erlinda remained in comatose condition until she died on August 3, 1999.
- Petitioners filed with the RTC a civil case for damages; the present petition is the 2nd MR of the private respondents in the SC, the main decision was rendered in December 29, '00.

ISSUES & ARGUMENTS

- **W/N the private respondents should be held liable for the injury caused to Erlinda and her family?**

HOLDING & RATIO DECIDENDI

YES. On the part of Dr. Gutierrez, her failure to exercise the standards of care in the administration of anesthesia on a patient through the non-performance of the preanesthetic/preoperative evaluation prior to an operation. The injury incurred by petitioner Erlinda does not normally happen absent any negligence in the administration of anesthesia and in the use of an endotracheal tube. As was noted in our Decision, the instruments used in the administration of anesthesia, including the endotracheal tube, were all under the exclusive control of private respondents Dr. Gutierrez and Dr. Hosaka. Thus the doctrine of res ipsa loquitor can be applied in this case.

- Such procedure was needed for 3 reasons: (1) to alleviate anxiety; (2) to dry up the secretions and; (3) to relieve pain. Now, it is very important to alleviate anxiety because anxiety is associated with the outpouring of certain substances formed in the body called adrenalin. When a patient is anxious there is an outpouring of adrenalin which would have adverse effect on the patient. One of it is high blood pressure, the other is that he opens himself to disturbances in the heart rhythm, which would have adverse implications. So, we would like to alleviate patient's anxiety mainly because he will not be in control of his body there could be adverse results to surgery and he will be opened up; a knife is going to open up his body. (Dr. Camagay)
-

On the part of Dr. Hosaka, while his professional services were secured primarily for their performance of acts within their respective fields of expertise for the treatment of petitioner Erlinda, and that one does not exercise control over the other, they were certainly not completely independent of each other so as to absolve one from the negligent acts of the other physician.

- First, it was Dr. Hosaka who recommended to petitioners the services of Dr. Gutierrez. In effect, he represented to petitioners that Dr. Gutierrez possessed the necessary competence and skills. Drs. Hosaka and Gutierrez had worked together since 1977. Whenever Dr. Hosaka performed a surgery, he would always engage the services of Dr. Gutierrez to administer the anesthesia on his patient.
  Second, Dr. Hosaka himself admitted that he was the attending physician of Erlinda. Thus, when Erlinda showed signs of cyanosis, it was Dr. Hosaka who gave instructions to call for another anesthesiologist and cardiologist to help resuscitate Erlinda.
  Third, it is conceded that in performing their responsibilities to the patient, Drs. Hosaka and Gutierrez worked as a team. Their work cannot be placed in separate watertight compartments because their duties intersect with each other.

  It is equally important to point out that Dr. Hosaka was remiss in his duty of attending to petitioner Erlinda promptly, for he arrived more than three (3) hours late for the scheduled operation. The cholecystectomy was set for June 17, 1985 at 9:00 a.m., but he arrived at DLSMC only at around 12:10 p.m. In reckless disregard for his patient's well being, Dr. Hosaka scheduled two procedures on the same day, just thirty minutes apart from each other, at different hospitals. Thus, when the first procedure (protoscopy) at the Sta. Teresita Hospital did not proceed on time, Erlinda was kept in a state of uncertainty at the DLSMC.

On the part of the hospital (DLSMC), since there was NO employer-employee relationship between the hospital and Dr. Gutierrez and Dr. Hosaka established in this case, the hospital cannot be held liable under Art. 2180 of the Civil Code. The contract of the hospital with its consultants is separate and distinct from the contract with its patients.

TEL VIRTUDEZ

73 DMCI Vs. Court of Appeals | Kapunan
G.R. No. 137873 April 20, 2001 | G.R. No. 137873

FACTS

- At around 1:30 p.m., November 2, 1990, Jose Juego, a construction worker of D. M. Consunji, Inc., fell 14 floors from the Renaissance Tower, Pasig City to his death.
- He was rushed to a hospital but was pronounced DOA at around 2:15 p.m. of the same date.
- Investigation disclosed that at the given time, date and place, while victim Jose A. Juego together with Jessie Jaluag and Delso Destajo [were] performing their work as carpenter[s] at the elevator core of the 14th floor of the Tower D, Renaissance Tower Building on board a platform made of channel beam (steel) measuring 4.8 meters by 2 meters wide with pinulid plywood flooring and cable wires attached to its four corners and hooked at the 5 ton chain block, when suddenly, the bolt or pin which was merely inserted to connect the chain block with the platform, got loose xxx causing the whole platform assembly and the victim to fall down to the basement of the elevator core, Tower D of the building under construction thereby crushing the victim of death, save his two (2) companions who luckily jumped out for safety.
- It is thus manifest that Jose A. Juego was crushed to death when the platform he was then on board and performing work, fell. And the falling of the platform was **due to the removal or getting loose of the pin which was merely inserted to the connecting points of the chain block and platform but without a safety lock.**
- Jose Juego's widow, Maria, filed in the Regional Trial Court (RTC) of Pasig a complaint for damages against the deceased's employer, D.M. Consunji, Inc.

ISSUES & ARGUMENTS

W/N petitioner should be held liable; should res ipsa loquitur be applied in this case

HOLDING & RATIO DECIDENDI

YES, petitioner is liable under res ipsa loquitur.

- The effect of the doctrine is to warrant a presumption or inference that the mere fall of the elevator was a result of the person having charge of the instrumentality was negligent. As a rule of evidence, the doctrine of *res ipsa loquitur* is peculiar to the law of negligence which recognizes that *prima facie* negligence may be established without direct proof and furnishes a substitute for specific proof of negligence.
- The concept of *res ipsa loquitur* has been explained in this wise:
- While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of res ipsa loquitur, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.
- x x x where it is shown that the thing or instrumentality which caused the injury complained of was under the control or management of the defendant, and that the occurrence resulting in the injury was such as in the ordinary course of things would not happen if those who had its control or management used proper care, there is sufficient evidence, or, as sometimes stated, reasonable evidence, in the absence of explanation by the defendant, that the injury arose from or was caused by the defendant's want of care.[21]
- One of the theoretical based for the doctrine is its necessity, i.e., that necessary evidence is absent or not available.
- The res ipsa loquitur doctrine is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it and that the plaintiff has no such knowledge, and therefore is compelled to allege negligence in general terms and to rely upon the proof of the happening of the accident in order to establish negligence. The inference which the doctrine permits is grounded upon the fact that the chief evidence of the true cause, whether culpable or innocent, is practically accessible to the defendant but inaccessible to the injured person.
- It has been said that the doctrine of res ipsa loquitur furnishes a bridge by which a plaintiff, without knowledge of the cause, reaches over to defendant who knows or should know the cause, for any explanation of care exercised by the defendant in respect of the matter of which the plaintiff complains. The res ipsa loquitur doctrine, another court has said, is a rule of necessity, in that it proceeds on the theory that under the peculiar circumstances in which the doctrine is applicable, it is within the power of the defendant to show that there was no negligence on his part, and direct proof of defendant's negligence is beyond plaintiff's power. Accordingly, some court add to the three prerequisites for the application of the res ipsa loquitur doctrine the further requirement that for the res ipsa loquitur doctrine to apply, it must appear that the injured party had no knowledge or means of knowledge as to the cause of the accident, or that the party to be charged with negligence has superior knowledge or opportunity for explanation of the accident.[23]
- The CA held that all the requisites of *res ipsa loquitur* are present in the case at bar:
- There is no dispute that appellee's husband fell down from the 14th floor of a building to the basement while he was working with appellant's construction project, resulting to his death. The construction site is within the exclusive control and management of appellant. It has a safety engineer, a project superintendent, a carpenter leadman and others who are in complete control of the situation therein. The circumstances of any accident that would occur therein are peculiarly within the knowledge of the appellant or its employees. On the other hand, the appellee is not in a position to know what caused the accident. *Res ipsa loquitur* is a rule of necessity and it applies where evidence is absent or not readily available, provided the following requisites are present: (1) the accident was of a kind which does not

ordinarily occur unless someone is negligent; (2) the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured. x x x.

- No worker is going to fall from the 14th floor of a building to the basement while performing work in a construction site unless someone is negligent[;] thus, the first requisite for the application of the rule of *res ipsa loquitur* is present. As explained earlier, the construction site with all its paraphernalia and human resources that likely caused the injury is under the exclusive control and management of appellant[;] thus[,] the second requisite is also present. No contributory negligence was attributed to the appellee's deceased husband[;] thus[,] the last requisite is also present. All the requisites for the application of the rule of *res ipsa loquitur* are present, thus a reasonable presumption or inference of appellant's negligence arises. x x x.[24]
- Petitioner does not dispute the existence of the requisites for the application of *res ipsa loquitur*, but argues that the presumption or inference that it was negligent did not arise since it "proved that it exercised due care to avoid the accident which befell respondent's husband."
- Petitioner apparently misapprehends the procedural effect of the doctrine. As stated earlier, the defendant's negligence is presumed or inferred[25] when the plaintiff establishes the requisites for the application of *res ipsa loquitur*. Once the plaintiff makes out a prima facie case of all the elements, the burden then shifts to defendant to explain.[26] The presumption or inference may be rebutted or overcome by other evidence and, under appropriate circumstances disputable presumption, such as that of due care or innocence, may outweigh the inference.[27] It is not for the defendant to explain or prove its defense to prevent the presumption or inference from arising. Evidence by the defendant of say, due care, comes into play only after the circumstances for the application of the doctrine has been established.

74 Perla Compania Inc v. Sps. Sarangaya | Corona, J.
G.R. No. 147746 October 25, 2005|

FACTS

- In 1986, spouses Sarangaya erected a building known as "Super A Building" and was subdivided into three doors, each of which was leased out. The two-storey residence of the Sarangayas was behind the second and third doors of the building.
- In 1988, petitioner Perla Compania de Seguros, Inc., through its branch manager and co-petitioner Bienvenido Pascual, entered into a contract of lease of the first door of the "Super A Building," abutting the office of Matsushita.
- Perla Compania renovated its rented space and divided it into two. The left side was converted into an office while the right was used by Pascual as a garage for a **1981 model 4-door Ford Cortina,** a company-provided vehicle he used in covering the different towns within his area of supervision.
- On July 7, 1988, Pascual left for San Fernando, Pampanga but did not bring the car with him. Three days later, he returned, and decided to "warm up" the car. When he pulled up the handbrake and switched on the ignition key, the engine made an "odd" sound and did not start. Thinking it was just the gasoline percolating into the engine, he again stepped on the accelerator and started the car. This revved the engine but petitioner again heard an unusual sound. He then saw a small flame coming out of the engine. Startled, he turned it off, alighted from the vehicle and started to push it out of the garage when suddenly, fire spewed out of its rear compartment and engulfed the whole garage. Pascual was trapped inside and suffered burns on his face, legs and arms.
- Meanwhile, respondents were busy watching television when they heard two loud explosions. The smell of gasoline permeated the air and, in no time, fire spread inside their house, destroying all their belongings, furniture and appliances.
- The city fire marshall conducted an investigation and thereafter submitted a report to the provincial fire marshall. He concluded that the fire was "accidental." The report also disclosed that petitioner-corporation had no fire permit as required by law.
- Based on the same report, a criminal complaint for "Reckless Imprudence Resulting to (sic) Damage in (sic) Property" was filed against petitioner Pascual. On the other hand, Perla Compania was asked to pay the amount of P7,992,350, inclusive of the value of the commercial building. At the prosecutor's office, petitioner Pascual moved for the withdrawal of the complaint, which was granted.
- Respondents (spouses Sarangaya) later on filed a civil complaint based on quasi-delict against petitioners for a "sum of money and damages," alleging that Pascual acted with gross negligence while petitioner-corporation lacked the required diligence in the selection and supervision of Pascual as its employee.
- During the trial, respondents presented witnesses who testified that a few days before the incident, Pascual was seen buying gasoline in a container from a nearby gas station. He then placed the container in the rear compartment of the car.
- In his answer, Pascual insisted that the fire was purely an accident, a caso fortuito, hence, he was not liable for damages. He also denied putting a container of gasoline in the car's rear compartment. For its part, Perla Compania refused liability for the accident on the ground that it exercised due diligence of a good father of a family in the selection and supervision of Pascual as its branch manager.

ISSUES & ARGUMENTS

- **W/N Pascual liable under res ipsa loquitur doctrine**
  - **<Pascual>** It was a fortuitous event

- **W/N Perla Compania liable under tort**
  - **<Perla Compania>** We exercised due diligence in selecting Pascual

HOLDING & RATIO DECIDENDI

YES, Pascual liable under res ipsa loquitur doctrine

- Res ipsa loquitur is a Latin phrase which literally means "the thing or the transaction speaks for itself." It relates to the fact of an injury that sets out an inference to the cause thereof or establishes the plaintiff's prima facie case. The doctrine rests on inference and not on presumption. The facts of the occurrence warrant the supposition of negligence and they furnish circumstantial evidence of negligence when direct evidence is lacking.
- The doctrine is based on the theory that the defendant either knows the cause of the accident or has the best opportunity of ascertaining it and the plaintiff, having no knowledge thereof, is compelled to allege negligence in general terms. In such instance, the plaintiff relies on proof of the happening of the accident alone to establish negligence.
- The doctrine provides a means by which a plaintiff can pin liability on a defendant who, if innocent, should be able to explain the care he exercised to prevent the incident complained of. Thus, it is the defendant's responsibility to show that there was no negligence on his part.
- To sustain the allegation of negligence based on the doctrine of res ipsa loquitur, the following requisites must concur:

  1) the accident is of a kind which does not ordinarily occur unless someone is negligent;
  2) the cause of the injury was under the exclusive control of the person in charge and
  3) the injury suffered must not have been due to any voluntary action or contribution on the part of the person injured.

- Under the first requisite, the occurrence must be one that does not ordinarily occur unless there is negligence. "Ordinary" refers to the usual course of events. Flames spewing out of a car engine, when it is switched on, is obviously not a normal event. Neither does an explosion usually occur when a car engine is revved. Hence, in this case, without any direct evidence as to the cause of the accident, the doctrine of res ipsa loquitur comes into play and, from it, we draw the inference that based on the evidence at hand, someone was in fact negligent and responsible for the accident.

- The test to determine the existence of negligence in a particular case may be stated as follows: did the defendant in committing the alleged negligent act, use reasonable care and caution which an ordinarily prudent person in the same situation would have employed? If not, then he is guilty of negligence.
- Here, the fact that Pascual, as the caretaker of the car, failed to submit any proof that he had it periodically checked (as its year-model and condition required) revealed his negligence. A prudent man should have known that a 14-year-old car, constantly used in provincial trips, was definitely prone to damage and other defects. For failing to prove care and diligence in the maintenance of the vehicle, the necessary inference was that Pascual had been negligent in the upkeep of the car.

- The exempting circumstance of caso fortuito may be availed only when: (a) the cause of the unforeseen and unexpected occurrence was independent of the human will; (b) it was impossible to foresee the event which constituted the caso fortuito or, if it could be foreseen, it was impossible to avoid; (c) the occurrence must be such as to render it impossible to perform an obligation in a normal manner and (d) the person tasked to perform the obligation must not have participated in any course of conduct that aggravated the accident.[20]

- In fine, human agency must be entirely excluded as the proximate cause or contributory cause of the injury or loss. In a vehicular accident, for example, a mechanical defect will not release the defendant from liability if it is shown that the accident could have been prevented had he properly maintained and taken good care of the vehicle.

- The circumstances on record do not support the defense of Pascual. Clearly, there was no caso fortuito because of his want of care and prudence in maintaining the car.

- Under the second requisite, the instrumentality or agency that triggered the occurrence must be one that falls under the exclusive control of the person in charge thereof. In this case, the car where the fire originated was under the control of Pascual. Being its caretaker, he alone had the responsibility to maintain it and ensure its proper functioning. No other person, not even the respondents, was charged with that obligation except him.

- Where the circumstances which caused the accident are shown to have been under the management or control of a certain person and, in the normal course of events, the incident would not have happened had that person used proper care, the inference is that it occurred because of lack of such care. The burden of evidence is thus shifted to defendant to establish that he observed all that was necessary to prevent the accident from happening. In this aspect, Pascual utterly failed.

- Under the third requisite, there is nothing in the records to show that respondents contributed to the incident. They had no access to the car and had no responsibility regarding its maintenance even if it was parked in a building they owned.

YES, COMPANIA LIABLE UNDER TORT

- In the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records.[25] While the petitioner-corporation does not appear to have erred in considering Pascual for his position, its lack of supervision over him made it jointly and solidarily liable for the fire.

- In the supervision of employees, the employer must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for the breach thereof. o fend off vicarious liability, employers must submit concrete proof, including documentary evidence, that they complied with everything that was incumbent on them.

- Here, petitioner-corporation's evidence hardly included any rule or regulation that Pascual should have observed in performing his functions. It also did not have any guidelines for the maintenance and upkeep of company property like the vehicle that caught fire. Petitioner-corporation did not require periodic reports on or inventories of its properties either. Based on these circumstances, petitioner-corporation clearly did not exert effort to be apprised of the condition of Pascual's car or its serviceability.

NOTE: Sensya na mahaba. Pero importante kasi yung mga requisites eh.

FRANK TAMARGO

75 Macalinao v. Ong| Tinga
(G.R. No. 1L-40242) (15 December 1982)

FACTS

Macalinao and Ong were employed as utility man and driver, respectively, at the Genetron International Marketing (Genetron), a single proprietorship owned and operated by Sebastian. On April 25, 1992, Sebastian instructed Mavalinao, Ong and two truck helpers to deliver a heavy piece of machinery – a reactor/motor for mixing chemicals, to Sebastian's manufacturing plant in Angat, Bulacan. While in the process of complying with the order, the vehicle driven by Ong, Genetron's Isuzu Elf Truck with plate noo. PMP-106 hit and bumped the front portion of private jeepney along Caypombo, Sta.Maria, Bulacan at around 11:20 in the morning.

Both vehicles incurred severe damages while the passengers sustained physical injuries as a consequence of the collision. Macalinao incurred the most serious injuries among the passengers of the truck. He was initially brought to the Sta. Maria District Hospital for first aid treatment but in view of the severity of his condition, he was transferred to the Philippine Orthopedic Center at the instance of Sebastian. He was again moved to Capitol Medical Center by his parents, for medical reasons then to PGH for financial consideration.

Macalinao's body was paralyzed and immobilized from the neck down as a result of the accident and per doctor's advice, his foot was amputated. He also suffered from bed sores and infection. His immedicable condition, coupled with the doctor's recommendation, led his family to bring him home where he died on Nov. 07, 1992.

Before he died, Macalinao was able to file an action for damages against both Ong and Sebastian before the RTC of QC. After his death Macalinao was substituted by his parents in the action.

Trial Court: based on the evidence, Ong drove the Isuzu truck in a reckless and imprudent manner thereby causing the same to hit the private jeepney. It observed that while respondents claimed that Ong was driving cautiously and prudently at the time of the mishap, no evidence was presented to substantiate the claim.

CA: reversed the findings of trial court. Evidence presented by petitioners is insufficient to support verdict of negligence against Ong.

ISSUES & ARGUMENTS

W/N sufficient evidence was presented to support a finding of negligence against Ong

HOLDING & RATIO DECIDENDI

The evidence on record coupled with the doctrine of res ipsa loquitur sufficiently establishes Ongs' negligence.

DOCTRINE:

- The photographs of the accident deserve substantial cogitation.
- Physical evidence is a mute but an eloquent manifestation of truth which ranks high in our hierarchy of trustworthy evidence.
- In this case, while there is dearth of testimonial evidence to enlighten us about what actually happened, photographs depicting the relative positions of the vehicles immediately after the accident took place do exist. It is well established that photographs, when duly verified and shown by extrinsic evidence to be faithful representations of the subject as of the time in question, are in the discretion of the trial court, admissible in evidence as aids in arriving at an understanding of the evidence, the situation or condition of objects or premises or the circumstances of an accident.
- Another piece of evidence which supports a finding of negligence against Ong is the police report of the incident. The report states that the Isuzu truck was the one which hit the left portion of the private jeepney. It must still be remembered that although police blotters are of little probative value, they are nevertheless admitted and considered in the absence of competent evidence to refute the facts stated therein. Entries in police records made by a police officer in the performance of the duty especially enjoined by law are prima facie evidence of the facttherein stated, and their probative value may be either substantiated ornullified by other competent evidence.
- While not constituting direct proof of Ong's negligence, the foregoing pieces of evidence justify the application of res ipsa loquitur,a Latin phrase which literally means " the thing or transaction speaks for itself."
    - *Res ipsa loquitur recognizes that parties may establish prima facie negligence without direct proof, thus, it allows the principle to substitute for specific proof of negligence. It permits the plaintiff to present along with proof of the accident, enough of the attending circumstances toinvoke the doctrine, create an inference or presumption of negligence and thereby place on the defendant the burden of proving that there was no negligence on his part.*
- The doctrine can be invoked only when under the circumstances, direct evidence is absent and not readily available. This is based in part upon the theory that the defendant in charge of the instrumentality which causes the injury either knows the cause of the accident or has the best opportunity of ascertaining it while the plaintiff has no knowledge, and is therefore compelled to allege negligence in general terms and rely upon the proof of the happening of the accident in order to establish negligence
- *Requisites of application of resipsaloquitur:*
    1. *The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;*

2. *It is caused by an instrumentality within the exclusive control of the defendant or defendants; and*
3. *The possibility of contributing conduct which would make the plaintiff responsible is eliminated*

- The court held that all the above requisites are present in the case at bar. In this case, Macalinao could no longer testify as to the cause of the accident since he is dead. Petitioners, while substituting their son as plaintiff, have no actual knowledge about the event since they were not present at the crucial moment. The driver of the jeepney who could have shed light on the circumstances is likewise dead. The only ones left with knowledge about the cause of the mishap are the two truck helpers who survived, both employees of Sebastian, and Ong, who is not only Sebastian's previous employee but his co-respondent in the case as well.

76 Joaquinita P. Capili vs. Sps Cardana | Quisumbing
November 2, 2006

FACTS

- Jasmin Cardaña was walking along the perimeter fence of the San Roque Elementary School when a branch of a caimito tree located within the school premises fell on her, causing her instantaneous death.

- Her parents filed a case for damages against petitioner Capili, alleging that a certain Lerios reported on the possible danger the tree posed. The Cardañas averred that petitioner's gross negligence and lack of foresight caused the death of their daughter.

- RTC dismissed the complaint for failure of respondent parents to establish negligence on part of petitioner, BUT the CA reversed, reasoning that petitioner should have known of the condition of the tree by its mere sighting and that no matter how hectic her schedule was, she should have had the tree removed and not merely delegated the task to Palaña.

- The appellate court ruled that the dead caimito tree was a nuisance that should have been removed soon after petitioner had chanced upon it. Hence, this petition for review.

ISSUES & ARGUMENTS

- **Whether or not petitioner is negligent and liable for the death of Cardaña?**

HOLDING & RATIO DECIDENDI

Petitioner is liable.

A negligent act is one from which an ordinary prudent person in the actor's position, in the same or similar circumstances, would foresee such an appreciable risk of harm to others as to cause him not to do the act or to do it in a more careful manner. The probability that the branches of a dead and rotting tree could fall and harm someone is clearly a danger that is foreseeable.

As the school principal, petitioner was tasked to see to the maintenance of the school grounds and safety of the children within the school and its premises. That she was unaware of the rotten state of a tree whose falling branch had caused the death of a child speaks ill of her discharge of the responsibility of her position.

The fact, however, that respondents' daughter, Jasmin, died as a result of the dead and rotting tree within the school's premises shows that the tree was indeed an obvious danger to anyone passing by and calls for application of the principle of res ipsa loquitur.

The doctrine of res ipsa loquitur applies where (1) the accident was of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.

While negligence is not ordinarily inferred or presumed, and while the mere happening of an accident or injury will not generally give rise to an inference or presumption that it was due to negligence on defendant's part, under the doctrine of res ipsa loquitur, which means, literally, the thing or transaction speaks for itself, or in one jurisdiction, that the thing or instrumentality speaks for itself, the facts or circumstances accompanying an injury may be such as to raise a presumption, or at least permit an inference of negligence on the part of the defendant, or some other person who is charged with negligence.

The procedural effect of the doctrine of res ipsa loquitur is that petitioner's negligence is presumed once respondents established the requisites for the doctrine to apply. Once respondents made out a prima facie case of all requisites, the burden shifts to petitioner to explain. The presumption or inference may be rebutted or overcome by other evidence and, under appropriate circumstances a disputable presumption, such as that of due care or innocence, may outweigh the inference.

As the school principal, petitioner was tasked to see to the maintenance of the school grounds and safety of the children within the school and its premises. That she was unaware of the rotten state of the tree calls for an explanation on her part as to why she failed to be vigilant. As school principal, petitioner is expected to oversee the safety of the school's premises. The fact that she failed to see the immediate danger posed by the dead and rotting tree shows she failed to exercise the responsibility demanded by her position.

Petition denied.

JR RUIZ

77 Cantre v. Spouses Go | Quisumbing
G.R. No. 160889, April 27, 2007|

FACTS

- Dr. Cantre is the gynecologist and attending physician of Nora Go.
- Go gave birth to her fourth child (boy) but with some complications. She suffered profuse bleeding inside her womb because the some parts of the placenta remained in her womb after delivery. Specifically, she suffered hypovolemic shock, causing a drop in her blood pressure.
- Dr. Cantre massaged Go's uterus to for it to contract and stop the bleeding. She also ordered a droplight to warm Go and her baby.
- However, Husband Go noticed a fresh gaping wound 2.5 by 3.5 inches in her arm close to the armpit. The nurses told Husband Go that this wound was a burn.
- In defense, Dr. Cantre contended that the blood pressure cuff caused the injury. On the other hand, NBI Medico-legal officer Dr. Floresto Arizala testified that Go's injury was a burn that was caused by 10 minutes of exposure by the droplight. He believes that the wound was not caused by the blood pressure cuff since the scar was not around the arm, it was just on one side of the arm.
- Go's arm would never be the same. It left an unsightly mark and still causes chronic pain. When sleeping, Go has to cradle her wounded arm. Her movements are restricted; her children cannot play with the left side of her body as they might accidentally bump the arm, which aches at the slightest touch. Hence, spouses Go filed for damages against Dr. Cantre.

ISSUES & ARGUMENTS

- **W/N Dr. Cantre is liable for damages.**
    - **Petitioners:** Petitioner-appellant, Dr. Cantre, posits that Nora Go's wound was caused not by the droplight but by the constant taking of her blood pressure, even if the latter was necessary given her condition, does not absolve her from liability.
    - **Respondent:** Spouses Go claim that Dr. Cantre was negligent in the practice of his profession

HOLDING & RATIO DECIDENDI

DR. CANTRE IS LIABLE FOR DAMAGES FOR HER NEGLIGENCE CAUSING HER PATIENT'S WOUNDED ARM.

- In cases involving medical negligence, the doctrine of *res ipsa loquitur* allows the mere existence of an injury to justify a presumption of negligence on the part of the person who controls the instrument causing the injury, provided that the following requisites concur:
    1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
    2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
    3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.18

- As to the first requirement, the gaping wound on Nora's arm is certainly not an ordinary occurrence in the act of delivering a baby, far removed as the arm is from the organs involved in the process of giving birth. Such injury could not have happened unless negligence had set in somewhere.
- Second, whether the injury was caused by the droplight or by the blood pressure cuff is of no moment. Both instruments are deemed within the exclusive control of the physician in charge under the "captain of the ship" doctrine. This doctrine holds the surgeon in charge of an operation liable for the negligence of his assistants during the time when those assistants are under the surgeon's control. In this particular case, it can be logically inferred that petitioner, the senior consultant in charge during the delivery of Nora's baby, exercised control over the assistants assigned to both the use of the droplight and the taking of Nora's blood pressure. Hence, the use of the droplight and the blood pressure cuff is also within petitioner's exclusive control.
- Third, the gaping wound on Nora's left arm, by its very nature and considering her condition, could only be caused by something external to her and outside her control as she was unconscious while in hypovolemic shock. Hence, Nora could not, by any stretch of the imagination, have contributed to her own injury.

CHESKA RESPICIO

78 City of Manila vs. IAC | Paras.
G.R. No. 71159, November 15, 1989

FACTS

- Vivencio Sto. Domingo, Sr. deceased husband of Irene Sto. Domingo died on June 4,1971 and buried on June 6,1971 in the North Cemetery which lot was leased by the city to Irene Sto. Domingo for the period from June 6, 1971 to June 6, 2021 per Official Receipt with an expiry date of June 6, 2021. Full payment of the rental therefor of P50.00 is evidenced by the said receipt which appears to be regular on its face. Apart from the aforementioned receipt, no other document was executed to embody such lease over the burial lot in question.
- Believing in good faith that, in accordance with Administrative Order No. 5, Series of 1975, dated March 6, 1975, of the City Mayor of Manila prescribing uniform procedure and guidelines in the processing of documents pertaining to and for the use and disposition of burial lots and plots within the North Cemetery, etc., subject the lot 194 in which the mortal remains of the late Vivencio Sto. Domingo were laid to rest, was leased to the bereaved family for five (5) years only, subject lot was certified on January 25, 1978 as ready for exhumation.
- On the basis of such certification, the authorities of the North Cemetery then headed by defendant Joseph Helmuth authorized the exhumation and removal from subject burial lot the remains of the late Vivencio Sto. Domingo, Sr., placed the bones and skull in a bag or sack and kept the same in the depository or bodega of the cemetery.
- Subsequently, the same lot in question was rented out to another lessee so that when the plaintiffs herein went to said lot on All Souls Day in their shock, consternation and dismay, that the resting place of their dear departed did not anymore bear the stone marker which they lovingly placed on the tomb. Indignant and disgusted over such a sorrowful finding, Irene Sto. Domingo lost no time in inquiring from the officer-in-charge of the North Cemetery, defendant Sergio Mallari, and was told that the remains of her late husband had been taken from the burial lot in question which was given to another lessee.
- Irene Sto. Domingo was also informed that she can look for the bones of her deceased husband in the warehouse of the cemetery where the exhumed remains from the different burial lots of the North Cemetery are being kept until they are retrieved by interested parties. But to the bereaved widow, what she was advised to do was simply unacceptable. According to her, it was just impossible to locate the remains of her late husband in a depository containing thousands upon thousands of sacks of human bones. She did not want to run the risk of claiming for the wrong set of bones. She was even offered another lot but was never appeased. She was too aggrieved that she came to court for relief even before she could formally present her claims and demands to the city government and to the other defendants named in the present complaint.

ISSUES & ARGUMENTS

- **W/N the City of Manila is liable for the tortious acts of its employees (torts only)**

HOLDING & RATIO DECIDENDI

YES

- Under the doctrine of respondent superior, petitioner City of Manila is liable for the tortious act committed by its agents who failed to verify and check the duration of the contract of lease. The contention of the petitioner-city that the lease is covered by Administrative Order No. 5, series of 1975 dated March 6, 1975 of the City of Manila for five (5) years only beginning from June 6, 1971 is not meritorious for the said administrative order covers new leases. When subject lot was certified on January 25, 1978 as ready for exhumation, the lease contract for fifty (50) years was still in full force and effect.

79 Viron Transportation Co. v. Santos | Vitug
G.R. No. 138296, November 22, 2000 | 345 SCRA 509

FACTS

- Viron set of facts:
  - On August 16, 1993, at around 2:30 in the afternoon, the Viron Transit Bus, owned by Viron Transportation Co., driven by Wilfredo Villanueva along MacArthur Highway within the vicinity of Tarlac coming from the North going to Manila.
  - It was following the Forward Cargo Truck proceeding from the same direction then being driven by Alberto delos Santos. The cargo truck swerved to the right shoulder of the road and, while about to be overtaken by the bus, again swerved to the left to occupy its lane. It was at that instance that the collision occurred, the left front side of the truck collided with the right front side of the bus causing the two vehicles substantial damages.
- Santos set of facts:
  - At about 12:30 in the afternoon of August 16, 1993, Santos was driving said truck along the National Highway within the vicinity of Tarlac. The Viron bus, tried to overtake his truck, and he swerved to the right shoulder of the highway, but as soon as he occupied the right lane of the road, the cargo truck which he was driving was hit by the Viron bus on its left front side, as the bus swerved to his lane to avoid an incoming bus on its opposite direction
- The lower court dismissed Viron's complaint and sustained Santos' counterclaim for damages. It ordered the petitioner to pay the following amounts: (1) P19,500.00, with interest thereon at 6% per annum from the date of complaint, as actual damages, until the same shall have been fully paid and satisfied; (2) P10,000.00 as additional compensatory damages for transportation and accommodations during the trial of this case; (3) P10,000.00 for and as attorney's fees; and (4) Costs of suit.

ISSUES & ARGUMENTS

- **W/N Viron through its driver was at fault**
- **W/N Viron Transportation Co. was liable for damage caused by their driver**
  - **Petitioner** Viron TransCo posit that Santos, in his counterclaim, failed to state a cause of action and that it they did not aver that Viron did not exercise diligence of a good father of the family.

HOLDING & RATIO DECIDENDI

THE COLLISION WAS CAUSED BY VIRON TRANSCO THROUGH THEIR DRIVER VILLANUEVA

- No witnesses for the plaintiff ever contradicted the obtrusive fact that it was while in the process of overtaking the cargo truck that the Viron bus collided with the former vehicle. Evidence proves that Viron bus overtook the truck and thus was the cause of the collision.
- It is here well to recall that the driver of an overtaking vehicle must see to it that the conditions are such that an attempt to pass is reasonably safe and prudent, and in passing must exercise reasonable care. In the absence of clear evidence of negligence on the part of the operator of the overtaken vehicle, the courts are inclined to put the blame for an accident occurring while a passage is being attempted on the driver of the overtaking vehicle (People vs. Bolason, (C.A.) 53 Off. Gaz. 4158).

VIRON TRANSCO IS LIABLE EVEN IF THEY EXERCISED DILIGENCE OF A GOOD FATHER OF THE FAMILY IN SELECTING AND SUPERVISING THEIR EMPLOYEES.

- Transportation Co., Inc., as the registered owner of the bus involved in the vehicular accident originally brought the action for damages against Santos. We find that the counterclaim of Santos alleges the ultimate facts constituting their cause of action. It is not necessary to state that petitioner was negligent in the supervision or selection of its employees, as its negligence is presumed by operation of law.
- As employers of the bus driver, the petitioner is, under Article 2180 of the Civil Code, directly and primary liable for the resulting damages. The presumption that they are negligent flows from the negligence of their employee. That presumption, however, is only *juris tantum*, not *juris et de jure*. Their only possible defense is that they exercised all the diligence of a good father of a family to prevent the damage. Article 2180 reads as follows:
  - "The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
    - Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

MIK MALANG

80 Vicente Calalas vs. CA| Mendoza
G.R. No. 122039, May 31, 2000| 332 SCRA 356

FACTS

- At 10 o'clock in the morning of August 23, 1989, Sunga, then a college freshman majoring in Physical Education at the Siliman University, took a passenger jeepney owned and operated by Calalas
- As the jeepney was filled to capacity of about 24 passengers, Sunga was given by the conductor an "extension seat," a wooden stool at the back of the door at the rear end of the vehicle
- On the way to Poblacion Sibulan, Negros Occidental, the jeepney stopped to let a passenger off. As she was seated at the rear of the vehicle, Sunga gave way to the outgoing passenger
- Just as she was doing so, an Isuzu truck driven by Verena and owned by Salva bumped the left rear portion of the jeepney, injuring Sunga necessitating her confinement and to ambulate in crutches for 3 months
- Sunga filed a complaint for damages against Calalas, alleging violation of the contract of carriage, to which Calalas in turn filed a third-party complaint against Salva, the owner of the Isuzu truck
- The lower court rendered judgment against Salva as third-party defendant and absolved Calalas of liability, holding that it was the driver of the Isuzu truck who was responsible for the accident, taking cognizance of another case (Civil Case No. 3490), filed by Calalas against Salva and Verena, for quasi-delict, in which Branch 37 of the same court held Salva and his driver Verena jointly liable to Calalas for the damage to his jeepney
- On appeal, the CA reversed on the ground that Sunga's cause of action was based on a contract of carriage, not quasi-delict, and that the common carrier failed to exercise the diligence required under the Civil Code, and dismissed the third-party complaint against Salva and adjudged Calalas liable for damages to Sunga

ISSUES & ARGUMENTS

- **W/N Calalas can be held civilly liable for damages**

HOLDING & RATIO DECIDENDI

YES, CALALAS IS LIABLE FOR DAMAGES BASED ON BREACH OF A CONTRACT OF CARRIAGE

- In quasi-delict, the negligence or fault should be clearly established because it is the basis of the action, whereas in breach of contract, the action can be prosecuted merely by proving the existence of the contract and the fact that the obligor, in this case the common carrier, failed to transport his passenger safely to his destination. In case of death or injuries to passengers, Art. 1756 of the Civil Code provides that common carriers are presumed to have been at fault or to have acted negligently unless they prove that they observed extraordinary diligence as defined in Arts. 1733 and 1755 of the Code. This provision necessarily shifts to the common carrier the burden of proof
- There is, thus, no basis for the contention that the ruling in Civil Case No. 3490, finding Salva and his driver Verena liable for the damage to the jeepney of Calalas, should be binding on Sunga. It is immaterial that the proximate cause of the collision between the jeepney and the truck was the negligence of the truck driver. The doctrine of proximate cause is applicable only in actions for quasi-delict, not in actions involving breach of contract. The doctrine is a device for imputing liability to a person where there is no relation between him and another party. In such a case, the obligation is created by law itself. But, where there is a pre-existing contractual relation between the parties, it is the parties themselves who create the obligation, and the function of the law is merely to regulate the relation thus created. Insofar as contracts of carriage are concerned, some aspects regulated by the Civil Code are those respecting the diligence required of common carriers with regard to the safety of passengers as well as the presumption of negligence in cases of death or injury to passengers
- In the case at bar, upon the happening of the accident, the presumption of negligence at once arose, and it became the duty of Calalas to prove that he had to observe extraordinary diligence in the care of his passengers
- Now, did the driver of jeepney carry Sunga "safely as far as human care and foresight could provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances" as required by Art. 1755? The Court did not think so. Several factors militate against the contention of Calalas
    - *First*, as found by the CA, the jeepney was not properly parked, its rear portion being exposed about 2 meters from the broad shoulders of the highway, and facing the middle of the highway in a diagonal angle. This is a violation of the R.A. No. 4136, as amended, or the Land Transportation and Traffic Code
    - *Second*, it is undisputed that his driver took in more passengers than the allowed seating capacity of the jeepney, a violation of §32(a) of the same law
- The fact that Sunga was seated in an "extension seat" placed her in a peril greater than that to which the other passengers were exposed. Therefore, not only was Calalas unable to overcome the presumption of negligence imposed on him for the injury sustained by Sunga, but also, the evidence shows he was actually negligent in transporting passengers

Judgment AFFIRMED WITH MODIFICATION.

KATH MATIBAG

81 Pestano v. Sumayang | Panganiban, J.
G.R. No. 139875. December 4, 2000
(Respondent Superior)

FACTS

- At 2:00 o'clock on the afternoon of August 9, 1986, Ananias Sumayang was riding a motorcycle along the national highway in Ilihan, Tabagon, Cebu. Riding with him was his friend Manuel Romagos.
- As they came upon a junction, they were hit by a passenger bus driven by Petitioner Gregorio Pestaño and owned by Petitioner Metro Cebu Autobus Corporation, which had tried to overtake them, sending the motorcycle and its passengers hurtling upon the pavement. Both Sumayang and Romagos were rushed to the hospital in Sogod, where Sumayang was pronounced dead on arrival. Romagos was transferred to the Cebu Doctors' Hospital, but he died the day after.
- The heirs of Sumayang instituted criminal action against Pestano and filed an action for damages against the driver, Pestano and Metro Cebu as the owner and operator of the bus.
- The CA and RTC ruled that Pestano was negligent and is therefore liable criminally and civilly. The appellate court opined that Metro Cebu had shown laxity in the conduct of its operations and in the supervision of its employees. By allowing the bus to ply its route despite the defective speedometer, said petitioner showed its indifference towards the proper maintenance of its vehicles. Having failed to observe the extraordinary diligence required of public transportation companies, it was held vicariously liable to the victims of the vehicular accident.

ISSUES & ARGUMENTS

W/N the CA erred in holding the bus owner and operator vicariously liable

HOLDING & RATIO DECIDENDI

The Court of Appeals is correct in holding the bus owner and operator vicariously liable. Under Articles 2180 and 2176 of the Civil Code, owners and managers are responsible for damages caused by their employees. When an injury is caused by the negligence of a servant or an employee, the master or employer is presumed to be negligent either in the selection or in the supervision of that employee. This presumption may be overcome only by satisfactorily showing that the employer exercised the care and the diligence of a good father of a family in the selection and the supervision of its employee.
The CA said that allowing Pestaño to ply his route with a defective speedometer showed laxity on the part of Metro Cebu in the operation of its business and in the supervision of its employees. The negligence alluded to here is in its supervision over its driver, not in that which directly caused the accident. The fact that Pestaño was able to use a bus with a faulty speedometer shows that Metro Cebu was remiss in the supervision of its employees and in the proper care of its vehicles. It had thus failed to conduct its business with the diligence required by law.

82 Ramos v CA | Kapunan
G.R. No. 124354 December 29, 1999|

FACTS

- Erlinda Ramos underwent an operation known as cholecystectomy (removal of stone in her gallbladder) under the hands of Dr. Orlino Hosaka. He was accompanied by Dr. Perfecta Gutierrez, an anesthesiologist which Dr. Hosaka recommended since Ramos (and her husband Rogelio) did not know any.
- The operation was schedule at 9am of June 17, 1985 but was however delayed for three hours due to the late arrival of Dr. Hosaka.
- Dr. Gutierrez subsequently started trying to intubate her. And at around 3pm, Erlinda was seen being wheeled to the Intensive Care Unit (ICU). The doctors explained to petitioner Rogelio that his wife had bronchospasm. Erlinda stayed in the ICU for a month. She was released from the hospital only four months later or on November 15, 1985. Since the ill-fated operation, Erlinda remained in comatose condition until she died on August 3, 1999.
- RTC ruled in favor of the petitioners, holding the defendants guilty of, at the very least, negligence in the performance of their duty to plaintiff-patient Erlinda Ramos.
- On appeal to CA, the said decision was reversed – dismissing the complaint against the defendants. Hence this petition.

ISSUES & ARGUMENTS

- **W/N the private respondents should be held liable for the injury caused to Erlinda and her family?**

HOLDING & RATIO DECIDENDI

YES.

- Res ipsa loquitur is a Latin phrase which literally means "the thing or the transaction speaks for itself." The phrase "res ipsa loquitur" is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's prima facie case, and present a question of fact for defendant to meet with an explanation.
- The doctrine of res ipsa loquitur is simply a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the defendant who is charged with negligence.
- However, much has been said that res ipsa loquitur is not a rule of substantive law and, as such, does not create or constitute an independent or separate ground of liability. Instead, it is considered as merely evidentiary or in the nature of a procedural rule. It is regarded as a mode of proof, or a mere procedural of convenience since it furnishes a substitute for, and relieves a plaintiff of, the burden of producing specific proof of negligence. Hence, mere invocation and application of the doctrine does not dispense with the requirement of proof of negligence. It is simply a step in the process of such proof, permitting the plaintiff to present along with the proof of the accident, enough of the attending circumstances to invoke the doctrine, creating an inference or presumption of negligence, and to thereby place on the defendant the burden of going forward with the proof. Still, before resort to the doctrine may be allowed, the following requisites must be satisfactorily shown:
    1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;
    2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
    3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.
- **Although generally, expert medical testimony is relied upon in malpractice suits to prove that a physician has done a negligent act or that he has deviated from the standard medical procedure, when the doctrine of res ipsa loquitur is availed by the plaintiff, the need for expert medical testimony is dispensed with because the injury itself provides the proof of negligence. The reason is that the general rule on the necessity of expert testimony applies only to such matters clearly within the domain of medical science, and not to matters that are within the common knowledge of mankind which may be testified to by anyone familiar with the facts.** When the doctrine is appropriate, all that the patient must do is prove a nexus between the particular act or omission complained of and the injury sustained while under the custody and management of the defendant without need to produce expert medical testimony to establish the standard of care. Resort to res ipsa loquitur is allowed because there is no other way, under usual and ordinary conditions, by which the patient can obtain redress for injury suffered by him.
- **We find the doctrine of res ipsa loquitur appropriate in the case at bar. As will hereinafter be explained, the damage sustained by Erlinda in her brain prior to a scheduled gall bladder operation presents a case for the application of res ipsa loquitur.**
- In the present case, Erlinda submitted herself for cholecystectomy and expected a routine general surgery to be performed on her gall bladder. On that fateful day she delivered her person over to the care, custody and control of private respondents who exercised complete and exclusive control over her. At the time of submission, Erlinda was neurologically sound and, except for a few minor discomforts, was likewise physically fit in mind and body. However, during the administration of anesthesia and prior to the performance of cholecystectomy she suffered irreparable damage to her brain. Thus, without undergoing surgery, she went out of the operating room already decerebrate and totally incapacitated. Obviously, brain damage, which Erlinda sustained, is an injury which does not normally occur in the process of a gall bladder operation. In fact, this kind of situation does not in the

absence of negligence of someone in the administration of anesthesia and in the use of endotracheal tube. Normally, a person being put under anesthesia is not rendered decerebrate as a consequence of administering such anesthesia if the proper procedure was followed. Furthermore, the instruments used in the administration of anesthesia, including the endotracheal tube, were all under the exclusive control of private respondents, who are the physicians-in-charge. Likewise, petitioner Erlinda could not have been guilty of contributory negligence because she was under the influence of anesthetics which rendered her unconscious.

- **We disagree with the findings of the Court of Appeals. We hold that private respondents were unable to disprove the presumption of negligence on their part in the care of Erlinda and their negligence was the proximate cause of her piteous condition.**
- **Dr. Gutierrez (anesthesiologist) is held liable for failure to perform the necessary pre-operative evaluation which includes taking the patient's medical history, review of current drug therapy, physical examination and interpretation of laboratory data. This physical examination performed by the anesthesiologist is directed primarily toward the central nervous system, cardiovascular system, lungs and upper airway. A thorough analysis of the patient's airway normally involves investigating the following: cervical spine mobility, temporomandibular mobility, prominent central incisors, diseased or artificial teeth, ability to visualize uvula and the thyromental distance.**
- In the case at bar, respondent Dra. Gutierrez admitted that she saw Erlinda for the first time on the day of the operation itself, on 17 June 1985. Before this date, no prior consultations with, or pre-operative evaluation of Erlinda was done by her. Until the day of the operation, respondent Dra. Gutierrez was unaware of the physiological make-up and needs of Erlinda. She was likewise not properly informed of the possible difficulties she would face during the administration of anesthesia to Erlinda. Respondent Dra. Gutierrez' act of seeing her patient for the first time only an hour before the scheduled operative procedure was, therefore, an act of exceptional negligence and professional irresponsibility. The measures cautioning prudence and vigilance in dealing with human lives lie at the core of the physician's centuries-old Hippocratic Oath. Her failure to follow this medical procedure is, therefore, a clear indicia of her negligence.
- Having failed to observe common medical standards in pre-operative management and intubation, respondent Dra. Gutierrez' negligence resulted in cerebral anoxia and eventual coma of Erlinda.
- **Dr. Hosaka, being the head of the surgical team ("captain of the ship"), it was his responsibility to see to it that those under him perform their task in the proper manner. Respondent Dr. Hosaka's negligence can be found in his failure to exercise the proper authority (as the "captain" of the operative team) in not determining if his anesthesiologist observed proper anesthesia protocols. In fact, no evidence on record exists to show that respondent Dr. Hosaka verified if respondent Dra. Gutierrez properly intubated the patient. Furthermore, it does not escape us that respondent Dr. Hosaka had scheduled another procedure in a different hospital at the same time as Erlinda's cholecystectomy, and was in fact over three hours late for the latter's operation. Because of this, he had little or no time to confer with his anesthesiologist regarding the anesthesia delivery. This indicates that he was remiss in his professional duties towards his patient. Thus, he shares equal responsibility for the events which resulted in Erlinda's condition.**
- Notwithstanding the general denial made by respondent hospital to the effect that the respondent doctors (referred to as "consultants") in this case are not their employees, there is a showing that the hospital exercises significant control in the hiring and firing of consultants and in the conduct of their work within the hospital premises.
- The basis for holding an employer solidarily responsible for the negligence of its employee is found in Article 2180 of the Civil Code which considers a person accountable not only for his own acts but also for those of others based on the former's responsibility under a relationship of patria potestas. **Such responsibility ceases when the persons or entity concerned prove that they have observed the diligence of a good father of the family to prevent damage.** In other words, while the burden of proving negligence rests on the plaintiffs, once negligence is shown, the burden shifts to the respondents (parent, guardian, teacher or employer) who should prove that they observed the diligence of a good father of a family to prevent damage.
- **In the instant case, respondent hospital, apart from a general denial of its responsibility over respondent physicians, failed to adduce evidence showing that it exercised the diligence of a good father of a family in the hiring and supervision of the latter.** It failed to adduce evidence with regard to the degree of supervision which it exercised over its physicians. In neglecting to offer such proof, or proof of a similar nature, respondent hospital thereby failed to discharge its burden under the last paragraph of Article 2180. Having failed to do this, **respondent hospital is consequently solidarily responsible with its physicians for Erlinda's condition.**

The CA decision and resolution are hereby modified so as to award in favor of petitioners, and solidarily against private respondents the following: 1) P1,352,000.00 as actual damages computed as of the date of promulgation of this decision plus a monthly payment of P8,000.00 up to the time that petitioner Erlinda Ramos expires or miraculously survives; 2) P2,000,000.00 as moral damages, 3) P1,500,000.00 as temperate damages; 4) P100,000.00 each as exemplary damages and attorney's fees; and, 5) the costs of the suit.

TEL VIRTUDEZ

83 Ramos vs. Court of Appeals | Kapunan
G.R. No. 124354, April 11, 2002| 380 SCRA 467

FACTS

- Petitioner Erlinda Ramos, after seeking professional medical help, was advised to undergo an operation for the removal of a stone in her gall bladder. She was referred to Dr. Hosaka, a surgeon, who agreed to perform the operation on her. The operation was scheduled for at 9:00 in the morning at private respondent De Los Santos Medical Center (DLSMC). Since neither petitioner Erlinda nor her husband, petitioner Rogelio, knew of any anesthesiologist, Dr. Hosaka recommended to them the services of Dr. Gutierrez.
- Petitioner Erlinda was admitted to the DLSMC the day before the scheduled operation. By 7:30 in the morning of the following day, petitioner Erlinda was already being prepared for operation. Upon the request of petitioner Erlinda, her sister-in-law, Cruz, who was then Dean of the College of Nursing at the Capitol Medical Center, was allowed to accompany her inside the operating room.
- By 10:00 in the morning, when Dr. Hosaka was still not around, petitioner Rogelio already wanted to pull out his wife from the operating room. He met Dr. Garcia, who remarked that he was also tired of waiting for Dr. Hosaka. Dr. Hosaka finally arrived at the hospital more than three (3) hours after the scheduled operation. Cruz, who was then still inside the operating room, heard about Dr. Hosaka's arrival. While she held the hand of Erlinda, Cruz saw Dr. Gutierrez having a hard time intubating the patient. Cruz noticed a bluish discoloration of Erlinda's nailbeds on her left hand. She (Cruz) then heard Dr. Hosaka instruct someone to call Dr. Calderon, another anesthesiologist. When he arrived, Dr. Calderon attempted to intubate the patient. The nailbeds of the patient remained bluish, thus, she was placed in a trendelenburg position – a position where the head of the patient is placed in a position lower than her feet.
- At almost 3:00 in the afternoon, Cruz saw Erlinda being wheeled to the Intensive Care Unit (ICU). The doctors explained to petitioner Rogelio that his wife had bronchospasm. Erlinda stayed in the ICU for a month. She was released from the hospital only four months later. Since then, Erlinda remained in comatose condition until she died in 1999

ISSUES & ARGUMENTS

- **W/N Dr. Gutierrez (anesthesiologist) is negligent and hence liable**
- **W/N Dr. Hosaka is liable under the Captain of the Ship Doctrine?**

HOLDING & RATIO DECIDENDI

DR. GUTIERREZ NEGLIGENT. DR HOSAKA LIABLE FOR THE ACTS OF HIS TEAM.

- Dr. Gutierrez' claim of lack of negligence on her part is belied by the records of the case. It has been sufficiently established that she failed to exercise the standards of care in the administration of anesthesia on a patient. The conduct of a preanesthetic/preoperative evaluation prior to an operation, whether elective or emergency, cannot be dispensed with. Such evaluation is necessary for the formulation of a plan of anesthesia care suited to the needs of the patient concerned.
- Nonetheless, Dr. Gutierrez omitted to perform a thorough preoperative evaluation on Erlinda. As she herself admitted, she saw Erlinda for the first time on the day of the operation itself, one hour before the scheduled operation. She auscultated the patient's heart and lungs and checked the latter's blood pressure to determine if Erlinda was indeed fit for operation. However, she did not proceed to examine the patient's airway. Had she been able to check petitioner Erlinda's airway prior to the operation, Dr. Gutierrez would most probably not have experienced difficulty in intubating the former, and thus the resultant injury could have been avoided.
- For his part, Dr. Hosaka mainly contends that the Court erred in finding him negligent as a surgeon by applying the Captain-of-the-Ship doctrine. Dr. Hosaka argues that the trend in United States jurisprudence has been to reject said doctrine in light of the developments in medical practice. He points out that anesthesiology and surgery are two distinct and specialized fields in medicine and as a surgeon, he is not deemed to have control over the acts of Dr. Gutierrez. As anesthesiologist, Dr. Gutierrez is a specialist in her field and has acquired skills and knowledge in the course of her training which Dr. Hosaka, as a surgeon, does not possess.
- That there is a trend in American jurisprudence to do away with the Captain-of-the-Ship doctrine does not mean that this Court will *ipso facto* follow said trend. Due regard for the peculiar factual circumstances obtaining in this case justify the application of the Captain-of-the-Ship doctrine. From the facts on record it can be logically inferred that Dr. Hosaka exercised a certain degree of, at the very least, supervision over the procedure then being performed on Erlinda.
- First, it was Dr. Hosaka who recommended to petitioners the services of Dr. Gutierrez. In effect, he represented to petitioners that Dr. Gutierrez possessed the necessary competence and skills. Drs. Hosaka and Gutierrez had worked together since 1977. Second, Dr. Hosaka himself admitted that he was the attending physician of Erlinda. Thus, when Erlinda showed signs of cyanosis, it was Dr. Hosaka who gave instructions to call for another anesthesiologist and cardiologist to help resuscitate Erlinda. Third, it is conceded that in performing their responsibilities to the patient, Drs. Hosaka and Gutierrez worked as a team. Their work cannot be placed in separate watertight compartments because their duties intersect with each other.

Petition partly granted. DLMSC absolved from liability. Drs. Guitierrez and Hosala solidarily liable.

MAUI MORALES

84 Castilex vs. Vasquez | Kapunan
G.R. No. 129329, July 31, 2001 | 362 SCRA 56

FACTS

- On 28 August 1988, at around 1:30 to 2:00 in the morning, Romeo So Vasquez, was driving a Honda motorcycle around Fuente Osmeña Rotunda. He was traveling counter-clockwise, (the normal flow of traffic in a rotunda) but without any protective helmet or goggles. He was also only carrying a Student's Permit to Drive at the time. Upon the other hand, Benjamin Abad was a production manager of Castilex Industrial Corporation, registered owner of the Toyota Hi-Lux Pick-up with plate no. GBW-794 which Abad drove car out of a parking lot. Instead of going around the Osmeña rotunda he went against the flow of the traffic in proceeding to his route to General Maxilom St. or to Belvic St.. The motorcycle of Vasquez and the pick-up of Abad collided with each other causing severe injuries to Vasquez. Abad stopped his vehicle and brought Vasquez to the Southern Islands Hospital and later to the Cebu Doctor's Hospital. On September 5, 1988, Vasquez died at the Cebu Doctor's Hospital. Abad signed an acknowledgment of Responsible Party wherein he agreed to pay whatever hospital bills, professional fees and other incidental charges Vasquez may incur.

ISSUES & ARGUMENTS

- **W/N Castilex as employer of Abad can be held liable with Abad.**

HOLDING & RATIO DECIDENDI

No.

- The fifth paragraph of article 2180 states **Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.**
- In order for this paragraph to apply, it must be shown that the employee was acting within the scope of his assigned tasks. Here it was not sufficiently proven that such was the case.
- Jurisprudence provides:
    - An employee who uses his employer's vehicle in going from his work to a place where he intends to eat or in returning to work from a meal is not ordinarily acting within the scope of his employment in the absence of evidence of some special business benefit to the employer. Evidence that by using the employer's vehicle to go to and from meals, an employee is enabled to reduce his time-off and so devote more time to the performance of his duties supports the finding that an employee is acting within the scope of his employment while so driving the vehicle.
    - Traveling to and from the place of work is ordinarily a personal problem or concern of the employee, and not a part of his services to his employer. Hence, in the absence of some special benefit to the employer other than the mere performance of the services available at the place where he is needed, the employee is not acting within the scope of his employment even though he uses his employer's motor vehicle.
    - An employer who loans his motor vehicle to an employee for the latter's personal use outside of regular working hours is generally not liable for the employee's negligent operation of the vehicle during the period of permissive use, even where the employer contemplates that a regularly assigned motor vehicle will be used by the employee for personal as well as business purposes and there is some incidental benefit to the employer. Even where the employee's personal purpose in using the vehicle has been accomplished and he has started the return trip to his house where the vehicle is normally kept, it has been held that he has not resumed his employment, and the employer is not liable for the employee's negligent operation of the vehicle during the return trip.
- In this case , ABAD did some overtime work at the petitioner's office, which was located in Cabangcalan, Mandaue City. Thereafter, he went to Goldie's Restaurant in Fuente Osmeña, Cebu City, which is about seven kilometers away from petitioner's place of business. At the Goldie's Restaurant, ABAD took some snacks and had a chat with friends. It was when ABAD was leaving the restaurant that the incident in question occurred. Thus ABAD was engaged in affairs of his own or was carrying out a personal purpose not in line with his duties at the time he figured in a vehicular accident.

JAN PORTER

85 Nogales vs. Capitol Medical Center | Carpio, J.:
G.R. No. 142625, Dec. 19, 2006 | 511 SCRA 204

FACTS

Pregnant with her fourth child, Corazon Nogales ("Corazon"), who was then 37 years old, was under the exclusive prenatal care of Dr. Oscar Estrada ("Dr. Estrada") beginning on her fourth month of pregnancy or as early as December 1975. While Corazon was on her last trimester of pregnancy, Dr. Estrada noted an increase in her blood pressure and development of leg edema5 indicating preeclampsia,6 which is a dangerous complication of pregnancy.7

Around midnight of 25 May 1976, Corazon started to experience mild labor pains prompting Corazon and Rogelio Nogales ("Spouses Nogales") to see Dr. Estrada at his home. After examining Corazon, Dr. Estrada advised her immediate admission to the Capitol Medical Center ("CMC").

On 26 May 1976, Corazon was admitted at 2:30 a.m. at the CMC after the staff nurse noted the written admission request8 of Dr. Estrada. Upon Corazon's admission at the CMC, Rogelio Nogales ("Rogelio") executed and signed the "Consent on Admission and Agreement"9 and "Admission Agreement."10 Corazon was then brought to the labor room of the CMC.

Dr. Rosa Uy ("Dr. Uy"), who was then a resident physician of CMC, conducted an internal examination of Corazon. Dr. Uy then called up Dr. Estrada to notify him of her findings.

Based on the Doctor's Order Sheet,11 around 3:00 a.m., Dr. Estrada ordered for 10 mg. of valium to be administered immediately by intramuscular injection. Dr. Estrada later ordered the start of intravenous administration of syntocinon admixed with dextrose, 5%, in lactated Ringers' solution, at the rate of eight to ten micro-drops per minute.

According to the Nurse's Observation Notes,12 Dr. Joel Enriquez ("Dr. Enriquez"), an anesthesiologist at CMC, was notified at 4:15 a.m. of Corazon's admission. Subsequently, when asked if he needed the services of an anesthesiologist, Dr. Estrada refused. Despite Dr. Estrada's refusal, Dr. Enriquez stayed to observe Corazon's condition.

At 6:00 a.m., Corazon was transferred to Delivery Room No. 1 of the CMC. At 6:10 a.m., Corazon's bag of water ruptured spontaneously. At 6:12 a.m., Corazon's cervix was fully dilated. At 6:13 a.m., Corazon started to experience convulsions.

At 6:15 a.m., Dr. Estrada ordered the injection of ten grams of magnesium sulfate. However, Dr. Ely Villaflor ("Dr. Villaflor"), who was assisting Dr. Estrada, administered only 2.5 grams of magnesium sulfate.

At 6:22 a.m., Dr. Estrada, assisted by Dr. Villaflor, applied low forceps to extract Corazon's baby. In the process, a 1.0 x 2.5 cm. piece of cervical tissue was allegedly torn. The baby came out in an apnic, cyanotic, weak and injured condition. Consequently, the baby had to be intubated and resuscitated by Dr. Enriquez and Dr. Payumo.

At 6:27 a.m., Corazon began to manifest moderate vaginal bleeding which rapidly became profuse. Corazon's blood pressure dropped from 130/80 to 60/40 within five minutes. There was continuous profuse vaginal bleeding. The assisting nurse administered hemacel through a gauge 19 needle as a side drip to the ongoing intravenous injection of dextrose.

At 7:45 a.m., Dr. Estrada ordered blood typing and cross matching with bottled blood. It took approximately 30 minutes for the CMC laboratory, headed by Dr. Perpetua Lacson ("Dr. Lacson"), to comply with Dr. Estrada's order and deliver the blood.

At 8:00 a.m., Dr. Noe Espinola ("Dr. Espinola"), head of the Obstetrics-Gynecology Department of the CMC, was apprised of Corazon's condition by telephone. Upon being informed that Corazon was bleeding profusely, Dr. Espinola ordered immediate hysterectomy. Rogelio was made to sign a "Consent to Operation."13

Due to the inclement weather then, Dr. Espinola, who was fetched from his residence by an ambulance, arrived at the CMC about an hour later or at 9:00 a.m. He examined the patient and ordered some resuscitative measures to be administered. Despite Dr. Espinola's efforts, Corazon died at 9:15 a.m. The cause of death was "hemorrhage, post partum."14

On 14 May 1980, petitioners filed a complaint for damages15 with the Regional Trial Court16 of Manila against CMC, Dr. Estrada, Dr. Villaflor, Dr. Uy, Dr. Enriquez, Dr. Lacson, Dr. Espinola, and a certain Nurse J. Dumlao for the death of Corazon. Petitioners mainly contended that defendant physicians and CMC personnel were negligent in the treatment and management of Corazon's condition. Petitioners charged CMC with negligence in the selection and supervision of defendant physicians and hospital staff.

ISSUES & ARGUMENTS

- **W/N CMC should be held liable**

HOLDING & RATIO DECIDENDI

YES

- The mere fact that a hospital permitted a physician to practice medicine and use its facilities is not sufficient to render the hospital liable for the negligence of a physician who is an independent contractor

- There is no proof that defendant physician was an employee of defendant hospital or that the latter had reason to know that any acts of malpractice would take place

- ***Borrowed Servant Doctrine*** – once the surgeon enters the operating room and takes charge of the proceedings, the acts or omissions of operating room personnel, and any negligence associated with such acts or omissions, are imputable to the surgeon.
  - While the assisting physicians and nurses may be employed by the hospital, or engaged by the patient, they normally become the temporary servants or agents of the surgeon in charge while the operation is in progress, and liability may be imposed upon the surgeon for their negligent acts under the doctrine of *respondeat superior*
    - A hospital is the employer, master, or principal of a physician employee, servant, or agent, and may be held liable for the physician's negligence
- While **"consultants"** are not, technically employees, a point which respondent hospital asserts in denying all responsibility for the patient's condition, the control exercised, the hiring, and the right to terminate consultants all fulfill the important hallmarks of an employer-employee relationship, with the exception of the payment of wages.
  - In assessing whether such a relationship in fact exists, the ***control test*** is determining. Accordingly, on the basis of the foregoing, we rule that for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians.
- After a thorough examination of the voluminous records of this case, the Court finds no single evidence pointing to CMC's exercise of control over Dr. Estrada's treatment and management of Corazon's condition.
  - It is undisputed that throughout Corazon's pregnancy, she was under the exclusive prenatal care of Dr. Estrada. At the time of Corazon's admission at CMC and during her delivery, it was Dr. Estrada, assisted by Dr. Villaflor, who attended to Corazon.
  - There was no showing that CMC had a part in diagnosing Corazon's condition.
  - While Dr. Estrada enjoyed staff privileges at CMC, such fact alone did not make him an employee of CMC.42 CMC merely allowed Dr. Estrada to use its facilities43 when Corazon was about to give birth, which CMC considered an emergency. Considering these circumstances, Dr. Estrada is not an employee of CMC, but an **independent contractor**.
- **Question now is whether CMC is automatically exempt from liability considering that Dr. Estrada is an independent contractor-physician.**
  - General Rule: Hospital is NOT liable for the negligence of an independent contractor-physician
  - Exception:
    - ***Doctrine of Apparent Authority (DAA)*** - a hospital can be held vicariously liable for the negligent acts of a physician providing care at the hospital, regardless of whether the physician is an independent contractor, unless the patient knows, or should have known, that the physician is an independent contractor.
    - *Elements*:
      - **H**ospital, or its agent, acted in a manner that would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital
      - Where the acts of the agent create the appearance of authority, the plaintiff must also prove that the hospital had knowledge of and acquiesced in them; and (3) t
      - The plaintiff acted in reliance upon the conduct of the hospital or its agent, consistent with ordinary care and prudence
  - 2 Factors to determine liability of an independent contractor-physician:
    - Hospital's manifestations
      - Inquiry whether the hospital acted in a manner which would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital
    - Patient's reliance
      - Inquiry on whether the plaintiff acted in reliance upon the conduct of the hospital or its agent, consistent with ordinary care and prudenc
  - Circumstances of the cases showing application of DAA:
    - CMC granted Dr. Estrada staff privileges
    - Consent forms were printed on CMC letterhead
    - Dr. Estrada's referral of Corazon's case with other physicians of CMC gave the impression that he, as a member of the CMC's medical staff, was collaborating with other CMC-employed specialists
    - Spouses Nogales' took Dr. Estrada as their physician in consideration of his connection with a reputable hospital (CMC)
      - Played a significant role in the Spouses' decision

WHEREFORE, CMC is found liable to pay the corresponding damages

CEO OCAMPO

86 Professional Services Inc. vs. Natividad | Sandoval-Guttierez
G.R. No. 126467, January 31, 2007 | 513 SCRA 478

FACTS

- Natividad Agana was rushed to the Medical City General Hospital (Medical City Hospital) because of difficulty of bowel movement and bloody anal discharge. After a series of medical examinations, Dr. Miguel Ampil diagnosed her to be suffering from "cancer of the sigmoid."
- Dr. Ampil, assisted by the medical staff of the Medical City Hospital, performed an anterior resection surgery on Natividad. A hysterectomy had to be performed on her, which was completed by Dr. Fuentes. And from that point, Dr. Ampil took over, completed the operation and closed the incision.
- However, the operation appeared to be flawed. In the corresponding Record of Operation, the attending nurses entered the remarks to the effect that 2 sponges were lacking and after an unsuccessful search by the surgeon, the closure was continued.
- Days after, Natividad started complaining about excruciating pains in the anal region. She went back to Dr Ampil and the latter assured her that it's a normal consequence of the operation. The pain continued so Natividad, with her husband, went to the US for another consultation. The hospital there informed her that she's free of cancer and was advised to come back. The couple returned. Then the unthinkable happened. Natividad's daughter saw a gauze protruding from Natividad's vagina. (hay grabe)
- Dr Ampil rushed to her house and removed the gauze measuring 1.5 inches. Thereafter the doctor assured her that the pain would eventually disappear. But it didn't, and in fact intensified. She then went to another hospital where a foul smelling gauze of the same length was found again.
- The couple filed with the QC RTC a complaint for damages against the PSI, Medical City Hospital, Dr. Fuentes and Dr Ampil for their negligence and malpractice for concealing their acts of negligence.
- Enrique Agana also filed with the Professional Regulation Commission (PRC) an administrative complaint for gross negligence and malpractice against Dr. Ampil and Dr. Fuentes
- The PRC dismissed the case against Dr Ampil and found Dr. Fuentes to be negligent and found liable to reimburse
- Both the RTC and CA found Dr. Ampil guilty of negligence and malpractice

ISSUES & ARGUMENTS

W/N Dr. Ampil is guilty of negligence and medical malpractice
W/N PSI, the hospital can be held liable for damages under the Respondeat Superior doctrine

HOLDING & RATIO DECIDENDI-

YES

Simply put, the elements are duty, breach, injury and proximate causation. Dr, Ampil, as the lead surgeon, had the duty to remove all foreign objects, such as gauzes, from Natividad's body before closure of the incision. When he failed to do so, it was his duty to inform Natividad about it. Dr. Ampil breached both duties. Such breach caused injury to Natividad, necessitating her further examination by American doctors and another surgery. That Dr. Ampil's negligence is the proximate cause12 of Natividad's injury could be traced from his act of closing the incision despite the information given by the attending nurses that two pieces of gauze were still missing. That they were later on extracted from Natividad's vagina established the causal link between Dr. Ampil's negligence and the injury.

YES

- One important legal change is an increase in hospital liability for medical malpractice. Many courts now allow claims for hospital vicarious liability under the theories of respondeat superior, apparent authority, ostensible authority, or agency by estoppel.
- ART. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
- The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.
- The case of Schloendorff v. Society of New York Hospital26 was then considered an authority for this view. The "Schloendorff doctrine" regards a physician, even if employed by a hospital, as an independent contractor because of the skill he exercises and the lack of control exerted over his work. Under this doctrine, hospitals are exempt from the application of the respondeat superior principle for fault or negligence committed by physicians in the discharge of their profession.
- However, the efficacy of the foregoing doctrine has weakened with the significant developments in medical care. Courts came to realize that modern hospitals are increasingly taking active role in supplying and regulating medical care to patients. No longer were a hospital's functions limited to furnishing room, food, facilities for treatment and operation, and attendants for its patients.
- In Bing v. Thunig,27 the New York Court of Appeals deviated from the Schloendorff doctrine, noting that modern hospitals actually do far more than provide facilities for treatment. Rather, they regularly employ, on a salaried basis, a large staff of physicians, interns, nurses, administrative and manual workers. They charge patients for medical care and treatment, even collecting for such services through legal action, if necessary. The court then concluded that there is no reason to exempt hospitals from the universal rule of respondeat superior.
- In other words, private hospitals, hire, fire and exercise real control over their attending and visiting 'consultant' staff. While 'consultants' are not, technically employees, x x x, the control exercised, the hiring, and the right to terminate

consultants all fulfill the important hallmarks of an employer-employee relationship, with the exception of the payment of wages

- The Ramos pronouncement is not our only basis in sustaining PSI's liability. Its liability is also anchored upon the agency principle of apparent authority or agency by estoppel and the doctrine of corporate negligence which have gained acceptance in the determination of a hospital's liability for negligent acts of health professionals.
- In this case, PSI publicly displays in the lobby of the Medical City Hospital the names and specializations of the physicians associated or accredited by it, including those of Dr. Ampil and Dr. Fuentes. We concur with the Court of Appeals' conclusion that it "is now estopped from passing all the blame to the physicians whose names it proudly paraded in the public directory leading the public to believe that it vouched for their skill and competence." Indeed, PSI's act is tantamount to holding out to the public that Medical City Hospital, through its accredited physicians, offers quality health care services.

87 Mallari Sr. and Mallari Jr. v. CA and Bulletin Publishing Corp. | Bellosillo
G.R. No.128607, January 31, 2000

FACTS

- The passenger jeepney driven by petitioner Alfredo Mallari Jr. and owned by his co-petitioner Alfredo Mallari Sr. collided with the delivery van of respondent Bulletin Publishing Corp. along the National Highway in Bataan.
- The van of respondent BULLETIN was coming from the opposite direction. It was driven by one Felix Angeles. The collision occurred after Mallari Jr. overtook the Fiera while negotiating a curve in the highway. The points of collision were the left rear portion of the passenger jeepney and the left front side of the delivery van of BULLETIN.
- The impact caused the jeepney to turn around and fall on its left side resulting in injuries to its passengers one of whom was Israel Reyes who eventually died.
- Claudia G. Reyes, the widow of Israel M. Reyes, filed a complaint for damages against Mallari Sr. and Mallari Jr., and also against BULLETIN, its driver Felix Angeles, and the N.V. Netherlands Insurance Company.
- TC found that the proximate cause of the collision was the negligence of Felix Angeles, driver of the Bulletin delivery van, considering the fact that the left front portion of the delivery truck driven by Felix Angeles hit and bumped the left rear portion of the passenger jeepney driven by Mallari Jr. Hence, it ordered BULLETIN and Felix Angeles to pay jointly and severally Claudia G. Reyes. It also dismissed the complaint against the other defendants Mallari Sr. and Mallari Jr.
- CA modified the decision and found no negligence on the part of Angeles and of his employer, respondent BULLETIN. Instead, it ruled that the collision was caused by the sole negligence of petitioner Mallari Jr. who admitted that immediately before the collision and after he rounded a curve on the highway, he overtook a Fiera which had stopped on his lane and that he had seen the van driven by Angeles before overtaking the Fiera. It also ordered petitioners Mallari Jr. and Mallari Sr. to compensate Claudia G. Reyes.

ISSUES & ARGUMENTS

- **W/N CA erred in finding Mallari Jr. negligent and holding him liable.**

HOLDING & RATIO DECIDENDI

NO. CA is correct.

- Contrary to the allegation that there was no evidence whatsoever that petitioner Mallari Jr. overtook a vehicle at a curve on the road at the time of or before the accident, the same petitioner himself testified that such fact indeed did occur .
- CA correctly found, based on the sketch and spot report of the police authorities which were not disputed by petitioners, that the collision occurred immediately after petitioner Mallari Jr. overtook a vehicle in front of it while traversing a curve on the highway. This act of overtaking was in clear violation of Sec. 41, pars. (a) and (b), of RA 4136 as amended, otherwise known as The Land Transportation and Traffic Code. The proximate cause of the collision was the sole negligence of the driver of the passenger jeepney, petitioner Mallari Jr., who recklessly operated and drove his jeepney in a lane where overtaking was not allowed by traffic rules.
- The rule is settled that a driver abandoning his proper lane for the purpose of overtaking another vehicle in an ordinary situation has the duty to see to it that the road is clear and not to proceed if he cannot do so in safety. When a motor vehicle is approaching or rounding a curve, there is special necessity for keeping to the right side of the road and the driver does not have the right to drive on the left hand side relying upon having time to turn to the right if a car approaching from the opposite direction comes into view.
- Under Art. 2185 of the Civil Code, unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap he was violating a traffic regulation. As found by the appellate court, petitioners failed to present satisfactory evidence to overcome this legal presumption.
- The negligence and recklessness of the driver of the passenger jeepney is binding against petitioner Mallari Sr., who admittedly was the owner of the passenger jeepney engaged as a common carrier, considering the fact that in an action based on contract of carriage, the court need not make an express finding of fault or negligence on the part of the carrier in order to hold it responsible for the payment of damages sought by the passenger.
- Under Art. 1755 of the Civil Code, a common carrier is bound to carry the passengers safely as far as human care and foresight can provide using the utmost diligence of very cautious persons with due regard for all the circumstances. Moreover, under Art. 1756 of the Civil Code, in case of death or injuries to passengers, a common carrier is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence. Further, pursuant to Art. 1759 of the same Code, it is liable for the death of or injuries to passengers through the negligence or willful acts of the former's employees. This liability of the common carrier does not cease upon proof that it exercised all the diligence of a good father of a family in the selection of its employees.

Petition denied. CA decision reversing TC decision is affirmed.

TIN OCAMPO-TAN

88 BLTB and Pon vs. IAC, Heirs of Paz. Heirs of Neri and Heirs of de Rosales | Paras
G.R. Nos. 74387-90 November 14, 1988

FACTS

- A bus owned by petitioner BLTB and driven by petitioner Pon collided with a bus owned by Superlines, when the former tried to overtake a car just as the Superlines' Bus was coming from the opposite direction.

- The collision resulted in the death of Rosales, Pamfilo and Neri, as well as injuries to the wife of Rosales, and Sales. These people were passengers of the petitioner's bus.

- Rosales and Sales, as well as the surviving heirs of Pamfilo, Rosales and Neri instituted separate cases ih the CFI against BLTB and Superlines, together with their drivers. Criminal cases against the drivers were also filed in a different CFI.

- CFI ruled that only BLTB and Pon should be liable, and they were ordered jointly and severally to pay damages. On appeal, the IAC affirmed the CFI's ruling.

- Petitioners contended that the CFI erred in ruling that the actions of private respondents are based on culpa contractual, since if it were private respondents' intention to file an action based on culap contractual, they could have done so by merely impleading BLTB and Pon. Instead the respondents filed an action against all defendants based on culpa aquiliana or tort.

ISSUES & ARGUMENTS

- **WON erred in ruling that the actions of private respondents are based on culpa contractual**
-

HOLDING & RATIO DECIDENDI

IAC anchored its decision on both culpa contractual and culpa aquiliana

- The proximate cause of the death and injuries of the passengers was the negligence of the bus driver Pon, who recklessly overtook a car despite knowing that that the bend of highway he was negotiating on had a continuous yellow line signifying a "no-overtaking" zone.

- It is presumed that a a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.

- In the instant case, the driver of the BLTB bus failed to act with diligence demanded by the circumstances. Pon should have remembered that when a motor vehicle is approaching or rounding a curve there is special necessity for keeping to the right side of the road and the driver has not the right to drive on the left hand side relying upon having time to turn to the right if a car is approaching from the opposite direction comes into view.

- As to the liability of the petitioners, Pon is primarily liable for his negligence in driving recklessly the truck owned by BLTB. The liability of the BLTB itself is also primary, direct and immediate in view of the fact that the deat of or injuries to its passengers was through the negligence of its employee.

- The common carrier's liability for the death of or injuries to its passengers is based on its contractual obligation to carry its passengers safely to their destination. They are presumed to have acted negligently unless they prove that they have observed extaordinary diligence. In the case at bar, the appellants acted negligently.

- BLTB is also solidarly liable with its driver even though the liability of the driver springs from quasi delict while that of the bus company from contract.

IAC decision affirmed. Respondents win.

SATURDAY ALCISO

89 Manuel vs. Court of Appeals| Quiason
G.R. No. 96781| October 1, 1993| 227 SCRA 29

FACTS

- Private respondents were passengers of an International Harvester Scout Car (Scout Car) owned by respondent Ramos, which left Manila for Camarines Norte in the morning of December 27, 1977 with respondent Fernando Abcede, Sr. as the driver of the vehicle.
- There was a drizzle at about 4:10 P.M. when the Scout car, which was then negotiating the zigzag road of Bo. Paraiso, Sta. Elena, Camarines Norte, was hit on its left side by a bus. The bus was owned by petitioner Emiliano Manuel. Due to the impact, the Scout car was thrown backwards against a protective railing. Were it not for the railing, the Scout car would have fallen into a deep ravine. All its ten occupants, which included four children were injured, seven of the victims sustained serious physical injuries (*Rollo*, p. 28).
- Emiliano Manuel, the driver of the bus, was prosecuted for multiple physical injuries through reckless imprudence in the Municipal Court of Sta. Elena, Camarines Norte. As he could not be found after he ceased reporting for work a few days following the incident, the private respondents filed the instant action for damages based on *quasi-delict*.
- After trial, the court *a quo* rendered judgment against petitioners and Perla Compania de Seguros, that covered the insurance of the bus. The court ordered them to pay, jointly and severally, the amount of P49,954.86 in damages to respondents.
- On appeal, the Court of Appeals, affirmed the decision of the trial court.
- Hence this petition

ISSUE & ARGUMENTS

W/N it was Fernando Abcede, Jr., driver of the Scout car, who was at fault. (Besides, petitioners claim the Fernando Abcede, Jr., who was only 19-years old at the time of the incident, did not have a driver's license)

HOLDING & RATIO DECIDENDI

NO.
The fact that the Scout car was found after the impact at rest against the guard railing shows that it must have been hit and thrown backwards by the bus (*Rollo*, p. 103). The physical evidence do not show that the Superlines Bus while traveling at high speed, usurped a portion of the lane occupied by the Scout car before hitting it on its left side. On collision, the impact due to the force exerted by a heavier and bigger passenger bus on the smaller and lighter Scout car, heavily damaged the latter and threw it against the guard railing.
Petitioner's contention that the Scout car must have been moved backwards is not only a speculation but is contrary to human experience. There was no reason to move it backwards against the guard railing. If the purpose was to clear the road, all that was done was to leave it where it was at the time of the collision, which was well inside its assigned lane. Besides, even petitioners accept the fact that when the police arrived at the scene of the accident, they found no one thereat (*Rollo*, p. 13). This further weakens the possibility that some persons moved the Scout car to rest on the guard railing.
The evidence with respect to the issue that Fernando Abcede, Jr. who was not duly licensed, was the one driving the Scout car at the time of the accident, could not simply exempt petitioner's liability because they were parties at fault for encroaching on the Scout car's lane

JAVIN OMPOC

90 Aguilar vs. Commercial Savings Bank| Quisumbing
G.R. No. 128705 June 29, 2001

FACTS

- Conrado Aguilar Jr. was hit by a car registered in the name of Commercial Bank and driven by Ferdinand Borja, its Asst. Vice Pres.
- Aguilar Jr, with companion Nestor Semella, was crossing the street, when the car overtook a jeepney and hit them. Aguilar was thrown upwards and hit the windshield of the car which didn't stop. Both victims were brought to the hospital where Aguilar was proclaimed DOA.
- Aguilar Sr. brought a suit for damages against Borja and Commercial Bank in the RTC of Makati. Borja didn't file his answer within the reglamentary period and was declared in default. Respondent bank admitted that the car was registered in its name and petitioner's counsel showed Borja's negligence.
- RTC held both respondents liable. By Art. 2180 of NCC says that the negligence of the employee is presumed to be that of the employer, whose liability is primary and direct. Court also said that respondent bank failed to exercise due diligence in the selection of its employees.
- Upon appeal to the CA, it ruled that it should be first established that Borja was exercising his functions for the bank to be liable. CA reversed ruling insofar as the bank is concerned by dismissing its liability.
- Aguilar Sr. appealed, hence this petition.

ISSUES & ARGUMENTS

- **W/N the bank could be held liable being the registered owner of the car**

Petitioner: Employer-employee relationship is immaterial for the registered owner of the car may be held liable without regard to who was driving the car

Respondent: Borja already purchased the car from the bank. True ownership of the car should be proved in the proceedings.

HOLDING & RATIO DECIDENDI

Commercial Bank is liable

- Under Article 2180 of the Civil Code, when the negligent employee commits the act outside the actual performance of his assigned tasks or duties, the employer has no vicarious liability. But according to established jurisprudence, registered owner of any vehicle, even if not for public service, is primarily responsible to third persons for deaths, injuries and damages it caused. This is true even if the vehicle is leased to third persons.
- Car registration is for public policy, to allow for identification of the vehicle and its operator in case of an accident. The means of detection may also act as a deterrent from lax observance of the law and of the rules of conservative and safe operation.
- Respondent's contention of the ownership should be proved in court would make way for a defendant easily evading liability by colluding with a 3rd person, or transferring the car to an indefinite or insolvent person. The injured wouldn't be able to collect damages then.
- The registered owner may only just bring a suit against the true owner but it does not exempt him from liability. It serves as a penalty for not registering the change of ownership of the car.

91 US vs. Crame | Moreland
G.R. No. 10181, March 2, 1915 | 30 SCRA 2

FACTS

- Mariano Crame, chauffeur of a motor vehicle, while driving along Calle Herran in the city of Manila, knocked down, dragged, and ran over the body of George E. Coombs, a private in the US army, who was then crossing the road, causing him injuries, wounds, and bruises. Moreover, such injuries damaged his mental faculties and incapacitated him from further performance of his duties as a soldier.
- Crame alleges that he was only going at about 10 miles per hour, and that since Coombs suddenly appeared in front of the car, he tried but failed to change the course of the automobile so as to avoid hitting him.
- The trial court convicted Crame of serious physical injuries by *imprudencia temeraria*, on the ground that 1) he did not reduce his speed sufficiently, nor did he attempt to stop to avoid an accident; 2) he did not sound his horn or whistle or use his voice to call the attention of Coombs to notify him that he should stop and avoid being struck by the car; and 3) Crame was driving in the center, or a little to the right of the center of the street instead of on the left side thereof.

ISSUES & ARGUMENTS

- **W/N Crame is criminally liable for the damages caused to Coombs.**
  - **<Petitioner's Arguments>:** A carromata was approaching him, and obscured his vision just before the accident occurred. Also, the rails of the street-car track made it difficult to pass the extreme left-hand side of the street.

HOLDING & RATIO DECIDENDI

THE CONCLUSIONS OF THE TRIAL COURT ARE MORE THAN SUSTAINED.

- The fact that Crame did not see Coombs until the car was very close to him is strong evidence of inattention to duty, especially since the street was wide and unobstructed, with no buildings on either side from which a person can dart out so suddenly. Moreover, the street was also well-lighted, so there is no reason why Crame did not see Coombs long before he had reached the position in the street where he was struck down.
- The presence of the carromata was not corroborated by any of the witnesses. Moreover, it would have obscured his vision only for a moment. Besides, it is the duty of automobile drivers in meeting a moving vehicle on public streets and highways to use due care and diligence to see to it that persons who may be crossing behind the moving vehicle are not run down by them.
- It is clearly established that Crame was driving along the right-hand side of the street when the accident happened. According to the law of the road and the custom of the country, he should have been on the left-hand side of the street. According to witnesses there was abundant room for him to drive on such side.
- There is no evidence which shows negligence on the part of Coombs. At the time he was struck, he had a right to be where the law fully protected him from vehicles traveling in the direction in which the accused was driving at the time of injury.
- There is no evidence to show that the soldier was drunk at the time of the accident. And even if he were, mere intoxication is not negligence, nor does it establish a want of ordinary care. It is but a circumstance to be considered with the other evidence tending to prove negligence. If one's conduct is characterized by a proper degree of care and prudence, it is immaterial whether he is drunk or sober.

Judgment affirmed.

CARSON, J., dissenting:

- Foot passengers owe some duty to themselves, and it is utterly unreasonable to require the driver of a car to run at so slow a speed that he will always be able to bring the machine to a dead stop in time to avoid injury to any man under the influence of liquor, who may suddenly step out into the middle of the street and in front of the car.
- There is no evidence that Crame was driving on the extreme right hand of the street. Rather, he was a little right to the center. The accused offered a very reasonable explanation for this. While the rule of the road imposes a general duty upon drivers to keep on the left when passing other vehicles and in densely crowded streets, there is no rule requiring him to keep on the extreme left without regard to the condition of the road or street, and to the presence/absence of other vehicles or pedestrians on the highway.
- Where the street is more or less deserted, no danger of collision, the proper place on the road for a fast and moderately fast vehicle is well toward the canter, provided that the driver is at all times prepared to move to the left to avoid collisions.
- The rights and duties of pedestrians and drivers of vehicles are equal. Each may use the highway, and each must exercise such care and prudence as the circumstances demand.
- The rule of the road is a rule of negligence, and the fact that a person was on the wrong side of the road when the collision took place does not per se make him liable for damages.

CHRISSIE MORAL

92 SPS Marcial & JuanaCaedo & Minor children: Ephraim, Eileen and Rose Caedo v Yu Khe Thai and Rafael Bernardo | Makalintal
No. L-20392 December 18, 1968 | 26 SCRA 410

FACTS

- Marcial Caedo with his wife, son and 3 daughters left the house early morning of March 24 1958 to bring drive his son to the airport who was leaving for Mindoro. About 530, driving a Mercury car, they were traveling along Highway 54 (now EDSA) within the area of San Lorenzo Village when a Cadillac coming from the opposite direction collided to their vehicle.
- Rafael Bernardo was driving the Cadillac, while owner, Yu Khe Thait was his passenger (for recit purposes: they came from Parañaque, going to Wack Wack to play for the owner's regular round of golf).
- **WHAT HAPPENED?** Bernardo testified that:
  - they were already about 8m away from the carretela driven by Pedro Bautista and his son when they noticed them despite the carretela being lighted on both sides. That should have been sufficient warning to take the necessary precaution (SIGN OF DRIVER'S NEGLIGENCE).
  - Instead of slowing down, he overtook the carretela, by eating the opposite lane by veering to the left. As he did so, the curved end of his car's right rear bumper caught forward the rig's left wheel, wrenching it off and carrying it along as the car skidded obliquely to the other lane, then colliding with the oncoming vehicle
- Note that both vehicles were traveling at a fairly moderate speed before collision. Caedo even slackened his speed when he saw the carretela and the Cadillac. Caedo figured the Cadillac would wait behind but Bernardo took a gamble and squeezed in the Cadillac, but his calculation fell short resulting to the collision. Caedo tried to avoid collision; photographs even confirm that the Mercury was already on the unpaved right shoulder of the road upon impact.
- Petitioners suffered multiple injuries and had to undergo medical treatment. They prayed for damages (including damage to car).
- TC: owner and driver solidarily liable to pay actual, moral, exemplary damages and atty's fees. CA: affrm/modify→ increased actual damages, to cover the damage sustained by their car.

ISSUES & ARGUMENTS

- **W/N Bernardo is liable?**
- **If Yes to ISSUE 1, W/N Yu Khe Thai is solidarily liable with Bernardo?**

HOLDING & RATIO DECIDENDI

YES! Bernardo is liable, because facts reveal that the collision was directly traceable to his negligence.

BUT, owner, Yu Khe Thai is not solidarily liable with his driver.

- Art 2184[1] is indeed the basis of a master's liability in a vehicular accident.
- Note however that the 2nd sentence of Art 2184 qualifies before the owner can be made solidarity liable with the negligent driver. This is because the basis of the master's liability is not RESPONDEAT SUPERIOR but rather the relation ship of PATERFAMILIAS. The theory is that, the negligence of the servant, is known to the master and susceptible of timely correction by him, reflects the master's negligence if he fails to correct it order to prevent injury or damage.
- Test of imputed negligence in Art 2184 is necessarily subjective. Car owners are not held in a uniform and inflexible standard of diligence as are professional drivers. The law does not require that a person must possess a certain measure of skill or proficiency either in mechanics of driving or in the observance of traffic rules before he can own a motor vehicle.
- PROOF OF DUE DILIGENCE of Yu Khe Thai:
  - Bernardo has been his driver since 1937 and until this incident, he has not committed a traffic violation. Bernardo was an experienced driver for 10 years with Yutivo Sons Hardware prior to his service to Yu. Thus, he had reason to believe in the capacity of Bernardo.
  - Their car was running at a reasonable speed, thus no reason for the owner to be alarmed.
  - He saw the carretela about 12m away, but he could not have anticipated Bernardo's sudden decision to overtake the carretela.
  - The time element before collision was so short that it would have been impossible for him to have reasonable opportunity to prevent it. He even said that sounding a sudden warning to the driver would only make the driver nervous and make the situation worse (*I agree. Isipin mo, yun Nanay mo, biglang hysterically sisigaw, Annnnnak, sa kanan! Tapos sumobra ka ng kabig sa gulat. hasslehoff!!! But true.)*
  - Taken altogether, due diligence required from Yu to avoid misfortune exists, thus he should not be held liable for the negligence, and the resulting damages caused by Bernardo.

Judgment modified. Affirm moral damages granted by TC to petitioners. Actual damages cannot be raised since only the petitioners' medical expenses were supported by evidence. Yu Khe Thai is free from liability, but decision is otherwise affirmed with respect to BERNARDO

DIANE LIPANA

[1] In a motor vehicle mishaps, the owner is solidarily liable with his driver, if the former, who was in the vehicle could have, by the use of due diligence, prevented the misfortune. It is disputably presumed that a driver was negligent, of he had been found guilty of reckless driving or violating traffic regulations at least twice within the next preceding two months.

93 FGU Insurance vs. CA|Bellosillo
G.R. No. 118889, March 23, 1998 | 287 SCRA 718

FACTS

- On 21 April 1987, two Mitsubishi Colt Lancers collided along EDSA at around 3AM. At that time, the car owned by Soriano was being driven by Jacildone. The other car was owned by FILCAR Transport, Inc. and was being driven by Dahl-Jansen, as lessee. Said Dahl-Jensen, being a Danish tourist, did not have Philippine driver's license. Dahl-Jensen had swerved to his right lane, thereby hitting the left side of the car of Soriano.
- Petitioner FGU Insurance paid Soriano P25,382.20 pursuant to the insurance contract it had with the latter. After which, it sued Dahl-Jensen, FILCAR, and FORTUNE Insurance for quasi-delict before the RTC of Makati.
- Summons was not served on Dahl-Jensen; and upon motion of the petitioner, he was later dropped from the complaint. The RTC dismissed the complaint on the ground that petitioner had failed to substantiate its claim for subrogation.
- The CA affirmed the RTC decision, although on a different ground, i.e. that only the fault and negligence of Dahl-Jensen was proved, and not that of FILCAR. Hence this appeal.

ISSUES & ARGUMENTS

W/N FILCAR and FORTUNE are liable for damages suffered by a third person even though the vehicle was leased to another.

HOLDING & RATIO DECIDENDI

FILCAR AND FORTUNE ARE NOT LIABLE. (please focus on the underlined doctrines for: our concern for this case is PRIMARY LIABILITY)

- Art. 2176 of the Civil Code which states: "*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* . . . "
- To sustain a claim based thereon, the following requisites must concur: (a) damage suffered by the plaintiff; (b) fault or negligence of the defendant; and, (c) connection of cause and effect between the fault or negligence of the defendant and the damage incurred by the plaintiff. [6]
- The Supreme Court agreed with the holding of the CA in saying that only the fault and negligence of Dahl-Jensen had been proved, since the only cause of the damage was due to his swerving to the right lane, in which FILCAR had no participation.
- Art. 2184 of the NCC provides: "***In motor vehicle mishap, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have by the use of due diligence, prevented the misfortune . . . . If the owner was not in the motor vehicle, the provisions of article 2180 are applicable.***" Obviously, this provision of Art. 2184 is neither applicable because of the absence of master-driver relationship between respondent FILCAR and Dahl-Jensen. Clearly, petitioner has no cause of action against respondent FILCAR on the basis of *quasi-delict*; logically, its claim against respondent FORTUNE can neither prosper.
- ***Article 2180, par 5 Civil Code: "…Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry…."***
- The liability imposed by Art. 2180 arises by virtue of a presumption *juris tantum* of negligence on the part of the persons made responsible thereunder, derived from their failure to exercise due care and vigilance over the acts of subordinates to prevent them from causing damage. [7] Yet, Art. 2180 is hardly applicable because FILCAR, being engaged in a rent-a-car business was only the owner of the car leased to Dahl-Jensen. As such, there was no *vinculum juris* between them as employer and employee.

Petition denied. CA affirmed.

94 DSR-Senator Lines vs. Federal Phoenix Assurance Co., Inc. |
G.R. No. 135377. October 7, 2003 |

FACTS

- Berde Plants delivered 632 units of artificial trees to C.F. Sharp, the General Ship Agent of DSR-Senator Lines. The Cargo was loaded in M/S Arabian Senator.
- Federal Phoenix Assurance insured the cargo against all risks in the amount of P941,429.61
- Arabian Senator left Manila for Saudi Arabia with the cargo on board. When the vessel arrived in Khor Fakkan Port, it was reloaded on board DSR-Senator Lines' feeder vessel, M/V Kapitan Sakharov. However, while in transit, the vessel and all its cargo caught on fire. DSR lines informed Berde Plants regarding the incident. Then, CF Sharp issued a certification to that effect.
- Federal Phoenix Assurance paid Berde Plants P941,429.61 corresponding to the amount of insurance for the cargo. In turn, Berde Plants executed in its favor a subrogation receipt.
- Federal Phoenix Assurance sent a letter to CF Sharp demanding the amount of P941,429,61 on the basis of the subrogation receipt. CF Sharp denied any liability on the ground that such liability was extinguished when the vessel carrying the cargo was gutted by the fire. Federal Phoenix Assurance filed with the RTC a complaint for damages against CF Sharp and DSR lines.

ISSUES & ARGUMENTS

- **W/N DSR-Senator lines and C.F. Sharp are liable for the damages.**

HOLDING & RATIO DECIDENDI

They are liable for the damages caused by the fire

Article 1734 of the Civil Code provides:

Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

(1)Flood, storm, earthquake, lightning, or other natural disaster or calamity;

(2) Act of the public enemy in war, whether international or civil;

(3) Act or omission of the shipper or owner of the goods;

(4) The character of the goods or defects in the packing or in the containers;

(5) Order or act of competent public authority."

Fire is not one of those enumerated under the above provision which exempts a carrier from liability for loss or destruction of the cargo.

Common carriers are obliged to observe extraordinary diligence in the vigilance over the goods transported by them. Accordingly, they are presumed to have been at fault or to have acted negligently if the goods are lost, destroyed or deteriorated. There are very few instances when the presumption of negligence does not attach and these instances are enumerated in Article 1734. In those cases where the presumption is applied, the common carrier must prove that it exercised extraordinary diligence in order to overcome the presumption

Respondent Federal Phoenix Assurance raised the presumption of negligence against petitioners. However, they failed to overcome it by sufficient proof of extraordinary diligence.

95 Delsan Transport Lines Inc. v C&A Construction | Ynares-Santiago.
G.R. No. 156034, October 1, 2003 |

FACTS

- NHA contracted with C&A to build a deflector wall for Vitas Reclamation Area in Vitas, Tondo. Project was finished in 1994. In October 20, 1994 12mn Captain Jusep of Delsan lines owned ship M/V Delsan express received information that there was a typhoon coming in from Japan. At 8.35AM M/V Delsan Express attempted to get into North Harbor but could not. 10.00AM M/V Delsan Express dropped anchor off of Vitas 4 miles away from Napocor barge. M/V Delsan Express nearly collided with the Napocor barge but managed to avoid it and instead hit the deflector wall causing almost 500,000 in damage. Petitioner refused to pay and thus a civil case was filed against Delsan by C&A. TC Ruled emergency rule applied, CA found captain negligent.

ISSUES & ARGUMENTS

- **W/N Captain Jusep is negligent**
- **W/N under Art. 2180 Delsan liable for the quasi-delict**

HOLDING & RATIO DECIDENDI

Captain Jusep is negligent by waiting for 8.35AM before bringing the ship to North Harbor

Petitioners are vicariously liable under 2180

- Art. 2176 of the Civil Code states that whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Captain Jusep received the report 12MN and waited for more than 8 hours to move the ship, he likewise ignored the weather report and in all angles failed to take action to prevent the damage.
- Under Art. 2180 whenever an employee's negligence causes damage or injury to another there arises a presumption *juris tantum* that the employer failed to exercise due diligence of a good father of a family in the selection and supervision of its employees.
- Petitioner failed to present evidence that showed it formulated guidelines/rules for the proper performance of functions of employees and any monitoring system.
- Not necessary to state petitioner is negligent in selecting or supervising employees as negligence is presumed by operation of law. Allegations of negligence of the employee and existence of employer-employee relationship in complaint are enough to make out a case of quasi-delict under 2180.

96 Singapore Airlines vs. Fernandez

FACTS

Andion Fernandez is an acclaimed soprano here in the Philippines and abroad. At the time of the incident, she was availing an educational grant from the Federal Republic of Germany, pursuing a Master's Degree in Music majoring in Voice.

She was invited to sing before the King and Queen of Malaysia on February 3 and 4, 1991. For this singing engagement, an airline passage ticket was purchased from petitioner Singapore Airlines which would transport her to Manila from Frankfurt, Germany on January 28, 1991. From Manila, she would proceed to Malaysia on the next day. It was necessary for the respondent to pass by Manila in order to gather her wardrobe; and to rehearse and coordinate with her pianist her repertoire for the aforesaid performance.

Flight No. SQ 27 left Frankfurt but arrived in Singapore two hours late or at about 11:00 in the morning of January 28, 1991. By then, the aircraft bound for Manila had left as scheduled, leaving the respondent and about 25 other passengers stranded in the *Changi* Airport in Singapore.

The respondent never made it to Manila and was forced to take a direct flight from Singapore to Malaysia on January 29, 1991, through the efforts of her mother and travel agency in Manila. Her mother also had to travel to Malaysia bringing with her respondent's wardrobe and personal things needed for the performance that caused them to incur an expense of about P50,000.

As a result of this incident, the respondent's performance before the Royal Family of Malaysia was below par. Because of the rude and unkind treatment she received from the petitioner's personnel in Singapore, the respondent was engulfed with fear, anxiety, humiliation and embarrassment causing her to suffer mental fatigue and skin rashes. She was thereby compelled to seek immediate medical attention upon her return to Manila for "acute urticaria." Fernandez then filed a civil action for damages against Singapore Airlines.

ISSUE & ARGUMENTS

Whether or not Singapore is liable for damages?

HOLDING & RATION DECIDENDI

YES.

When an airline issues a ticket to a passenger, confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger then has every right to expect that he be transported on that flight and on that date. If he does not, then the carrier opens itself to a suit for a breach of contract of carriage.

The contract of air carriage is a peculiar one. Imbued with public interest, the law requires common carriers to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons with due regard for all the circumstances. In an action for breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that is necessary to prove is the existence of the contract and the fact of its non-performance by the carrier.

The defense that the delay was due to fortuitous events and beyond petitioner's control is unavailing.

Petitioner was not without recourse to enable it to fulfill its obligation to transport the respondent safely as scheduled as far as human care and foresight can provide to her destination. Tagged as a premiere airline as it claims to be and with the complexities of air travel, it was certainly well-equipped to be able to foresee and deal with such situation. The petitioner's indifference and negligence by its absence and insensitivity was exposed by the trial court.

When a passenger contracts for a specific flight, he has a purpose in making that choice which must be respected. This choice, once exercised, must not be impaired by a breach on the part of the airline without the latter incurring any liability. For petitioner's failure to bring the respondent to her destination, as scheduled, we find the petitioner clearly liable for the breach of its contract of carriage with the respondent.

The petitioner acted in bad faith. Bad faith means a breach of known duty through some motive of interest or ill will..

97 Smith Bell and Company v CA | Feliciano
G.R. No. L-56294, May 20, 1991 |

FACTS

- In the early morning of 3 May 1970—at exactly 0350 hours, on the approaches to the port of Manila near Caballo Island, a collision took place between the M/V "Don Carlos," an inter-island vessel owned and operated by private respondent Carlos A. Go Thong and Company ("Go Thong"), and the M/S "Yotai Maru," a merchant vessel of Japanese registry.
- The "Don Carlos" was then sailing south bound leaving the port of Manila for Cebu, while the "Yotai Maru" was approaching the port of Manila, coming in from Kobe, Japan.
- The bow of the "Don Carlos" rammed the portside (left side) of the "Yotai Maru" inflicting a three (3) cm. gaping hole on her portside near Hatch No. 3, through which seawater rushed in and flooded that hatch and her bottom tanks, damaging all the cargo stowed therein.
- The consignees of the damaged cargo got paid by their insurance companies. The insurance companies in turn, having been subrogated to the interests of the consignees of the damaged cargo, commenced actions against private respondent Go Thong for damages sustained by the various shipments.
- 2 Civil Cases were filed against Go Thong. In Case No.1, the SC ruled through JBL Reyes that the "Don Carlos" to have been negligent rather than the "Yotai Maru". This was contrary to the findings of the CA.
- This is Case No. 2. The parties agreed that the cases be tried under the same issues and that the evidence presented in one case would be simply adopted in the other.

ISSUES & ARGUMENTS

W/N Don Carlos is the proximate cause of the collision.

HOLDING & RATIO DECIDENDI

"*Don Carlos*" had been negligent and that its negligence was the sole proximate cause of the collision and of the resulting damages.

Three factors were considered in determining who the proximate cause is:

The first of these factors was the failure of the "*Don Carlos*" to comply with the requirements of Rule 18 (a) of the International Rules of the Road
This has something to do with foresight and safety measure which the captain should observe another ship is approaching.

- **The second circumstance constitutive of negligence on the part of the "*Don Carlos*" was its failure to have on board that night a "proper look-out" as required by Rule I (B) Under Rule 29 of the same set of Rules, all consequences arising from the failure of the "*Don Carlos*" to keep a "proper look-out" must be borne by the "*Don Carlos*."**
- **The third factor constitutive of negligence on the part of the "*Don Carlos*" relates to the fact that Second Mate Benito German was, immediately before and during the collision, in command of the "*Don Carlos*."**
- Second Mate German simply did not have the level of experience, judgment and skill essential for recognizing and coping with the risk of collision as it presented itself that early morning when the "*Don Carlos*," running at maximum speed and having just overtaken the "Don Francisco" then approximately one mile behind to the starboard side of the "*Don Carlos*," found itself head-on or nearly head on *vis-a-vis* the "*Yotai Maru.* " It is essential to point out that this situation was created by the "*Don Carlos*" itself.

JON LINA

98 Rakes v. Atlantic, Gulf and Pacific Co. | Tracey
Januray 23, 1907

FACTS

- Plaintiff Rakes was one of the laborers of defendant, transporting iron rails from the barge in the harbor to defendant's yard. Piled lengthwise on 2 hand cars were 7 rails such that the ends of the rails protruded beyond the cars. The rails lay upon 2 crosspieces or sills secured to the cars but without side guards to prevent them from slipping off. Near the water's edge, the tracks sagged, the tie broke, the rails slid off and caught plaintiff, resulting in a broken leg which was subsequently amputated.
- Plaintiff alleges that defendant was negligent in not provided side guards on the cars, and that the tracks had no fishplates. Defendant admitted absence of side guards and failed to effectively overcome the plaintiff's proof that no fishplates existed.
- The sagging of the tracks was found to have been caused by the water of the bay raised by a recent typhoon. It wasn't proved that the company inspected the track after the typhoon or that it had any proper system of inspecting.

ISSUE & ARGUMENTS

W/N plaintiff was guilty of contributory negligence to exonerate defendant from liability.

HOLDING & RATIO DECIDENDI

No.

- The allegation that plaintiff was at fault for continuing his work despite notice of the sagging of the track constituted contributory negligence that exonerate defendant is untenable. Nothing in the evidence shows that plaintiff did or could see the displaced timber underneath. Plaintiff had worked on the job for less than two days.
- Where plaintiff contributed to the principal occurrence, as one of the determining factors, he cannot recover. Where, in conjunction with the occurrence, he contributes only to his own injury, he may recover the amount that the defendant responsible for the event should pay for such injury, less the sum deemed a suitable equivalent for his own imprudence.

99 Taylor vs. Manila Electric| Paras
G.R. No. L-4977 March 22,1910| 16 Phil.8

FACTS

- The plaintiff, David Taylor, was at the time when he received the injuries complained of, 15 years of age, the son of a mechanical engineer, more mature than the average boy of his age, and having considerable aptitude and training in mechanics.
- On the 30th of September, 1905, plaintiff, with a boy named Manuel Claparols, about 12 years of age, crossed the footbridge to the Isla del Provisor, for the purpose of visiting one Murphy, an employee of the defendant, who and promised to make them a cylinder for a miniature engine. Finding on inquiry that Mr. Murphy was not in his quarters, the boys, impelled apparently by youthful curiosity and perhaps by the unusual interest which both seem to have taken in machinery, spent some time in wandering about the company's premises. The visit was made on a Sunday afternoon, and it does not appear that they saw or spoke to anyone after leaving the power house where they had asked for Mr. Murphy.
- They walked across the open space in the neighborhood of the place where the company dumped in the cinders and ashes from its furnaces. Here they found some twenty or thirty brass fulminating caps scattered on the ground. These caps are approximately of the size and appearance of small pistol cartridges and each has attached to it two long thin wires by means of which it may be discharged by the use of electricity. They are intended for use in the explosion of blasting charges of dynamite, and have in themselves a considerable explosive power. After some discussion as to the ownership of the caps, and their right to take them, the boys picked up all they could find, hung them on stick, of which each took end, and carried them home.
- After crossing the footbridge, they met a little girl named Jessie Adrian, less than 9 years old, and all three went to the home of the boy Manuel. The boys then made a series of experiments with the caps. They trust the ends of the wires into an electric light socket and obtained no result. They next tried to break the cap with a stone and failed. Manuel looked for a hammer, but could not find one. Then they opened one of the caps with a knife, and finding that it was filled with a yellowish substance they got matches, and David held the cap while Manuel applied a lighted match to the contents. An explosion followed, causing more or less serious injuries to all three. Jessie, who when the boys proposed putting a match to the contents of the cap, became frightened and started to run away, received a slight cut in the neck. Manuel had his hand burned and wounded, and David was struck in the face by several particles of the metal capsule, one of which injured his right eye to such an extent as to the necessitate its removal by the surgeons who were called in to care for his wounds.
- Two years before the accident, plaintiff spent four months at sea, as a cabin boy on one of the interisland transports. Later he took up work in his father's office, learning mechanical drawing and mechanical engineering. About a month after his accident he obtained employment as a mechanical draftsman and continued in that employment for six months at a salary of P2.50 a day; and it appears that he was a boy of more than average intelligence, taller and more mature both mentally and physically than most boys of fifteen.

ISSUE & ARGUMENTS

W/N Manila Electric is liable for damages to the petitioners

HOLDING & RATIO DECIDENDI

- No.The immediate cause of the explosion, the accident which resulted in plaintiff's injury, was in his own act in putting a match to the contents of the cap, and that having "contributed to the principal occurrence, as one of its determining factors, he can not recover."
- In the case at bar, plaintiff at the time of the accident was a well-grown youth of 15, more mature both mentally and physically than the average boy of his age; he had been to sea as a cabin boy; was able to earn P2.50 a day as a mechanical draftsman thirty days after the injury was incurred; and the record discloses throughout that he was exceptionally well qualified to take care of himself. The evidence of record leaves no room for doubt that, despite his denials on the witness stand, he well knew the explosive character of the cap with which he was amusing himself. The series of experiments made by him in his attempt to produce an explosion, as described by the little girl who was present, admit of no other explanation. His attempt to discharge the cap by the use of electricity, followed by his efforts to explode it with a stone or a hammer, and the final success of his endeavors brought about by the application of a match to the contents of the caps, show clearly that he knew what he was about. Nor can there be any reasonable doubt that he had reason to anticipate that the explosion might be dangerous, in view of the fact that the little girl, 9 years of age, who was within him at the time when he put the match to the contents of the cap, became frightened and ran away.
- True, he may not have known and probably did not know the precise nature of the explosion which might be expected from the ignition of the contents of the cap, and of course he did not anticipate the resultant injuries which he incurred; but he well knew that a more or less dangerous explosion might be expected from his act, and yet he willfully, recklessly, and knowingly produced the explosion. It would be going far to say that "according to his maturity and capacity" he exercised such and "care and caution" as might reasonably be required of him, or that defendant or anyone else should be held civilly responsible for injuries incurred by him under such circumstances.
- The law fixes no arbitrary age at which a minor can be said to have the necessary capacity to understand and appreciate the nature and consequences of his own acts, so as to make it negligence on his part to fail to exercise due care and precaution in the commission of such acts; and indeed it would be impracticable and perhaps impossible so to do, for in the very nature of things

the question of negligence necessarily depends on the ability of the minor to understand the character of his own acts and their consequences; and the age at which a minor can be said to have such ability will necessarily depends of his own acts and their consequences; and at the age at which a minor can be said to have such ability will necessarily vary in accordance with the varying nature of the infinite variety of acts which may be done by him.

100 Phoenix Construction v IAC | Feliciano
G.R. No. L-65295 March 10, 1987 |

FACTS

- Early morning of November 15, 1975 at about 1:30am, Leonardo Dionisio was on his way home from a cocktails-and-dinner meeting with his boss. During the cocktails phase of the evening, Dionisio had taken "a shot or two" of liquor. Dionisio was driving his Volkswagen car and had just crossed the intersection of General Lacuna and General Santos Streets at Bangkal, Makati, not far from his home, and was proceeding down General Lacuna Street, when his car headlights (in his allegation) suddenly failed. He switched his headlights on "bright" and thereupon he saw a Ford dump truck looming some 2-1/2 meters away from his car. The dump truck, owned by and registered in the name of petitioner Phoenix Construction Inc., was parked on the right hand side of General Lacuna Street facing the oncoming traffic. The dump truck was parked askew (not parallel to the street curb) in such a manner as to stick out onto the street, partly blocking the way of oncoming traffic. There were no lights nor any so-called "early warning" reflector devices set anywhere near the dump truck, front or rear. The dump truck had earlier that evening been driven home by petitioner Armando U. Carbonel, its regular driver, with the permission of his employer Phoenix, in view of work scheduled to be carried out early the following morning, Dionisio claimed that he tried to avoid a collision by swerving his car to the left but it was too late and his car smashed into the dump truck. As a result of the collision, Dionisio suffered some physical injuries including some permanent facial scars, a "nervous breakdown" and loss of two gold bridge dentures.
- Dionisio commenced an action for damages in the Court of First Instance of Pampanga which rendered judgment in his favor.
- On appeal to IAC, the decision was affirmed with modification as to the amount of damages awarded.

ISSUES & ARGUMENTS

W/N Phoenix should be held liable for the damage incurred by Dionisio, notwithstanding the allegation that the latter had no curfew pass and thus drove speedily with his headlights off?

HOLDING & RATIO DECIDENDI

YES. The collision between the dump truck and the Dionisio's car would in all probability not have occurred had the dump truck not been parked askew without any warning lights or reflector devices. The improper parking of the dump truck created an unreasonable risk of injury for anyone driving down General Lacuna Street and for having so created this risk, the truck driver must be held responsible.

- Dionisio's negligence was not of an independent and overpowering nature as to cut, as it were, the chain of causation in fact between the improper parking of the dump truck and the accident, nor to sever the juris vinculum of liability.
- We hold that Dionisio's negligence was "only contributory," that the "immediate and proximate cause" of the injury remained the truck driver's "lack of due care" and that consequently respondent Dionisio may recover damages though such damages are subject to mitigation by the courts (Art. 2179 Civil Code of the Philippines)
- Petitioner Carbonel's proven negligence creates a presumption of negligence on the part of his employer Phoenix in supervising its employees properly and adequately. The respondent appellate court in effect found, correctly in our opinion, that Phoenix was not able to overcome this presumption of negligence.
- Turning to the award of damages and taking into account the comparative negligence of private respondent Dionisio on one hand and petitioners Carbonel and Phoenix upon the other hand, we believe that the demands of substantial justice are satisfied by allocating most of the damages on a **20-80 ratio**. Thus, 20% of the damages awarded by the respondent appellate court, except the award of P10,000.00 as exemplary damages and P4,500.00 as attorney's fees and costs, shall be borne by private respondent Dionisio; only the balance of 80% needs to be paid by petitioners Carbonel and Phoenix who shall be solidarity liable therefor to the former. The award of exemplary damages and attorney's fees and costs shall be borne exclusively by the petitioners. Phoenix is of course entitled to reimbursement from Carbonel. We see no sufficient reason for disturbing the reduced award of damages made by the respondent appellate court.

TEL VIRTUDEZ

101 LBC Air Cargo vs. CA

FACTS

A certain Rogelio Monterola was riding his motorcycle along a dusty road when it collided with a cargo van owned by LBC Air Cargo driven by Jaime Tano Jr. coming from an opposite direction. On board the van was manager of LBC and his son. The van originally gave way to two almost-racing cars which clouded the way of Tano, who then, not waiting for the dustiness to subside turned sudden at the sharp curve causing the mishap with the motorcycle, killing Monterola. Heirs of the latter filed for Homicide through reckless imprudence and damages were sought from LBC, the driver and the manager.

ISSUE & ARGUMENTS

Whether LBC, Tano and the Manager are liable for damages.

HOLDING & RATIO DECIDENDI

Yes. But the manager is not, there being no employer-employee relationship between him and the driver. The proximate cause of the incident was Tano's negligence of not letting the dustiness subside and suddenly turning in the curve. LBC is liable as employer to Tano. However Monterola contributed to the negligence because he was driving speedily and too closely behind the vehicle he was following hence damages are reduced by 20%.

102 Jarco Marketing Corp vs. CA and Aguilars | Villa-Real
GR. No.- 129792, December 21, 1999 | 321 SCRA 375

FACTS

- Petitioner Jarco Marketing Corp is the owner of Syvel's Department Store. Petitioners Kong, Tiope and Panelo are the store's branch manager, operations manager and supervisor, respectively. Private respondents are spouses and the parents of Zhieneth Aguilar.
- Criselda (mom) and Zhieneth were at the 2nd floor of Syvel's Department Store. Criselda was signing her credit card slip at the payment and verification counter when she felt a sudden gust of wind and heard a loud thud. She looked behind her and saw her daughter on the floor, her young body pinned by the bulk of the store's gift-wrapping counter/structure. Zhieneth was crying and screaming for help.
- With the assistance of people around, Zhieneth was retrieved and rushed to the Makati Med where she was operated on. The next day, she lost her speech and 13 days thereafter, passed away.
- After the burial of Zhieneth, her parents demanded reimbursment of the hospitalization, medical bills and wake and funeral expenses, which they had incurred from petitioners. Upon petitioners' refusal, the parents filed a complaint for damages.
- Trial court absolved petitioners. It ruled that the proximate cause of the fall of the counter on Zhieneth was her act of clinging to it. Furthermore, Criselda's negligence contributed to her daughter's accident. Basically, the court reasoned that the counter was situated at the end or corner of the 2nd floor as a precautionary measure and hence it could not be considered as an attractive nuisance. The court added that the counter has been in existence for 15 years and its structure safe and well-balanced.
- Court of Appeals reversed. It found that the petitioners were negligent in maintaining a structurally dangerous counter. (The counter was shaped like an inverted L with a top wider than the base. It was top heavy and the weight of the upper portion was neither evenly distributed nor supported by its narrow base. Thus the counter was defective, unstable and dangerous.) Moreover, Zhieneth who was below 7 years old at the time of the incident was absolutely incapable of negligence since a child under 9 could not be held liable even for an intentional wrong.

ISSUES & ARGUMENTS

- **W/N death of Zhieneth was accidental or attributable to negligence.**
- **In case of a finding of negligence, whether attributable to private respondents for maintaining a defective counter or to Criselda and Zhieneth for failing to exercise due and reasonable care while inside the store premises.**

HOLDING & RATIO DECIDENDI

TRAGEDY, WHICH BEFELL ZHIENETH WAS NO ACCIDENT AND THAT HER HEATH COULD ONLY BE ATTRIBUTED TO NEGLIGENCE.

- Accident and negligence are intrinsically contradictory; one cannot exist with the other. Accident occurs when the person concerned is exercising ordinary care, which is not caused by fault of any person and which could not have been prevented by any means suggested by common prudence.
- The test in determining the existence of negligence is enunciated in *Picart vs. Smith*, thus: *Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence.*

PETITIONER NEGLIGENT.

- According to the testimony of Gerardo Gonzales, a former gift-wrapper, who was at the scene of the incident: While in the emergency room the doctor asked the child *what did you do* to which the child replied *nothing, I did not come near the counter and the counter just fell on me.*
- Moreover, Ramon Guevarra, another former employee, testified to the effect that the counter needed some nailing because it was shaky, but that it was not attended to.
- Undoubtedly, petitioner Panelo and another store supervisor knew the danger of the unstable counter yet did not remedy the situation.
- Anent the negligence imputed to Zhieneth, the conclusive presumption that favors children below 9 years old in that they are incapable of contributory negligence, applies (criminal cases- conclusively presumed to have acted without discernment).
- Assuming Zhieneth committed contributory negligence when she climbed the counter, no injury should have occurred if petitioners theory that the counter was stable and sturdy was true. Indeed, the physical analysis of the counter reveal otherwise, i.e. it was not durable after all.
- Criselda should likewise be absolved from contributory negligence. To be able to sign her credit card, it was reasonable for Criselda to momentarily release her child's hand.

Petition DENIED. Court of Appeals' decision AFFIRMED.

DANI BOLONG

103 Illusorio vs. CA| Quisimbing
G.R. No. 139130 November 27, 2002 |SCRA

FACTS

- Petitioner **Ramon Illusorio** is a prominent businessman who was the Managing Director of Multinational Investment Bancorporation and the Chairman and/or President of several other corporations. He was a depositor in good standing of respondent bank, the **Manila Banking Corporation (MBC).**
- As he was then running about 20 corporations, and was going out of the country a number of times, **Illusorio** entrusted to his secretary, **Katherine E. Eugenio**, his credit cards and his checkbook with blank checks. It was also Eugenio who verified and reconciled the statements of said checking account.
- Between the dates September 5, 1980 and January 23, 1981, Eugenio was able to encash and deposit to her personal account about seventeen (17) checks drawn against the account of the **Illusorio** at the MBC, with an aggregate amount of ₱119,634.34. **Illusorio** did not bother to check his statement of account until a business partner apprised him that he saw Eugenio use his credit cards.
- **Illusorio** fired Eugenio immediately, and instituted a criminal action against her for estafa thru falsification before the Office of the Provincial Fiscal of Rizal. MBC, through an affidavit executed by its employee, Mr. Dante Razon, also lodged a complaint for estafa thru falsification of commercial documents against Eugenio on the basis of petitioner's statement that his signatures in the checks were forged.
- **Illusorio** then requested the MBC to credit back and restore to its account the value of the checks which were wrongfully encashed but **MBC** refused.
- TC and CA ruled in favor of **MBC**.

ISSUES & ARGUMENTS

W/N Illusorio has a cause of action against MBC.
W/N MBC, in filing an estafa case against Eugenio, is barred from raising the defense that the fact of forgery was not established.

Illusorio:

- **MBC** is liable for damages for its negligence in failing to detect the discrepant checks. He adds that as a general rule a bank which has obtained possession of a check upon an unauthorized or forged endorsement of the payee's signature and which collects the amount of the check from the drawee is liable for the proceeds thereof to the payee.
- **Illusorio** invokes the doctrine of estoppel, saying that having itself instituted a forgery case against Eugenio, **MBC** is now estopped from asserting that the fact of forgery was never proven.

MBC:

- Section 23 of the Negotiable Instruments Law is inapplicable, considering that the fact of forgery was never proven.
- The bank negates **Illusorio's** claim of estoppel.

HOLDING & RATIO DECIDENDI

1.) No. Illusorio does not have a cause of action against MBC.

- To be entitled to damages, **Illusorio** has the burden of proving negligence on the part of **MBC** for failure to detect the discrepancy in the signatures on the checks. It is incumbent upon **Illusorio** to establish the fact of forgery. Curiously though, he failed to submit additional specimen signatures as requested by the NBI from which to draw a conclusive finding regarding forgery.
- **Illusorio's** contention that **MBC** was remiss in the exercise of its duty as drawee lacks factual basis. Consistently, the CA and the RTC found that **MBC** exercised due diligence in cashing the checks.
- Of course it is possible that the verifiers of **MBC** might have made a mistake in failing to detect any forgery -- if indeed there was. However, a mistake is not equivalent to negligence if they were honest mistakes and all precautions were taken.
- **It was Illusorio, not MBC, who was negligent[2].** In the present case, it appears that **Illusorio** accorded his secretary unusual degree of trust and unrestricted access to his credit cards, passbooks, check books, bank statements, including custody and possession of cancelled checks and reconciliation of accounts. What is worse, whenever the **bank** verifiers call the office of **Illusorio**, it is the same secretary who answers and confirms the checks. Moreover, while the **bank** was sending him the monthly Statements of Accounts, he was not personally checking the same
- **Illusorio's failure to examine his bank statements appears as the proximate cause of his own damage[3].** **Illusorio** had sufficient opportunity to prevent or detect any misappropriation by his secretary had he only reviewed the status of his accounts based on the bank statements sent to him regularly. In view of Article 2179 of the New Civil Code, when the plaintiff's own negligence was the immediate and proximate cause of his injury, no recovery could be had for damages.
- **Illusorio** further contends that under Section 23 of the Negotiable Instruments Law a forged check is inoperative, and that **MBC** had no authority to pay the forged checks. However, **Illusorio** is precluded from setting up the forgery,

[2] Negligence is the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would do.
[3] Proximate cause is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.

assuming there is forgery, due to his own negligence in entrusting to his secretary his credit cards and checkbook including the verification of his statements of account.

2.) No. The fact that MBC had filed a case for estafa against Eugenio would not estop it from asserting the fact that forgery has not been clearly established.

- In a criminal action, the State is the plaintiff, for the commission of a felony is an offense against the State. Thus, under Section 2, Rule 110 of the Rules of Court the complaint or information filed in court is required to be brought in the name of the "People of the Philippines."
- The filing of the estafa case by **MBC** was a last ditch effort to salvage its ties with **Illusorio** as a valuable client, by bolstering the estafa case which he filed against his secretary.

104 Gan vs. CA | Fernan, C.J.:
G.R. No. L-44264, Sept. 19, 1988 | 165 SCRA 378

FACTS

- July 4, 1972 (8am): Hedy Gan was driving a Toyota Crown Sedan along North Bay Boulevard, Tondo, Manila
- While driving two vehicles, a truck and a jeepney, are parked at the right side of the road
- While driving, there was a vehicle coming from the opposite direction and another one who overtakes the first vehicle
- To avoid a head-on collision, the Gan served to the right and as a consequence:
    - The front bumper of the Toyota Crown Sedan hit an old man pedestrian (Isidoro Casino) ~ DOA to Jose Reyes Memorial Hospital
        - Casino was pinned against the rear of the parked jeepney and the jeepney moved forward hitting the truck
    - Sedan was damaged on its front
    - The jeep suffered damages
    - The truck sustained scratches
- Gan was convicted of Homicide thru Reckless Imprudence
- On appeal, the conviction was modified to Homicide thru Simple Imprudence
- Petitioner now appeals to the said ruling

ISSUES & ARGUMENTS

W/N Gan is criminally liable for the accident

HOLDING & RATIO DECIDENDI

NO

- TEST for determining negligence:
    - Would a prudent man in the position of the person to whom negligence is attributed foresee harm to the person injured as a reasonable consequence of the course about to be pursued?
    - If so, the law imposes the duty on the doer to take precaution against its mischievous results and the failure to do so constitutes negligence
- However a corollary rule must be understood, that is the 'Emergency Rule' which provides that:
    - One who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence
    - It presupposes sufficient time to analyze the situation and to ponder on which of the different courses of action would result to the least possible harm to herself and to others
- The CA, in its decision, said that Gan should have stepped on the brakes when she saw the car going in the opposite direction. And that she should not only have swerved the car she was driving to the right but should have also tried to stop or lessen her speed so that she would not bump into the pedestrian.
- The SC held that the appellate court is asking too much from a mere mortal like the petitioner who in the blink of an eye had to exercise her best judgment to extricate herself from a difficult and dangerous situation caused by the driver of the overtaking vehicle.
    - The danger confronting Gan was real and imminent, threatening her very existence
    - She had no opportunity for rational thinking but only enough time to head the very powerful instinct of self-preservation

WHEREFORE, Gan is acquitted.

CEO OCAMPO

105 Estacion vs. Bernardo| Austria-Martinez
G.R. No. 144723, February 27, 2006 | 483 SCRA 222

FACTS

- October 16, 1982, afternoon, Respondent Noe was going home to Dumaguete from Cebu. He boarded a Ford Fiera jeepney driven by Geminiano Quinquillera (Quinquillera) and owned by Cecilia Bandoquillo (Bandoquillo).
- He was seated on the extension seat at the center of the fiera.
- From San Jose, an old woman wanted to ride so Noe offered his seat and hung/stood on the left rear carrier of the vehicle (*sumabit*)
- The fiera slowed down and stopped to pick up more passengers.
- Suddenly, an Isuzu cargo truck owned by petitioner Estacion and driven by Gerosano, which was travelling in the same direction, hit the rear portion of the jeepney.
- The fiera crushed Noe's legs and feet, he was brought to Siliman Univ Med Center where his lower left leg was amputated.
- Police report showed that there were 10 more who were injured by the accident.
- Feb 18, 1993, Now and his guardian ad litem Arlie Bernardo filed w the RTC of Dumaguete a complaint for damages arising from quasi-delict against petitioner as owner of the truck and his driver.
- RTC ruled that Gerosano was negligent and it was the direct and proximate cause of the incident. It also held petitioner liable as employer.
- CA affirmed in toto the RTC.
-

ISSUES & ARGUMENTS

- **W/N Petitioner is liable?**
- **W/N Noe was guilty of contributory negligence?**

HOLDING & RATIO DECIDENDI

YES.

- From the way the truck reacted to the application of the brakes, it can be shown that Gerosano was driving at a fast speed because the brakes skidded a lengthy 48 feet as shown in he sketch of the police.
- There was also only one tire mark which meant that the brakes of the truck were not aligned properly, otherwise, there would have been 2 tire marks.
- It is the negligent act of petitioner's driver of driving the cargo truck at a fast speed coupled with faulty brakes which was the proximate cause of respondent Noe's injury.
- As employer of Gerosano, petitioner is primarily and solidarily liable for the quasi-delict committed by the former. He is presumed to be negligent in the selection of his employee which petitioner failed to overcome.
- He failed to show that he examined driver Gerosano as to his qualifications, experience and records.

YES. NOE IS GUILTY OF CONTRIBUTORY NEGLIGENCE BY STANDING AT THE REAR PORTION OF THE JEEP.

- Contributory Negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.
- Noe's act of standing on the left rear portion showed his lack of ordinary care and foresight that such act could cause him harm or put his life in danger.
- To hold a person as having contributed to his injuries, it must be shown that he performed an act that brought about his injuries in disregard of warning or signs of an impending danger to health and body.
- Quinquillera (jeepney driver) was also negligent because there was overloading which is in violation of traffic rules and regulations. He also allowed Noe to stand on the left rear of his jeep.
- There is also a presumption of negligence on the part of the owner of the jeep, Bandoquillo, which she did not rebut.
- 20-80 ratio distribution of damages.

PAT FERNANDEZ

106 Cadiente vs. Macas | Quisumbing
G.R. No. 161946, November 14, 2008 |

FACTS

- At the intersection of Buhangin and San Vicente Streets, respondent Bithuel Macas, a 15-year old high school student, was standing on the shoulder of the road.
- He was bumped and ran over by a Ford Fiera, driven by Chona Cimafranca. Cimafranca then rushed Macas to the Davao Medical Center.
- Mathas suffered severe muscular and major vessel injuries in both thighs and other parts of his legs. In order to save his life, the surgeon had to amputate both legs up to the groins.
- Cimafranca had since absconded and disappeared. However, records showed that the Ford Fiera was registered in the name of Atty. Medardo Cadiente.
- Cadiente claimed that when the accident happened, he was no longer the owner of the said Ford Fiera. He allegedly sold it to Engr. Jalipa.
- Macas' father filed a complaint for torts and damages against Cimafranca and Cadiente.
- Trial court ruled in favor of Macas. Affirmed by the CA.

ISSUES & ARGUMENTS

W/N there was contributory negligence on the part of Macas?

HOLDING & RATIO DECIDENDI

NO.

- The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full, but must proportionately bear the consequences of his own negligence. The defendant is thus held liable only for the damages actually caused by his negligence.
- In this case, when the accident happened, Macas was standing on the shoulder, which was the uncemented portion of the highway. The shoulder was intended for pedestrian use. Only stationary vehicles, such as those loading or unloading passengers may use the shoulder. Running vehicles are not supposed to pass through the said uncemented portion of the highway.
- However, the Ford Fiera in this case, without so much as slowing down, took off from the cemented part of the highway, inexplicably swerved to the shoulder, and recklessly bumped and ran over an innocent victim. Macas was just where he should be when the unfortunate event transpired.

CADIENTE STILL LIABLE.

- Since the Ford Fiera was still registered in the petitioner's name at the time the misfortune took place, Cadiente cannot escape liability for the permanent injury it caused the respondent.

107 NPC v Heirs of Casionan
GR 165969, November 27 2008

FACTS

- A trail leading to Sangilo, Itogon, existed in Dalicno and this trail was regularly used by members of the community. Sometime in the 1970's, petitioner NPC installed high-tension electrical transmission lines of 69 kilovolts (KV) traversing the trail.
    - Eventually, some of the transmission lines sagged and dangled reducing their distance from the ground to only about eight to ten feet. This posed a great threat to passersby who were exposed to the danger of electrocution especially during the wet season.
- As early as 1991, the leaders of Ampucao, Itogon made verbal and written requests for NPC to institute safety measures to protect users of the trail from their high tension wires. On June 18, 1991 and February 11, 1993, Pablo and Pedro Ngaosie, elders of the community, wrote Engr. Paterno Banayot, Area Manager of NPC, to make immediate and appropriate repairs of the high tension wires.
- On June 27, 1995, Noble and his co-pocket miner, Melchor Jimenez, were at Dalicno. They cut two bamboo poles for their pocket mining. One was 18 to 19 feet long and the other was 14 feet long. Each man carried one pole horizontally on his shoulder
- As Noble was going uphill and turning left on a curve, the tip of the bamboo pole he was carrying touched one of the dangling high tension wires.
    - **Melchor, who was walking behind him, narrated that he heard a buzzing sound when the tip of Noble's pole touched the wire for only about one or two seconds. Thereafter, he saw Noble fall to the ground. Melchor rushed to Noble and shook him but the latter was already dead. Their co-workers heard Melchor's shout for help and together they brought the body of Noble to their camp.**
- Consequently, the heirs of the deceased Noble filed a claim for damages against the NPC before the Regional Trial Court (RTC) in Benguet.

ISSUES & ARGUMENTS

Was there contributory negligence on the part of the victim?

HOLDING & RATIO DECIDENDI

Yes

- The sagging high tension wires were an accident waiting to happen. As established during trial, the lines were sagging around 8 to 10 feet in violation of the required distance of 18 to 20 feet. If the transmission lines were properly maintained by petitioner, the bamboo pole carried by Noble would not have touched the wires. He would not have been electrocuted.
- Negligence is the failure to observe, for the protection of the interest of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury. On the other hand, **contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard which he is required to conform for his own protection**.
    - The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence.[15] If indeed there was contributory negligence on the part of the victim, then it is proper to reduce the award for damages.
- In this case, the trail where Noble was electrocuted was regularly used by members of the community. There were no warning signs to inform passersby of the impending danger to their lives should they accidentally touch the high tension wires. Also, the trail was the only viable way from Dalicon to Itogon. Hence, Noble should not be faulted for simply doing what was ordinary routine to other workers in the area.

108 Afialda v. Hisole | Reyes
No. L–2075 November 29, 1949 | 85 Phil. 67

FACTS

- Spouses Hisole hired Loreto Afialda as caretaker of the former's carabaos at a fixed compensation.
- While Loreto was tending the carabaos, he was gored by one of them and died as a result. Loreto's elder sister, Margarita Afialda, now sues spouses Hisole as Loreto's dependant and heir.

ISSUES & ARGUMENTS

W/N the spouses Hisole are liable for the death of their caretaker, Loreto Afialda.

HOLDING & RATIO DECIDENDI

NO, THEY ARE NOT LIABLE.

- The animal was in the custody and under the control of the caretaker, who was paid for his work as such. Obviously, it was the caretaker's business to try to prevent the animal from causing injury or damage to anyone, including himself. And being injured by the animal under those circumstances was one of the risks of the occupation which he had voluntarily assumed and for which he must take the consequences.

109 Ong vs. Metropolitan Water District | Bautista Angelo
L-7644 August 29, 1958 |

FACTS

- Metropolitan owns 3 swimming pools at its filters in Balara, Quezon City
- It charges the public a certain fee if such wanted to use its pools
- Dominador Ong, 14 years of age, son of petitioners, went to the pools along with his 2 brothers
- He stayed in the shallow pool, but then he told his brothers that he would get something to drink. His brothers left him and went to the Deep pool
- Around 4pm that day, a bather reported that one person was swimming to long under water
- Upon hearing this, the lifeguard on duty dove into the pool to retrieve Ong's lifeless body. Applying first aid, the lifeguard tried to revive the boy.
- Soon after, male nurse Armando Rule came to render assistance, followed by sanitary inspector Iluminado Vicente who, after being called by phone from the clinic by one of the security guards, boarded a jeep carrying with him the resuscitator and a medicine kit, and upon arriving he injected the boy with camphorated oil. After the injection, Vicente left on a jeep in order to fetch Dr. Ayuyao from the University of the Philippines. Meanwhile, Abaño continued the artificial manual respiration, and when this failed to revive him, they applied the resuscitator until the two oxygen tanks were exhausted
- Investigation was concluded and the cause of death is asphyxia by submersion in water (pagkalunod)
- The parents of Ong bring this action for damages against Metropolitan, alleging negligence on the selection and supervision of its employees and if not negligent, they had the last clear chance to revive Ong.
- It is to be noted that Metropolitan had complete safety measures in place: they had a male nurse, six lifeguards, ring buoys, toy roof, towing line, saving kit and a resuscitator. There is also a sanitary inspector who is in charge of a clinic established for the benefit of the patrons. Defendant has also on display in a conspicuous place certain rules and regulations governing the use of the pools, one of which prohibits the swimming in the pool alone or without any attendant. Although defendant does not maintain a full- time physician in the swimming pool compound, it has however a nurse and a sanitary inspector ready to administer injections or operate the oxygen resuscitator if the need should arise

ISSUES & ARGUMENTS

- **W/N Metropolitan is liable to the Ongs for its negligence**
- **W/N the last clear chance doctrine may be invoked in this case**

HOLDING & RATIO DECIDENDI

No. Metropolitan is not negligent

- Metropolitan has taken all necessary precautions to avoid danger to the lives of its patrons. It has been shown that the swimming pools of appellee are provided with a ring buoy, toy roof, towing line, oxygen resuscitator and a first aid medicine kit. The bottom of the pools is painted with black colors so as to insure clear visibility. There is on display in a conspicuous place within the area certain rules and regulations governing the use of the pools. Appellee employs six lifeguards who are all trained as they had taken a course for that purpose and were issued certificates of proficiency. These lifeguards work on schedule prepared by their chief and arranged in such a way as to have two guards at a time on duty to look after the safety of the bathers. There is a male nurse and a sanitary inspector with a clinic provided with oxygen resuscitator. And there are security guards who are available always in case of emergency.

- The record also shows that when the body of minor Ong was retrieved from the bottom of the pool, the employees of appellee did everything possible to bring him back to life. When they found that the pulse of the boy was abnormal, the inspector immediately injected him with camphorated oil. When the manual artificial respiration proved ineffective they applied the oxygen resuscitator until its contents were exhausted. And while all these efforts were being made, they sent for Dr. Ayuyao from the University of the Philippines who however came late because upon examining the body found him to be already dead. All of the foregoing shows that appellee has done what is humanly possible under the circumstances to restore life to minor Ong and for that reason it is unfair to hold it liable for his death

The Last Clear Chance Doctrine is inapplicable in this case

- The record does not show how minor Ong came into the big swimming pool. The only thing the record discloses is that minor Ong informed his elder brothers that he was going to the locker room to drink a bottle of coke but that from that time on nobody knew what happened to him until his lifeless body was retrieved. The doctrine of last clear chance simply means that the negligence of a claimant does not preclude a recovery for the negligence of defendant where it appears that the latter, by exercising reasonable care and prudence, might have avoided injurious consequences to claimant notwithstanding his negligence
- Since it is not known how minor Ong came into the big swimming pool and it being apparent that he went there without any companion in violation of one of the regulations of appellee as regards the use of the pools, and it appearing that lifeguard Abaño responded to the call for help as soon as his attention was called to it and immediately after retrieving the body all efforts at the disposal of appellee had been put into play in order to bring him back to life, it is clear that there is no room for the application of the doctrine now invoked by appellants to impute liability to appellee.

GINO CAPATI

110 Co. v. CA
G.R. 124922 June 22, 1998

FACTS

- On July 18, 1990, petitioner entrusted his Nissan pick-up car 1988 model to private respondent - which is engaged in the sale, distribution and repair of motor vehicles for job repair services and supply of parts.
- Private respondent undertook to return the vehicle on July 21, 1990 fully serviced and supplied in accordance with the job contract. After petitioner paid in full the repair bill in the amount of ₱1,397.00 private respondent issued to him a gate pass for the release of the vehicle on said date. But came July 21, 1990, the latter could not release the vehicle as its battery was weak and was not yet replaced. Left with no option, petitioner himself bought a new battery nearby and delivered it to private respondent for installation on the same day. However, the battery was not installed and the delivery of the car was rescheduled to July 24, 1990 or three (3) days later. When petitioner sought to reclaim his car in the afternoon of July 24, 1990, he was told that it was carnapped earlier that morning while being road-tested by private respondent's employee along Pedro Gil and Perez Streets in Paco, Manila. Private respondent said that the incident was reported to the police.
- Having failed to recover his car and its accessories or the value thereof, petitioner filed a suit for damages against private respondent anchoring his claim on the latter's alleged negligence. For its part, private respondent contended that it has no liability because the car was lost as a result of a fortuitous event, the car napping.

ISSUE & ARGUMENTS

Whether a repair shop can be held liable for the loss of a customer's vehicle while the same is in its custody for repair or other job services?

HOLDING & RATIO DECIDENDI

It is a not a defense for a repair shop of motor vehicles to escape liability simply because the damage or loss of a thing lawfully placed in its possession was due to carnapping. Carnapping *per se* cannot be considered as a fortuitous event. The fact that a thing was unlawfully and forcefully taken from another's rightful possession, as in cases of carnapping, does not automatically give rise to a fortuitous event. To be considered as such, carnapping entails more than the mere forceful taking of another's property. It must be proved and established that the event was an act of God or was done solely by third parties and that neither the claimant nor the person alleged to be negligent has any participation. In accordance with the Rules of evidence, the burden of proving that the loss was due to a fortuitous event rests on him who invokes it which in this case is the private respondent. However, other than the police report of the alleged carnapping incident, no other evidence was presented by private respondent to the effect that the incident was not due to its fault. A police report of an alleged crime, to which only private respondent is privy, does not suffice to established the carnapping. Neither does it prove that there was no fault on the part of private respondent notwithstanding the parties' agreement at the pre-trial that the car was carnapped. Carnapping does not foreclose the possibility of fault or negligence on the part of private respondent.

It must likewise be emphasized that pursuant to Articles 1174 and 1262 of the New Civil Code, liability attaches even if the loss was due to a fortuitous event if "the nature of the obligation requires the assumption of risk". Carnapping is a normal business risk for those engaged in the repair of motor vehicles. For just as the owner is exposed to that risk so is the repair shop since the car was entrusted to it. That is why, repair shops are required to first register with the Department of Trade and Industry (DTI) and to secure an insurance policy for the "shop covering the property entrusted by its customer for repair, service or maintenance" as a pre-requisite for such registration/accreditation. Violation of this statutory duty constitutes negligence *per se*. Having taken custody of the vehicle, private respondent is obliged not only to repair the vehicle but must also provide the customer with some form of security for his property over which he loses immediate control. An owner who cannot exercise the seven (7) *juses* or attributes of ownership the right to possess, to use and enjoy, to abuse or consume, to accessories, to dispose or alienate, to recover or vindicate and to the fruits is a crippled owner. Failure of the repair shop to provide security to a motor vehicle owner would leave the latter at the mercy of the former. Moreover, on the assumption that private respondent's repair business is duly registered, it presupposes that its shop is covered by insurance from which it may recover the loss. If private respondent can recover from its insurer, then it would be unjustly enriched if it will not compensate petitioner to whom no fault can be attributed. Otherwise, if the shop is not registered, then the presumption of negligence applies.

J.C. LERIT

111 Erquiaga v CA | Quisumbing
G.R. No. 124513. October 17, 2001

FACTS

- Honesta Bal is a businesswoman who owned a bookstore. Sometime in May 1989, she was contacted by Manuel Dayandante @ Manny Cruz who offered to buy her land in Pili, Camarines Sur. He told Honesta that the company he represented was interested in purchasing her property.
- Honesta's daughter, Josephine Tapang, received a telegram from Dayandante informing Honesta that the sale had been approved and that he would arrive with the inspection team.
- Honesta received a call from Dayandante. Her daughter and she met Dayandante and a certain Lawas @ Rodolfo Sevilla at the Aristocrat Hotel. Dayandante and Lawas said they were field purchasing representative and field purchasing head, respectively, of the Taiwanese Marine Products. They persuaded Honesta to purchase cans of a marine preservative which, could be bought for P1,500 each from a certain peddler. In turn, they would buy these cans from her at P2,000 each.
- The following day, Glenn Orosco, one of herein petitioners, appeared at Honesta's store and introduced himself as an agent, a.k.a. "Rey," who sold said marine preservative. Like a fish going after a bait, Honesta purchased a can which she sold to Dayandante for P1,900. The following day, Orosco brought five more cans which Honesta bought and eventually sold to Lawas. It was during this transaction that petitioner Roberto Erquiaga, a.k.a. "Mr. Guerrerro," was introduced to Honesta to ascertain whether the cans of marine preservative were genuine or not.
- Subsequently, Orosco delivered 215 cans to Honesta. Encouraged by the huge profits from her previous transactions, she purchased all 215 cans for P322,500. She borrowed the money from a Jose Bichara at 10% interest on the advice of Erquiaga who lent her P5,000.00 as deposit or earnest money and who promised to shoulder the 10% interest of her loan. Soon after the payment, Lawas, Dayandante, Erquiaga, and Orosco vanished. Realizing that she was conned, Honesta reported the incident to the National Bureau of Investigation (NBI) which, upon examination of the contents of the cans, discovered that these were nothing more than starch. The NBI likewise uncovered that the modus operandi and sting operation perpetrated on Honesta had been going on in other parts of the country, in particular, Cebu, Batangas, Dagupan, Baguio and Olongapo.

ISSUES & ARGUMENTS

W/N Honesta assumed risk of buying the goods

- Petitioners suggest that damages should not be awarded because Honesta was forewarned to buy at her own risk and because the doctrine of caveat emptor placed her on guard.

HOLDING & RATIO DECIDENDI

THE DOCTRINE OF CAVEAT EMPTOR DOES NOT APPLY.

Petitioners apparently misapply the doctrine. A basic premise of the doctrine of "Let the buyer beware" is that there be no false representation by the seller. As discussed earlier, petitioners' scheme involves a well-planned scenario to entice the buyer to pay for the bogus marine preservative. Even the initial buy-and-sell transactions involving one and then five cans were intended for confidence building before the big transaction when they clinched the deal involving P322,500. Thereafter, they vanished from the scene. These circumstances clearly show that petitioners' Orosco and Erquiaga were in on the plot to defraud Honesta. Honesta could hardly be blamed for not examining the goods. She was made to depend on petitioners' supposed expertise. She said she did not open the cans as there was a label in each with a warning that the seal should not be broken. That Honesta Bal thought the buy-and-sell business would result in a profit for her is no indictment of her good faith in dealing with petitioners. The ancient defense of caveat emptor belongs to a by-gone age, and has no place in contemporary business ethics.

It is not true that Honesta did not suffer any damage because she merely borrowed the money, and that she showed no proof that she issued a check to pay said debt.The prosecution clearly showed that Bichara had sent a demand letter to Honesta asking for payment. Honesta had borrowed P322,500 from Bichara for which she assuredly must repay. This constitutes business loses to her and, in our view, actual damages as contemplated under Article 315, par. 2 (a).

Given the facts established in this case, we are convinced that estafa had been consummated by petitioners who had conspired with each other, and the guilt of petitioners had been adequately proved beyond reasonable doubt.

112 Picart vs. Smith | Street
March 15, 1918 | 37 Phil 809

FACTS

- Amando Picart seeks to recover from the defendant Frank Smith the sum of Php 31,100 as damages alleged to have been caused by an automobile driven by Smith. The incident happened on Dec 12, 1912, at the Carlatan Bridge, San Fernando, La Union.
- Picart was riding on his pony aver the said bridge. Before he had gotten half way across, Smith approached from the opposite direction driving his vehicle at 10 to 12 miles per hour.
- Smith blew his horn to give warning as he observed that the man was not observing rules of the road. Smith continued his course and made two more blasts.
- Picart was perturbed by the rapidity of the approach that he pulled his pony to the right side of the railing.
- As the automobile approached, Smith guided the automobile to its left, that being the proper side of the road for the machine.
- Smith noticed that the pony was not frightened so he continued without diminution of speed.
- When he learned that there was no possibility for the pony to go on the other side, Smith drove his car to the right to avoid hitting the pony, but in so doing the vehicle passed in a close proximity to the horse that it became frightened and turned its belly across the bridge with its head towards the railing.
- The horse was struck on the hock of the left hind leg by the flange of the car and the limb was broken.
- The horse fell and its rider was thrown off with some violence.
- It showed that the free space where the pony stood between the automobile and the railing was probably less than one half meters.
- The horse died and Picart received contusions which caused temporary unconsciousness and required medical attention for several days.

ISSUES & ARGUMENTS

Whether or not Smith was guilty of negligence that gives rise to a civil obligation to repair the damage done to Picart and his pony.

HOLDING & RATIO DECIDENDI

Yes, the court ruled that Smith that he is liable to pay Picart the amount of P200. The sum is computed to include the value of the horse, medical expenses of the plaintiff, the loss or damage occasioned to articles of his apparel.

- In the nature of things, this change in situation occurred while the automobile was still some distance away. From this moment it was no longer possible for Picart to escape being run down by going to a place for greater safety.
- The control of the situation had then passed entirely to Smith, and it was his duty to bring his car to an immediate stop or seeing no other persons on the bridge, to take the other side and pass sufficiently far away from the horse to avoid collision. There was an appreciable risk that a horse not acquainted with vehicles would react that way.
- The Test to Determine the Existence of Negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used the same situation? If not then he is guilty of negligence.
- The law in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet paterfamilias of the Roman Law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy or negligent in the man of ordinary intelligence and prudence and determines liability by that.
- A prudent man, placed in the position of Smith in the Court's opinion would have recognized that the course which he was pursuing was fraught with risk and would therefore have foreseen harm to the horse and the rider as a reasonable consequence of that course. (DOCTRINE OF LAST CLEAR CHANCE)

113 Bustamante, et al v. CA, Del Pilar, Montesiano | Medialdea
G.R. No. 89880, February 6, 1991

FACTS

- A collision occurred between a gravel and sand truck and a Mazda passenger bus along the national road at Cavite. The front left side portion (barandilla) of the body of the truck sideswiped the left side wall of the passenger bus, ripping off the said wall from the driver's seat to the last rear seat.
- The cargo truck was driven by defendant Montesiano and owned by defendant Del Pilar; while the passenger bus was driven by defendant Susulin. The vehicle was registered in the name of defendant Novelo but was owned and/or operated as a passenger bus jointly by defendants Magtibay and Serrado.
- The cargo truck and the passenger bus were approaching each other, coming from the opposite directions of the highway. While the truck was still about 30 meters away, Susulin, the bus driver, saw the front wheels of the vehicle wiggling. He also observed that the truck was heading towards his lane. Not minding this circumstance due to his belief that the driver of the truck was merely joking, Susulin shifted from fourth to third gear in order to give more power and speed to the bus, which was ascending the inclined part of the road, in order to overtake or pass a Kubota hand tractor being pushed by a person along the shoulder of the highway. While the bus was in the process of overtaking or passing the hand tractor and the truck was approaching the bus, the two vehicles sideswiped each other at each other's left side. After the impact, the truck skidded towards the other side of the road and landed on a nearby residential lot, hitting a coconut tree and felling it.
- Due to the impact, several passengers of the bus were thrown out and died as a result of the injuries they sustained.
- TC conclude that the negligent acts of both drivers contributed to or combined with each other in directly causing the accident which led to the death of the aforementioned persons. The liability of the two drivers for their negligence is solidary.
- Only defendants Federico del Pilar and Edilberto Montesiano, owner and driver, respectively, of the sand and gravel truck have interposed an appeal. CA dismissed the complaint insofar as defendants-appellants Federico del Pilar and Edilberto Montesiano are concerned.

ISSUES & ARGUMENTS

- **W/N the respondent court has properly and legally applied the doctrine of "last clear chance" in the present case despite its own finding that appellant cargo truck driver was admittedly negligent in driving his cargo truck.**

HOLDING & RATIO DECIDENDI

NO. Doctrine of Last Clear Chance is not applicable in this case.

- TC declared that the negligent acts of both drivers directly caused the accident which led to the death of the passengers.
- CA, ruling on the contrary, opined that the bus driver had the last clear chance to avoid the collision and his reckless negligence in proceeding to overtake the hand tractor was the proximate cause of the collision.
- The doctrine of last clear chance, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence. In other words, the doctrine of last clear chance means that even though a person's own acts may have placed him in a position of peril, and an injury results, the injured person is entitled to recovery. As the doctrine is usually stated, a person who has the last clear chance or opportunity of avoiding an accident, notwithstanding the negligent acts of his opponent or that of a third person imputed to the opponent is considered in law solely responsible for the consequences of the accident.
- The practical import of the doctrine is that a negligent defendant is held liable to a negligent plaintiff, or even to a plaintiff who has been grossly negligent in placing himself in peril, if he, aware of the plaintiffs peril, or according to some authorities, should have been aware of it in the reasonable exercise of due case, had in fact an opportunity later than that of the plaintiff to avoid an accident.
- The principle of last clear chance applies in a suit between the owners and drivers of colliding vehicles. It does not arise where a passenger demands responsibility from the carrier to enforce its contractual obligations. For it would be inequitable to exempt the negligent driver and its owners on the ground that the other driver was likewise guilty of negligence.
- Furthermore, as between defendants, the doctrine cannot be extended into the field of joint tortfeasors as a test of whether only one of them should be held liable to the injured person by reason of his discovery of the latter's peril, and it cannot be invoked as between defendants concurrently negligent. As against third persons, a negligent actor cannot defend by pleading that another had negligently failed to take action which could have avoided the injury.
- Well settled is the rule that parties, counsel and witnesses are exempted from liability in libel or slander cases for words otherwise defamatory, uttered or published in the course of judicial proceedings, provided the statements are pertinent or relevant to the case.
- The Court is convinced that the respondent Court committed an error of law in applying the doctrine of last clear chance as between the defendants, since the case at bar is not a suit between the owners and drivers of the colliding vehicles but a suit brought by the heirs of the deceased passengers against both owners and drivers of the colliding vehicles. Therefore, the respondent court erred in absolving the owner and driver of the cargo truck from liability.

Petition is granted. CA decision reversed and set aside. TC decision reinstated.

TIN OCAMPO-TAN

114 George Mckee and Araceli Koh Mckee vs. IAC , Jaime Tayag and Rosalinda manalo | Davide
G.R. No. L-68102, July 16, 1992| 211 SCRA 517

FACTS

- Between 9 and 10 o'clock in the morning of January 1977, in Pulong Pulo Bridge along MacArthur Highway, between Angeles City and San Fernando, Pampanga, a head-on-collision took place between an International cargo truck, Loadstar, owned by Tayag and Manalo, driven by Galang, and a Ford Escort car driven by Jose Koh, resulting in the deaths of Jose Koh, Kim Koh McKee and Loida Bondoc, and physical injuries to George Koh McKee, Christopher Koh McKee and Araceli Koh McKee, all passengers of the Ford Escort
- Immediately before the collision, the cargo truck, which was loaded with 200 cavans of rice weighing about 10,000 kilos, was traveling southward from Angeles City to San Fernando Pampanga, and was bound for Manila. The Ford Escort, on the other hand, was on its way to Angeles City from San Fernando
- When the Ford Escort was about 10 meters away from the southern approach of the bridge, 2 boys suddenly darted from the right side of the road and into the lane of the car moving back and forth, unsure of whether to cross all the way to the other side or turn back
- Jose Koh blew the horn of the car, swerved to the left and entered the lane of the truck; he then switched on the headlights of the car, applied the brakes and thereafter attempted to return to his lane. But before he could do so, his car collided with the truck. The collision occurred in the lane of the truck, which was the opposite lane, on the said bridge
- As a result of the accident, 2 civil cases were filed for damages for the death and physical injuries sustained by the victims boarding the Ford Escort; as well as a criminal case against Galang
- During the trial, evidence were presented showing that the driver of the Truck was speeding resulting in the skid marks it caused in the scene of the accident
- The lower court found Galang guilty in the criminal case, but the civil cases were dismissed
- On appeal, the CA affirmed the conviction of Galang, and reversed the decision in the civil cases, ordering the payment of damages for the death and physical injuries of the McKee family
- On MR, the CA reversed its previous decision and ruled in favor of the owners of the truck

ISSUES & ARGUMENTS

- **W/N the owner and driver of the Truck were responsible for the collision**

HOLDING & RATIO DECIDENDI

THE PROXIMATE CAUSE OF THE COLLISION WAS THE OVER SPEEDING OF THE TRUCK SHOWING ITS NEGLIGENCE

- The test of negligence and the facts obtaining in this case, it is manifest that no negligence could be imputed to Jose Koh. Any reasonable and ordinary prudent man would have tried to avoid running over the two boys by swerving the car away from where they were even if this would mean entering the opposite lane. Avoiding such immediate peril would be the natural course to take particularly where the vehicle in the opposite lane would be several meters away and could very well slow down, move to the side of the road and give way to the oncoming car. Moreover, under what is known as the emergency rule, "one who suddenly finds himself in a place of danger, and is required to act without time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence, if he fails to adopt what subsequently and upon reflection may appear to have been a better method, unless the emergency in which he finds himself is brought about by his own negligence"
- Considering the sudden intrusion of the 2 boys into the lane of the car, the Court finds that Jose Koh adopted the best means possible in the given situation to avoid hitting them. Applying the above test, therefore, it is clear that he was not guilty of negligence
- In any case, assuming, *arguendo* that Jose Koh is negligent, it cannot be said that his negligence was the proximate cause of the collision. Galang's negligence is apparent in the records. He himself said that his truck was running at 30 miles (48 kilometers) per hour along the bridge while the maximum speed allowed by law on a bridge is only 30 kilometers per hour. Under Article 2185 of the Civil Code, a person driving a vehicle is presumed negligent if at the time of the mishap, he was violating any traffic regulation
- Even if Jose Koh was indeed negligent, the doctrine of last clear chance finds application here. *Last clear chance is a doctrine in the law of torts which states that the contributory negligence of the party injured will not defeat the claim for damages if it is shown that the defendant might, by the exercise of reasonable care and prudence, have avoided the consequences of the negligence of the injured party. In such cases, the person who had the last clear chance to avoid the mishap is considered in law solely responsible for the consequences thereof*
- Applying the foregoing doctrine, it is not difficult to rule that it was the truck driver's negligence in failing to exert ordinary care to avoid the collision which was, in law, the proximate cause of the collision. As employers of the truck driver, Tayag and Manalo are, under Article 2180 of the Civil Code, directly and primarily liable for the resulting damages. The presumption that they are negligent flows from the negligence of their employee. That presumption, however, is only *juris tantum,* not *juris et de jure*. Their only possible defense is that they exercised all the diligence of a good father of a family to prevent the damage, which they failed to do

Petition GRANTED. Resolution SET ASIDE and previous DECISION REINSTATED.

KATH MATIBAG

115 PBCom v. CA|
269 SCRA 695

FACTS

- Rommel's Marketing Corporatiopn (RMC), represented by its President and General Manager Romeo Lipana filed a case agains PBCom to recover a sum of money representing various deposits it made with the latter. Such amounts were not credited to its account and were instead deposited to the account of onr Bienvenido Cotas, allegedly due to the Gross and inexcusable negligence of the bank.
- Lipana claims to have entrusted RMC funds in the form of cash to his secretary, Yabut. He said that Yabut was to deposit such amount to PBCom. However, what the secretary did was to deposit it in the account of his husband and only wrote RMC's account number in the duplicate copy of the deposit slips.
- This happened for a year without RMC knowing. When it found out about the scam, it filed a collection suit against PBCom.

ISSUES & ARGUMENTS

W/N the Proximate Cause of the loss is the negligence of respondent RMC and Romeo Lipana

HOLDING & RATIO DECIDENDI

The Proximate Cause of the loss is the negligence of PBCom through its teller in validating the deposit slips notwithstanding that the duplicate copy is not completely accomplished.

Under the last clear chance doctrine, petitioner bank is the liable party. The doctrine states that where both parties are negligent, but the negligent act of he one is appreciably later in time than that of the other, or, when it is impossible to determine whose fault it should be attributed to, the one who had the last clear opportunity to avoid the harm and failed to do so is chargeable with the consequences thereof. Petitioner bank thru its teller, had the last clear opportunity to avert the injury incurred by its client, simply by faithfully observing their self imposed valdation procedure.

116 Canlas vs. Court of Appeals | Purisima
G.R. No. 112160, February 28, 2000|

FACTS

- Petitioner Erlinda Ramos, after seeking professional medical help, was advised to undergo an operation for the removal of a stone in her gall bladder. She was referred to Dr. Hosaka, a surgeon, who agreed to perform the operation on her. The operation was scheduled for at 9:00 in the morning at private respondent De Los Santos Medical Center (DLSMC). Since neither petitioner Erlinda nor her husband, petitioner Rogelio, knew of any anesthesiologist, Dr. Hosaka recommended to them the services of Dr. Gutierrez.
- Petitioner Erlinda was admitted to the DLSMC the day before the scheduled operation. By 7:30 in the morning of the following day, petitioner Erlinda was already being prepared for operation. Upon the request of petitioner Erlinda, her sister-in-law, Cruz, who was then Dean of the College of Nursing at the Capitol Medical Center, was allowed to accompany her inside the operating room.
- By 10:00 in the morning, when Dr. Hosaka was still not around, petitioner Rogelio already wanted to pull out his wife from the operating room. He met Dr. Garcia, who remarked that he was also tired of waiting for Dr. Hosaka. Dr. Hosaka finally arrived at the hospital more than three (3) hours after the scheduled operation. Cruz, who was then still inside the operating room, heard about Dr. Hosaka's arrival. While she held the hand of Erlinda, Cruz saw Dr. Gutierrez having a hard time intubating the patient. Cruz noticed a bluish discoloration of Erlinda's nailbeds on her left hand. She (Cruz) then heard Dr. Hosaka instruct someone to call Dr. Calderon, another anesthesiologist. When he arrived, Dr. Calderon attempted to intubate the patient. The nailbeds of the patient remained bluish, thus, she was placed in a trendelenburg position – a position where the head of the patient is placed in a position lower than her feet.
- At almost 3:00 in the afternoon, Cruz saw Erlinda being wheeled to the Intensive Care Unit (ICU). The doctors explained to petitioner Rogelio that his wife had bronchospasm. Erlinda stayed in the ICU for a month. She was released from the hospital only four months later. Since then, Erlinda remained in comatose condition until she died in 1999

ISSUES & ARGUMENTS

- **W/N Dr. Gutierrez (anesthesiologist) is negligent and hence liable**
- **W/N Dr. Hosaka is liable under the Captain of the Ship Doctrine?**

HOLDING & RATIO DECIDENDI

DR. GUTIERREZ NEGLIGENT. DR HOSAKA LIABLE FOR THE ACTS OF HIS TEAM.

- Dr. Gutierrez' claim of lack of negligence on her part is belied by the records of the case. It has been sufficiently established that she failed to exercise the standards of care in the administration of anesthesia on a patient. The conduct of a preanesthetic/preoperative evaluation prior to an operation, whether elective or emergency, cannot be dispensed with. Such evaluation is necessary for the formulation of a plan of anesthesia care suited to the needs of the patient concerned.
- Nonetheless, Dr. Gutierrez omitted to perform a thorough preoperative evaluation on Erlinda. As she herself admitted, she saw Erlinda for the first time on the day of the operation itself, one hour before the scheduled operation. She auscultated the patient's heart and lungs and checked the latter's blood pressure to determine if Erlinda was indeed fit for operation. However, she did not proceed to examine the patient's airway. Had she been able to check petitioner Erlinda's airway prior to the operation, Dr. Gutierrez would most probably not have experienced difficulty in intubating the former, and thus the resultant injury could have been avoided.
- For his part, Dr. Hosaka mainly contends that the Court erred in finding him negligent as a surgeon by applying the Captain-of-the-Ship doctrine. Dr. Hosaka argues that the trend in United States jurisprudence has been to reject said doctrine in light of the developments in medical practice. He points out that anesthesiology and surgery are two distinct and specialized fields in medicine and as a surgeon, he is not deemed to have control over the acts of Dr. Gutierrez. As anesthesiologist, Dr. Gutierrez is a specialist in her field and has acquired skills and knowledge in the course of her training which Dr. Hosaka, as a surgeon, does not possess.
- That there is a trend in American jurisprudence to do away with the Captain-of-the-Ship doctrine does not mean that this Court will *ipso facto* follow said trend. Due regard for the peculiar factual circumstances obtaining in this case justify the application of the Captain-of-the-Ship doctrine. From the facts on record it can be logically inferred that Dr. Hosaka exercised a certain degree of, at the very least, supervision over the procedure then being performed on Erlinda.
- First, it was Dr. Hosaka who recommended to petitioners the services of Dr. Gutierrez. In effect, he represented to petitioners that Dr. Gutierrez possessed the necessary competence and skills. Drs. Hosaka and Gutierrez had worked together since 1977. Second, Dr. Hosaka himself admitted that he was the attending physician of Erlinda. Thus, when Erlinda showed signs of cyanosis, it was Dr. Hosaka who gave instructions to call for another anesthesiologist and cardiologist to help resuscitate Erlinda. Third, it is conceded that in performing their responsibilities to the patient, Drs. Hosaka and Gutierrez worked as a team. Their work cannot be placed in separate watertight compartments because their duties intersect with each other.

Petition partly granted. DLMSC absolved from liability. Drs. Guitierrez and Hosala solidarily liable.

117 Ong vs. Metropolitan Water District | Bautista Angelo
L-7644 August 29, 1958 |

FACTS

- Metropolitan owns 3 swimming pools at its filters in Balara, Quezon City
- It charges the public a certain fee if such wanted to use its pools
- Dominador Ong, 14 years of age, son of petitioners, went to the pools along with his 2 brothers
- He stayed in the shallow pool, but then he told his brothers that he would get something to drink. His brothers left him and went to the Deep pool
- Around 4pm that day, a bather reported that one person was swimming to long under water
- Upon hearing this, the lifeguard on duty dove into the pool to retrieve Ong's lifeless body. Applying first aid, the lifeguard tried to revive the boy.
- Soon after, male nurse Armando Rule came to render assistance, followed by sanitary inspector Iluminado Vicente who, after being called by phone from the clinic by one of the security guards, boarded a jeep carrying with him the resuscitator and a medicine kit, and upon arriving he injected the boy with camphorated oil. After the injection, Vicente left on a jeep in order to fetch Dr. Ayuyao from the University of the Philippines. Meanwhile, Abaño continued the artificial manual respiration, and when this failed to revive him, they applied the resuscitator until the two oxygen tanks were exhausted
- Investigation was concluded and the cause of death is asphyxia by submersion in water (pagkalunod)
- The parents of Ong bring this action for damages against Metropolitan, alleging negligence on the selection and supervision of its employees and if not negligent, they had the last clear chance to revive Ong.
- It is to be noted that Metropolitan had complete safety measures in place: they had a male nurse, six lifeguards, ring buoys, toy roof, towing line, saving kit and a resuscitator. There is also a sanitary inspector who is in charge of a clinic established for the benefit of the patrons. Defendant has also on display in a conspicuous place certain rules and regulations governing the use of the pools, one of which prohibits the swimming in the pool alone or without any attendant. Although defendant does not maintain a full- time physician in the swimming pool compound, it has however a nurse and a sanitary inspector ready to administer injections or operate the oxygen resuscitator if the need should arise

ISSUES & ARGUMENTS

- **W/N Metropolitan is liable to the Ongs for its negligence**
- **W/N the last clear chance doctrine may be invoked in this case**

HOLDING & RATIO DECIDENDI

No. Metropolitan is not negligent

- Metropolitan has taken all necessary precautions to avoid danger to the lives of its patrons. It has been shown that the swimming pools of appellee are provided with a ring buoy, toy roof, towing line, oxygen resuscitator and a first aid medicine kit. The bottom of the pools is painted with black colors so as to insure clear visibility. There is on display in a conspicuous place within the area certain rules and regulations governing the use of the pools. Appellee employs six lifeguards who are all trained as they had taken a course for that purpose and were issued certificates of proficiency. These lifeguards work on schedule prepared by their chief and arranged in such a way as to have two guards at a time on duty to look after the safety of the bathers. There is a male nurse and a sanitary inspector with a clinic provided with oxygen resuscitator. And there are security guards who are available always in case of emergency.

- The record also shows that when the body of minor Ong was retrieved from the bottom of the pool, the employees of appellee did everything possible to bring him back to life. When they found that the pulse of the boy was abnormal, the inspector immediately injected him with camphorated oil. When the manual artificial respiration proved ineffective they applied the oxygen resuscitator until its contents were exhausted. And while all these efforts were being made, they sent for Dr. Ayuyao from the University of the Philippines who however came late because upon examining the body found him to be already dead. All of the foregoing shows that appellee has done what is humanly possible under the circumstances to restore life to minor Ong and for that reason it is unfair to hold it liable for his death

The Last Clear Chance Doctrine is inapplicable in this case

- The record does not show how minor Ong came into the big swimming pool. The only thing the record discloses is that minor Ong informed his elder brothers that he was going to the locker room to drink a bottle of coke but that from that time on nobody knew what happened to him until his lifeless body was retrieved. The doctrine of last clear chance simply means that the negligence of a claimant does not preclude a recovery for the negligence of defendant where it appears that the latter, by exercising reasonable care and prudence, might have avoided injurious consequences to claimant notwithstanding his negligence
- Since it is not known how minor Ong came into the big swimming pool and it being apparent that he went there without any companion in violation of one of the regulations of appellee as regards the use of the pools, and it appearing that lifeguard Abaño responded to the call for help as soon as his attention was called to it and immediately after retrieving the body all efforts at the disposal of appellee had been put into play in order to bring him back to life, it is clear that there is no room for the application of the doctrine now invoked by appellants to impute liability to appellee.

GINO CAPATI

118 Anuran, et al. vs. Buno, et. Al. | Bengzon
G.R. Nos. L-21353 and L-21354, May 20, 1966 | 17 SCRA 224

FACTS

- At noon of January 12, 1958, a passenger jeepney owned by defendant spouses Pedro Gahol and Luisa Alcantara and driven by defendant Pepito Buno was on its regular route travelling form Mahabang Ludlud, Taal, Batangas towards the poblacion of the said municipality. After crossing the bridge, Buno stopped the jeepney to allow one of the passengers to alight. He parked his jeepney in such a way that one-half of its width (the left wheels) was on the asphalted pavement of the road and the other half, on the right shoulder of the said road.
- Thereafter a speeding water truck, owned by defendant spouses Anselmo Maligaya and Ceferina Aro driven by Guillermo Razon, violently smashed against the parked jeepney from behind, causing it to turn turtle into a nearby ditch.
- As a result of the collision, three of the jeepney's passengers died with two others suffering injuries.
- The suit was instituted by the representatives of the dead and of the injured, to recover damages from the owners and drivers of both the truck and the jeepney.
- The Batangas CFI rendered judgment absolving the driver of the jeepney and its owners. On appeal to the CA, the appellate court affirmed the exoneration of the jeepney driver and of its owners.

ISSUES & ARGUMENTS

W/N the driver and owners of the jeepney should also be made liable?

W/N the "Last Clear Chance" principle is applicable?

HOLDING & RATIO DECIDENDI

YES, THE JEEPNEY OWNERS AND DRIVER ARE ALSO LIABLE

- The obligation of the carrier to transport its passengers safely is such that the Civil Code requires "utmost diligence" from the carriers who are "presumed to have been at fault of to have acted negligently, unless they prove that they have observed extraordinary diligence". The driver of the jeepney was at fault fo parking the vehicle improperly.

NO, THE LAST CLEAR CHANCE PRINCIPLE IS NOT APPLICABLE

- The principle about the "last clear chance" would call for application in a suit **between the owners and drivers of the two colliding vehicles. It does not arise where a passenger demands responsibility from the carrier to enforce its contractual obligations.** For it would be inequitable to exempt the negligent driver of the jeepney and its owners on the ground that the other driver was likewise guilty of negligence.

BON ARCILLA

119 Phoenix Construction v IAC | Feliciano
G.R. No. L-65295 March 10, 1987 |

FACTS

- Early morning of November 15, 1975 at about 1:30am, Leonardo Dionisio was on his way home from a cocktails-and-dinner meeting with his boss. During the cocktails phase of the evening, Dionisio had taken "a shot or two" of liquor. Dionisio was driving his Volkswagen car and had just crossed the intersection of General Lacuna and General Santos Streets at Bangkal, Makati, not far from his home, and was proceeding down General Lacuna Street, when his car headlights (in his allegation) suddenly failed. He switched his headlights on "bright" and thereupon he saw a Ford dump truck looming some 2-1/2 meters away from his car. The dump truck, owned by and registered in the name of petitioner Phoenix Construction Inc., was parked on the right hand side of General Lacuna Street facing the oncoming traffic. The dump truck was parked askew (not parallel to the street curb) in such a manner as to stick out onto the street, partly blocking the way of oncoming traffic. There were no lights nor any so-called "early warning" reflector devices set anywhere near the dump truck, front or rear. The dump truck had earlier that evening been driven home by petitioner Armando U. Carbonel, its regular driver, with the permission of his employer Phoenix, in view of work scheduled to be carried out early the following morning, Dionisio claimed that he tried to avoid a collision by swerving his car to the left but it was too late and his car smashed into the dump truck. As a result of the collision, Dionisio suffered some physical injuries including some permanent facial scars, a "nervous breakdown" and loss of two gold bridge dentures.
- Dionisio commenced an action for damages in the Court of First Instance of Pampanga which rendered judgment in his favor.
- On appeal to IAC, the decision was affirmed with modification as to the amount of damages awarded.

ISSUES & ARGUMENTS

W/N Phoenix should be held liable for the damage incurred by Dionisio, notwithstanding the allegation that the latter had no curfew pass and thus drove speedily with his headlights off?

HOLDING & RATIO DECIDENDI

YES. The collision between the dump truck and the Dionisio's car would in all probability not have occurred had the dump truck not been parked askew without any warning lights or reflector devices. The improper parking of the dump truck created an unreasonable risk of injury for anyone driving down General Lacuna Street and for having so created this risk, the truck driver must be held responsible.

- Dionisio's negligence was not of an independent and overpowering nature as to cut, as it were, the chain of causation in fact between the improper parking of the dump truck and the accident, nor to sever the juris vinculum of liability.
- We hold that Dionisio's negligence was "only contributory," that the "immediate and proximate cause" of the injury remained the truck driver's "lack of due care" and that consequently respondent Dionisio may recover damages though such damages are subject to mitigation by the courts (Art. 2179 Civil Code of the Philippines)
- Petitioner Carbonel's proven negligence creates a presumption of negligence on the part of his employer Phoenix in supervising its employees properly and adequately. The respondent appellate court in effect found, correctly in our opinion, that Phoenix was not able to overcome this presumption of negligence.
- Turning to the award of damages and taking into account the comparative negligence of private respondent Dionisio on one hand and petitioners Carbonel and Phoenix upon the other hand, we believe that the demands of substantial justice are satisfied by allocating most of the damages on a **20-80 ratio**. Thus, 20% of the damages awarded by the respondent appellate court, except the award of P10,000.00 as exemplary damages and P4,500.00 as attorney's fees and costs, shall be borne by private respondent Dionisio; only the balance of 80% needs to be paid by petitioners Carbonel and Phoenix who shall be solidarity liable therefor to the former. The award of exemplary damages and attorney's fees and costs shall be borne exclusively by the petitioners. Phoenix is of course entitled to reimbursement from Carbonel. We see no sufficient reason for disturbing the reduced award of damages made by the respondent appellate court.

TEL VIRTUDEZ

120 Glan People's Lumber and Hardware vs NLRC| NARVASA
G.R. No. 70493 May 18, 1989|

FACTS

- Engineer Orlando Calibo, Agripino Roranes and Maximo Patos were on the jeep owned by the Bacnotan Consolidated Industries Inc.
- Calibo was driving the car as they were approaching the Lizada Bridge towards the direction going to Davao City.
- At about that time, Paul Zacarias was driving a truck loaded with cargo. The truck just crossed the said bridge coming from the opposite direction of Davao City and bound for Glan, South Cotabato.
- At about 59 yards after crossing the bridge, the jeep and the truck collided and as a consequence of which Calibo died while Roranes and Patos sustained physical injuries. Zacarias was unhurt.
- A civil suit was filed by the wife of Calibo against Zacarias and the owner of the truck
- At the lower court, the case was dismissed for the plaintiff failed to establish the negligence by preponderance of evidence. The court highlighted that moments before the collision, the jeep was "zigzagging."
- Zacarias immediately submitted himself to police investigation while Roranes and Patos refused to be investigated. Zacarias presented more credible testimony unlike Roranes and Patos.
- The evidence showed that the path of the truck had skid marks which indicated that the driver applied brakes. The court accepted the evidence that even if there was negligence on the part of Zacarias who intruded about 25 centimeters to the lane of Calibo, the latter still had the last clear chance to avoid the accident.
- The Court of Appeals reversed the decision and ruled in favor of the plaintiff. Ths was on the grounds that Zacarias saw the jeep already at about 150 meters and Zacarias did not have a drivers license at the time of the incident. The Appellate Court opined that Zacarias negligence gave rise to the presumption of negligence on the part of his employer and their liability is both primary and solidary.

ISSUES & ARGUMENTS

Whether Zacarias should have an actionable responsibility for the accident under the rule of last clear chance.

HOLDING & RATIO DECIDENDI

No.

- The evidence indicates that it was rather Engineer Calibo's negligence that was the proximate cause of the accident. Assuming there was an antecedent negligence on the part of Zacarias, the physical facts would still absolve him of any actionable responsibility under the rule of the last clear chance.
- From the established facts, the logical conclusion emerges that the driver of the jeep has the clear chance to avoid the accident.
- The respondents have admitted that the truck was already at a full stop when the jeep plowed into it. And they have not seen fit to deny or impugn petitioner's imputation that they also admitted the truck had been brought to a stop while the jeep was still 30 meters away. From these facts the logical conclusion emerges that the driver of the jeep had what judicial doctrine has appropriately called the last clear chance to avoid the accident. While still at that distance of thirty meters from the truck, by stopping in his turn or swerving his jeep away from the truck, either of which the driver of the jeep had sufficient time to do while running at 30 kilometers per hour.
- In those circumstances, his duty was to seize that opportunity of avoidance, not merely rely on a supposed right to expect, as the appellate court would have it, the truck to swerve and leave him in a clear path.
- The doctrine of the last clear chance provides as a valid and complete defense to accident liability today as it did when invoked and applied in the 1918 case of Picart vs Smith.

121 Pantranco North Express, Inc vs Baesa | Cortes
G.R. Nos. 79050-51 | November 14, 1989

FACTS

- The spouses Baesa, their four children, the Ico spouses, the latter's son and 7 other people boarded a passenger jeep to go to a picnic in Isabela, to celebrate the 5th wedding anniversary of the Baesa spouses. The jeep was driven by David Ico.
- Upon reaching the highway, the jeep turned right and proceeded to Malalam River at a speed of about 20 kph. While they were proceeding towards Malalam River, a speeding PANTRANCO bus from Aparri, on its regular route to Manila, encroached on the jeepney's lane while negotiating a curve, and collided with it.
- As a result, the entire Baesa family, except for one daughter, as well as David Ico, died, and the rest suffered from injuries. Maricar Baesa, the surviving daughter, through her guardian filed separate actions for damages arising from quasi-delict against PANTRANCO.
- PANTRANCO, aside from pointing to the late David Ico's (the driver)alleged negligence as a proximate cause of the accident, invoked the defense of due diligence in the selection and supervision of its driver. The RTC ruled in favor of Baesa, which was upheld by the CA
- The petitioner now contends that the CA erred in not applying the doctrine of the "last clear chance" against the jeepney driver. Petitioner contends that under the circumstances, it was the driver of the jeep who had the last clear chance to avoid the collision and was therefore negligent in failing to utilize with reasonable care and competence his then existing opportunity to avoid the harm.

ISSUES & ARGUMENTS

Does the "last clear chance" doctrine apply?
HOLDING & RATIO DECIDENDI

No.

- The doctrine applies only in a situation where the plaintiff was guilty of a prior or antecedent negligence but the defendant, who had the last fair chance to avoid the impending harm and failed to do so, is made liable for all the consequences
- Generally, the last clear change doctrine is invoked for the purpose of making a defendant liable to a plaintiff who was guilty of prior or antecedent negligence, although it may also be raised as a defense to defeat claim for damages.
- It is the petitioner's position that even assuming arguendo, that the bus encroached into the lane of the jeepney, the driver of the latter could have swerved the jeepney towards the spacious dirt shoulder on his right without danger to himself or his passengers. This is untenable
- For the last clear chance doctrine to apply, it is necessary to show that the person who allegedly has the last opportunity to avert the accident was aware of the existence of the peril, or should, with exercise of due care, have been aware of it. One cannot be expected to avoid an accident or injury if he does not know or could not have known the existence of the peril.
- In this case, there is nothing to show that the jeepney driver David Ico knew of the impending danger. When he saw at a distance that the approaching bus was encroaching on his lane, he did not immediately swerve the jeepney to the dirt shoulder on his right since he must have assumed that the bus driver will return the bus to its own lane upon seeing the jeepney approaching form the opposite direction.
- Even assuming that the jeepney driver perceived the danger a few seconds before the actual collision, he had no opportunity to avoid it. The Court has held that the last clear chance doctrine "can never apply where the party charged is required to act instantaneously, and if the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered."

122 LBC Air Inc, et al v CA, et al| Vitug, *J.*
G.R. No. 101683 February 23, 1995

FACTS

- At about 11:30 in the morning of 15 November 1987. Rogelio Monterola, a licensed driver, was traveling on board his Suzuki motorcycle towards Mangagoy on the right lane along a dusty national road in Bislig, Surigao del Sur.

- At about the same time, a cargo van of the LBC Air Cargo Incorporated, driven by defendant Jaime Tano, Jr., was coming from the opposite direction on its way to the Bislig Airport. On board were passengers Fernando Yu, Manager of LBC Air Cargo, and his son who was seated beside Tano.

- When Tano (driver) was approaching the vicinity of the airport road entrance on his left, he saw two vehicles racing against each other from the opposite direction. Tano stopped his vehicle and waited for the two racing vehicles to pass by. The stirred cloud of dust made visibility extremely bad.

- Instead of waiting for the dust to settle, Tano started to make a sharp left turn towards the airport road. When he was about to reach the center of the right lane, the motorcycle driven by Monterola suddenly emerged from the dust and smashed head-on against the right side of the LBC van. Monterola died from the severe injuries he sustained.

- A criminal case for "homicide thru reckless imprudence" was filed against Tano. A civil suit was likewise instituted by the heirs of deceased Monterola against Tano, along with Fernando Yu and LBC Air Cargo Incorporated, for the recovery of damages. The two cases were tried jointly by the Regional Trial Court

- RTC dismissed both cases on the ground that the proximate cause of the "accident" was the negligence of deceased Rogelio Monterola.

- CA Reversed, hence this petition for review

ISSUES & ARGUMENTS

- **W/N Tano's alleged negligence was the proximate cause of the accident**
  - **<Tano (driver)>** Deceased Monterola was contributory negligent, he even had the "last clear chance" to evade the collision

  - **<Heirs of Monterola>** Proximate cause was negligence of Tano when he did not wait for the dust to settle

HOLDING & RATIO DECIDENDI

YES, Tano's negligence is the proximate cause of the accident.

- From every indication, the proximate cause of the accident was the negligence of Tano who, despite extremely poor visibility[4], hastily executed a left turn (towards the Bislig airport road entrance) without first waiting for the dust to settle. It was this negligent act of Tano, which had placed his vehicle (LBC van) directly on the path of the motorcycle coming from the opposite direction, that almost instantaneously caused the collision to occur. Simple prudence required him not to attempt to cross the other lane until after it would have been safe from and clear of any oncoming vehicle.

- Petitioners poorly invoke the doctrine of "last clear chance" (also referred to, at times, as "supervening negligence" or as "discovered peril"). The doctrine, in essence, is to the effect that where both parties are negligent, but the negligent act of one is *appreciably* later in time than that of the other, or when it is impossible to determine whose fault or negligence should be attributed to the incident, the one who had the last clear opportunity to avoid the impending harm and failed to do so is chargeable with the consequences thereof (*see* Picart vs. Smith, 37 Phil. 809). Stated differently, the rule would also mean that an antecedent negligence of a person does not preclude the recovery of damages for supervening negligence of, or bar a defense against the liability sought by, another if the latter, who had the last *fair chance*, could have avoided the impending harm by the exercise of due diligence (Pantranco North Express, Inc. vs. Baesa, 179 SCRA 384; Glan People's Lumber and Hardware vs. Intermediate Appellate Court, 173 SCRA 464).

- In the case at bench, the victim was traveling along the lane where he was rightly supposed to be. The incident occurred in an instant. No appreciable time had elapsed, from the moment Tano swerved to his left to the actual impact; that could have afforded the victim a last clear opportunity to avoid the collision.

- It is true however, that the deceased was not all that free from negligence in evidently speeding too closely behind the vehicle he was following. We, therefore, agree with the appellate court that there indeed was contributory negligence on the victim's part that could warrant a mitigation of petitioners liability for damages.

FRANK TAMARGO

[4] Q & A portion (TSN) show that he admitted that he could only see big vehicles but not small vehicles like Monterola's motorcycle through the dust which then has not yet fully settled.

123 Raynera v. Hiceta| Pardo
(G.R. No. 120027) (21 April 1999)

FACTS:

- On March 23, 1989, at about 2:00 in the morning, Reynaldo Raynera was on his way home. He was riding a motorcycle traveling on the southbound lane of East Service Road, Cupang, Muntinlupa. The Isuzu truck was travelling ahead of him at 20 to 30 kilometers per hour. The truck was loaded with two (2) metal sheets extended on both sides, two (2) feet on the left and three (3) feet on the right. There were two (2) pairs of red lights, about 35 watts each, on both sides of the metal plates. The asphalt road was not well lighted.
- At some point on the road, Reynaldo Raynera crashed his motorcycle into the left rear portion of the truck trailer, which was without tail lights. Due to the collision, Reynaldo sustained head injuries and he was rushed to the hospital where he was declared dead on arrival.
- Edna Raynera, widow of Reynaldo, filed with the RTC a complaint for damages against respondents Hiceta and Orpilla, owner and driver of the Isuzu truck.
- At the trial, petitioners presented Virgilio Santos. He testified that at about 1:00 and 2:00 in the morning of March 23, 1989, he and his wife went to Alabang, market, on board a tricycle. They passed by the service road going south, and saw a parked truck trailer, with its hood open and without tail lights. They would have bumped the truck but the tricycle driver was quick in avoiding a collision. The place was dark, and the truck had no early warning device to alert passing motorists.
- Trial court: respondent's negligence was the immediate and proximate cause of Raynera's death.
- CA: The appellate court held that Reynaldo Raynera's bumping into the left rear portion of the truck was the proximate cause or his death, and consequently, absolved respondents from liability.

ISSUE:

(a) whether respondents were negligent, and if so,
(b) whether such negligence was the proximate cause of the death of Reynaldo Raynera.

HOLDING & RATIO DECIDENDI

We find that the direct cause of the accident was the negligence of the victim. Traveling behind the truck, he had the responsibility of avoiding bumping the vehicle in front of him. He was in control of the situation. His motorcycle was equipped with headlights to enable him to see what was in front of him. He was traversing the service road where the prescribed speed limit was less than that in the highway.
Traffic investigator Cpl. Virgilio del Monte testified that two pairs of 50-watts bulbs were on top of the steel plates, which were visible from a distance of 100 meters Virgilio Santos admitted that from the tricycle where he was on board, he saw the truck and its cargo of iron plates from a distance of ten (10) meters. In light of these circumstances, an accident could have been easily avoided, unless the victim had been driving too fast and did not exercise dues care and prudence demanded of him under the circumstances.
Virgilio Santos' testimony strengthened respondents' defense that it was the victim who was reckless and negligent in driving his motorcycle at high speed. The tricycle where Santos was on board was not much different from the victim's motorcycle that figured in the accident. Although Santos claimed the tricycle almost bumped into the improperly parked truck, the tricycle driver was able to avoid hitting the truck.
It has been said that drivers of vehicles "who bump the rear of another vehicle" are presumed to be "the cause of the accident, unless contradicted by other evidence". The rationale behind the presumption is that the driver of the rear vehicle has full control of the situation as he is in a position to observe the vehicle in front of him.
We agree with the Court of Appeals that the responsibility to avoid the collision with the front vehicle lies with the driver of the rear vehicle.

124 Lapanday Agricultural and Development Corporation (LADECO, and Apolonio R. De Ocampo vs. Michael Raymond Angala | Carpio | June 21, 2007

FACTS

- Deocampo, while driving a crewcab, bumped into a Chevy owned by respondent Angala and drivine by Borres. The crewcab was owned by LADECO and was assigned to the manager Mendez.

- Respondent Angala filed an action for quasi-delict, damages, and attorney's fees against LADECO, its administrative officer Berenguel and Deocampo. Angala alleged that his car was slowing down to about 5-10 kph and was making a left turn when it was bumped from behind by the crewcab running at around 60-70 kph.

- The RTC ruled in favor of Angala, reasoning that the crewcab's speed was the proximate cause of the accident. It gave merit to the allegation of Angala that the crewcab stopped 21 meters away from the point of impact, and that Deocampo had the last opportunity to avoid the accident.

- On appeal, the CA applied the doctrine of last clear chance and ruled that Deocampo had the responsibility of avoiding the pick-up.

ISSUES & ARGUMENTS

- **Whether or not the last clear chance doctrine applies?**
- **Whether or not petitioner LADECO is solidarily liable with Deocampo.**

HOLDING & RATIO DECIDENDI

Doctrine of Last Clear Chance applies.

Both parties were negligent in this case. Borres was at the outer lane when he executed a U-turn. Following Section 45(b) of RA 4136[5], Borres should have stayed at the inner lane which is the lane nearest to the center of the highway.

However, Deocampo was equally negligent. Borres slowed down the pick-up preparatory to executing the U-turn. Deocampo should have also slowed down when the pick-up slowed down. Deocampo could have avoided the crewcab if he was not driving very fast before the collision, as found by both the trial court and the Court of Appeals. The crewcab stopped 21 meters from the point of impact. It would not have happened if eocampo was not driving very fast.

Doctrine of Last Clear Chance: Where both parties are negligent but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the last clear opportunity to avoid the loss but failed to do so is chargeable with the loss.

Applied in this case, **Deocampo had the last clear chance to avoid the collision**. Since Deocampo was driving the rear vehicle, he had full control of the situation since he was in a position to observe the vehicle in front of him. Deocampo had the responsibility of avoiding bumping the vehicle in front of him. A U-turn is done at a much slower speed to avoid skidding and overturning, compared to running straight ahead.

Deocampo could have avoided the vehicle if he was not driving very fast while following the pick-up. Deocampo was not only driving fast, he also admitted that he did not step on the brakes even upon seeing the pick-up. He only stepped on the brakes after the collision.

Petitioners are solidarily liable.

LADECO alleges that it should not be held jointly and severally liable with Deocampo because it exercised due diligence in the supervision and selection of its employees. Aside from this statement, **LADECO did not proffer any proof to show how it exercised due diligence in the supervision and selection of its employees.** LADECO did not show its policy in hiring its drivers, or the manner in which it supervised its drivers. LADECO failed to substantiate its allegation that it exercised due diligence in the supervision and selection of its employees.

Petitioners solidarily liable for actual damages and moral damages.

[5] Sec. 45. Turning at intersections. x x x

(b) The driver of a vehicle intending to turn to the left shall approach such intersection in the lane for traffic to the right of and nearest to the center line of the highway, and, in turning, shall pass to the left of the center of the intersection, except that, upon highways laned for traffic and upon one-way highways, a left turn shall be made from the left lane of traffic in the direction in which the vehicle is proceeding.

125 Austria v. CA | Quisumbing
G.R. No. 133323, March 9, 2000| 327 SCRA 688

FACTS

- On July 9, 1989 at around 7:00 P.M. along the Olongapo-Gapan Road in the vicinity of barangay Cabetican, Bacolor, Pampanga, Austria was driving his Ford Fiera with ten (10) passengers. They came from the Manila International Airport bound to Dinalupihan, Bataan.
- One of the vehicle's tire suddenly hit a stone lying in the road, which caused Austria to lose control and collide with the rear of an improperly parked cargo truck trailer driven by Flores. As a result of the collision, five (5) passengers suffered varying degrees injuries.

ISSUES & ARGUMENTS

- **W/N Austria is guilty of Reckless Imprudence resulting in Serious Physical Injury.**
    - **Petitioner:** Austria argues that the collision was not his fault, rather that of the driver of the truck, Flores. He asserts the ruling in the case of Phoenix v. IAC, which had similar facts.
    - **Respondent:** The CA finding of facts reveal that Austria was driving at speed more than thirty (30) kph. Assuming that he was driving his vehicle at that speed of thirty (30) kilometers per hour, appellant would have not lost control of the vehicle after it hit the stone before the collision. Under these circumstances, the appellant did not exercise the necessary precaution required of him.

HOLDING & RATIO DECIDENDI

AUSTRIA WAS THE PROXIMATE CAUSE OF THE COLLISION WHICH LED THE INJURIES OF 4 OF THE PASSENGERS, AND THE DEATH OF ANOTHER.

- There are indeed similarities in the factual milieu of *Phoenix* to that of the present case, we are unable to agree with Austria that the truck driver should be held solely liable while the petitioner should be exempted from liability. In Phoenix, we ruled that the driver of the improperly parked vehicle was liable and the driver of the colliding car contributorily liable. We agree with the respondent court in its observation on the petitioner's culpability: "That he had no opportunity to avoid the collision is of his own making and [this] should not relieve him of liability."
- Patently, the negligence of the petitioner as driver of the Ford Fiera is the immediate and proximate cause of the collision.

JOHAN UY

126 Consolidated Bank and Trust Corp. v. CA and L.C. Diaz and Co., CPA| Carpio
G.R. No. 138569, September 11, 2003 | 410 SCRA 562

FACTS

- Consolidated bank (now known as Solidbank), is a corporation engaged in banking while private respondent LC. Diaz and Co. CPA's is an accounting partnership.
- Diaz opened a savings account with the bank.
- Diaz, through its cashier, Macaraya, filled up a savings (cash) deposit slip for 900Php and check deposit slip for 50Php. Macarya instructed the messenger Calapre to deposit it and even gave the latter the passbook.
- Calapre deposited the money with Solidbank. Since he had to make another deposit at another bank, he left the passbook. When he came back, the teller (no. 6) already gave the passbook to someone else.
- Macaraya went to Solidbank and deposited another 200,000Php check. The teller told Macaraya that she did not remember to whom she gave the passbook. This teller gave Macaraya a deposit slip dated on that very same day for a deposit of a 90,000Php PBC check of Diaz. This PBC account had been "long closed".
- The next day, CEO Luis Diaz called up the bank to stop any transaction involving the stolen passbook. Diaz also learned of the unauthorized withdrawal of 300,000 the same day the passbook was stolen. The withdrawal slip bore the signatures of Luis and Murillo. They however denied signing the said withdrawal slip. A certain Noel Tamayo received the money.
- Diaz charged its messenger Ilagan and one Mendoza with Estafa through falsification of commercial documents but the charges were dismissed.
- Diaz asked Solidbank to give its money back, the latter refused.
- The collection case was ruled in favor of Solidbank. TC used the rules written on the passbook in absolving the bank saying that "possession of this book (passbook) shall raise the presumption of ownership and any payments made by the bank upon the production of the book…shall have the same effect as if made to the depositor personally." Tamayo had possession of the passbook at the time of the withdrawal and also had the withdrawal slip with the needed signatures. The signatures matched those of the specimen signatures in the bank. TC said that the bank acted with care and observed the rules on savings account when it allowed the withdrawal and that Diaz's negligence was the proximate cause of the loss.
- CA reversed saying that the teller of the bank should have been more careful in allowing the withdrawal. She should have called up Diaz since the amount was substantial. Although Diaz was also negligent in allowing a messenger to make its deposits and said messenger left the passbook, the proximate cause of the loss was the bank. CA applied the "last clear chance rule".

ISSUES & ARGUMENTS

- **W/N the doctrine of last clear chance is applicable in the case.**

HOLDING & RATIO DECIDENDI

NO. The doctrine of last clear chance is not applicable to the present case.

- The doctrine of last clear chance states that where both parties are negligent but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the last clear opportunity to avoid the loss but failed to do so, is chargeable with the loss. Stated differently, the antecedent negligence of the plaintiff does not preclude him from recovering damages caused by the supervening negligence of the defendant, who had the last fair chance to prevent the impending harm by the exercise of due diligence.
- We do not apply the doctrine of last clear chance to the present case. Solidbank is liable for breach of contract due to negligence in the performance of its contractual obligation to L.C. Diaz. This is a case of culpa contractual, where neither the contributory negligence of the plaintiff nor his last clear chance to avoid the loss, would exonerate the defendant from liability.

CA decision affirmed with modification.

127 Capuno vs. Pepsi-Cola | Makalintal
L-19331, April 30, 1965 | 13 SCRA 659

FACTS

- The case arose from a vehicular collision which occurred on January 3, 1953 in Apalit, Pampanga. Involved were a Pepsi-Cola delivery truck driven by Jon Elordi and a private car driven by Capuno. The collision proved fatal to the latter as well as to his passengers, the spouses Florencio Buan and Rizalina Paras.
- Elordi was charged with triple homicide through reckless imprudence in the Court of First Instance of Pampanga (criminal case No. 1591). The information was subsequently amended to include claims for damages by the heirs of the three victims.
- While the criminal case was pending, the Intestate Estate of the Buan spouses and their heirs filed a civil action, also for damages, in the Court of First Instance of Tarlac against the Pepsi-Cola Bottling Company of the Philippines and Jon Elordi (civil case No. 838). Included in the complaint was a claim for indemnity in the sum of P2,623.00 allegedly paid by the Estate to the heirs of Capuno under the Workmen's Compensation Act.
- On June 11, 1958 the parties in Civil Case No. 838 entered into a "Compromise and Settlement." For P290,000.00 the Buan Estate gave up its claims for damages, including the claim for reimbursement of the sum of P2,623.00 previously paid to the heirs of Capuno "under the Workmen's Compensation Act." The Court approved the compromise and accordingly dismissed the case on the following June 17.
- At that time the criminal case was still pending; judgment was rendered only on April 15, 1959, wherein the accused Elordi was acquitted of the charges against him. Prior thereto, or on September 26, 1958, however, herein appellants commenced a civil action for damages against the Pepsi-Cola Bottling Company of the Philippines and Jon Elordi. This is the action which, upon appellees' motion, was dismissed by the Court *a quo* in its order of February 29, 1960, from which order the present appeal has been taken.
-

ISSUES & ARGUMENTS

W/N that the action had already prescribed

HOLDING & RATIO DECIDENDI

YES, THE ACTION HAS PRESCRIBED.

- The civil action for damages could have been commenced by appellants immediately upon the death of their decedent, Cipriano Capuno, on January 3, 1953 or thereabouts, and the same would not have been stayed by the filing of the criminal action for homicide through reckless imprudence. But the complaint here was filed only on September 26, 1958, or after the lapse of more than five years.
- In the case of *Diocosa Paulan, et al. vs. Zacarias Sarabia, et al.,* G.R. No. L-10542, promulgated July 31, 1958, this Court held that an action based on a *quasi-delict* is governed by Article 1150 of the Civil Code as to the question of when the prescriptive period of four years shall begin to run, that is, "from the day (the action) may be brought," which means from the day the *quasi-delict* occurred or was committed.
- The foregoing considerations dispose of appellants' contention that the four-year period of prescription in this case was interrupted by the filing of the criminal action against Jon Elordi inasmuch as they had neither waived the civil action nor reserved the right to institute it separately. Such reservation was not then necessary; without having made it they could file — as in fact they did — a separate civil action even during the pendency of the criminal case (Pacheco v. Tumangday, L-14500, May 25, 1960; Azucena v. Potenciano, L-14028, June 30, 1962); and consequently, as held in *Paulan v. Sarabia, supra,* "the institution of a criminal action cannot have the effect of interrupting the institution of a civil action based on a *quasi-delict.*"

128 Virgilio Callanta vs. Carnation Philippines Inc. |Fernan
G.R. No. 70615, October 28, 1986 | 145 SCRA 268

FACTS

- Petitioner Virgilio Callanta was terminated by Carnation Phils. on June 1, 1976 for alleged grounds of serious misconduct and misappropriation of company funds amounting to P12,000.00, more or less.
- MOLE Regional Director Baterbonia approved the clearance application of Carnation to terminate Callanta.
- On July 5, 1982, Callanta filed with MOLE a case for illegal dismissal.
- Labor Arbiter Ramos ruled in favor of Callanta and ordered reinstatement.
- Upon appeal to NLRC, it set aside the decision by reason of prescription based on provisions of the Labor Code which states that:

  a) Art. 291. *Offenses.* — Offenses penalized under this Code and the rules and regulations issued pursuant thereto shall prescribe in three [3] years.

  b) Art. 292. *Money claims.* — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three [3] years from the time the cause of action accrued; otherwise, they shall be forever barred.

ISSUES & ARGUMENTS

- **W/N the case had already prescribed**
  Petitioner: The law is silent for the prescriptive period for a case of illegal dismissal hence it should be 4 yrs. under injury of a right
  Respondents: Illegal dismissal falls under an offense under the Labor Code and such prescribes in 3 yrs.

HOLDING & RATIO DECIDENDI

NO. CALLANTA HAS 4 YEARS TO FILE THE CASE UNDER ARTICLE 1146 NCC.

- It has long been established by jurisprudence that one's employment, profession, trade or calling is a "property right," and the wrongful interference therewith is an actionable wrong. And the New Civil Code provision provides:

  Art. 1146. The following actions must be instituted within four years.
  [1] *Upon an injury to the lights of the plaintiff.*

- Moreover, the Labor Code does not define illegal dismissal as an unlawful practice, thus it does not fall under Art. 291. The nature of backwages also is not a "money claim" in the sense that it is not the principal cause of action but the unlawful deprivation of the one's employment committed by the employer in violation of the right of an employee.

129 Allied Bank vs. CA |
G.R. No. 85868. October 13, 1989 |

FACTS

- Private respondent Joselito Z. Yujuico obtained a loan from the General Bank and Trust Company (GENBANK) in the amount of Five Hundred Thousand pesos (P500,000.00), payable on or before April 1, 1977. As evidence thereof, private respondent issued a corresponding promissory note in favor of GENBANK. At the time private respondent incurred the obligation, he was then a ranking officer of GENBANK and a member of the family owning the controlling interest in the said bank.
- On March 25,1977, the Monetary Board of the Central Bank issued Resolution No. 675 forbidding GENBANK from doing business in the Philippines. This was followed by Resolution No. 677 issued by the Monetary Board on March 29, 1977 ordering the liquidation of GENBANK.
- It appears that in a Memorandum of Agreement dated May 9, 1977 executed by and between Allied Banking Corporation (ALLIED) and Arnulfo Aurellano as Liquidator of GENBANK, ALLIED acquired all the assets and assumed the liabilities of GENBANK, which includes the receivable due from private respondent under the promissory note.
- Upon failing to comply with the obligation under the promissory note, petitioner ALLIED, on February 7, 1979, filed a complaint against private respondent for the collection of a sum of money. This case was docketed as Civil Case No. 121474 before the then Court of First Instance of Manila (now Regional Trial Court).
- Sometime in 1987 and in the course of the proceedings in the court below, private respondent, then defendant in the court below, filed a Motion to Admit Amended/Supplemental Answer and Third-Party Complaint. Private respondent sought to implead the Central Bank and Arnulfo Aurellano as third-party defendants. It was alleged in the third-party complaint that by reason of the tortious interference by the Central Bank with the affairs of GENBANK, private respondent was prevented from performing his obligation under the loan such that he should not now be held liable thereon.

ISSUES & ARGUMENTS

- W/N Arnulfo Arellano and Central Bank are liable for tortious interference

HOLDING & RATIO DECIDENDI

They are liable for tortious interference but the action has already prescribe.

As early as Capayas vs. Court of First Instance of Albay,[11] this Court had already outlined the tests to determine whether the claim for indemnity in a third-party claim is "in respect of plaintiff's claim." They are: (a) whether it arises out of the same transaction on which the plaintiffs claim is based, or whether the third-party's claim, although arising out of another or different contract or transaction, is connected with the plaintiffs claim; (b) whether the third-party defendant would be liable to the plaintiff or to the defendant for all or part of the plaintiffs claim against the original defendant, although the third-party defendant's liability arises out of another transaction; or (c) whether the third-party defendant may assert any defense which the third-party plaintiff has, or may have against plaintiff s claim.[1]

While the claim of third-party plaintiff, private respondent herein, does not fall under test (c), there is no doubt that such claim can be accommodated under tests (a) and (b) above-mentioned. Whether or not this Court agrees with the petitioner's assertion that the claim does not "arise out of the same transaction on which the plaintiff s claim is based," it cannot be denied that the third-party's claim (although arising out of another or different contract or transaction) is connected with plaintiffs claim. Put differently, there is merit in private respondent's position that if held liable on the promissory note, they are seeking, by means of the third-party complaint, to transfer unto the third-party defendants liability on the note by reason of the illegal liquidation of GENBANK which, in the first place, was the basis for the assignment of the promissory note. If there was any confusion at all on the ground/s alleged in the third-party complaint, it was the claim of third-party plaintiff for other damages in addition to any amount which he may be called upon to pay under the original complaint. While these allegations in the proposed third-party complaint may cause delay in the disposition of the main suit, it cannot, however, be outrightly asserted that it would not serve any purpose.

As to the issue of prescription, it is the position of petitioner that the cause of action alleged in the third-party complaint has already prescribed. Being founded on what was termed as tortious interference," petitioner asserts that under the applicable provisions of the Civil Code on quasi-delict the action against third-party defendants should have been filed within four (4) years from the date the cause of action accrued

130 Arsenio Delos Reyes et al. v. CA | Bellosillo
G.R. No. 121468, January 27, 1998 |

FACTS

- 28 July 1987 RTC dismissed recovery of possession of real property with damages filed by petitioners against private respondents. 23 January 1995 CA affirmed order of dismissal.
- 7 July 1942 vendors Delos Reyes sold 10,000sqm to Mercado and Pena out of 13405sqm. 4 June 1943 vendees managed to get a TCT covering whole parcel worth 13405sqm. Pena sold whole property to de Guzman and de Onon, and they in turn sold the land… until private respondents managed to acquire the current property.
- 3 October 1978 petitioners filed an action for reconveyance over the unsold 3405sqm portion

ISSUES & ARGUMENTS

- **W/N An action for reconveyance can prosper if filed more than 30 years against holder for value?**

HOLDING & RATIO DECIDENDI

PETITION DENIED.

- Right is not imprescriptible. There is a time corridor for filing. Art 1141 of Civil Code provides real actions over 143mmovable's prescribe after 30 years. Action initiated only after 36 years. Right has prescribed.
- Even if allowed by law petition still barred by laches as 36 years have passed and neither the original vendor nor the heirs attempted to restrain the transfer of the 3405sqm

131 Ferrer vs. Ericta | Kapunan
G.R. No. 129329, July 31, 2001 | 362 SCRA 56

FACTS

- Mr. and Mrs. Francis Pfleider were the owners or operators of a Ford pick-up car. At about 5:00 o'clock in the afternoon of December 31, 1970, their son, defendant Dennis Pfleider, who was then only sixteen (16) years of age, without proper official authority, drove the for pick-up, without due regard to traffic rules and regulations, and without taking the necessary precaution to prevent injury to persons or damage to property. The pickup car was overturned, causing physical injuries to plaintiff Annette Ferrer, who was then a passenger therein, which injuries paralyzed her and required medical treatment and confinement at different hospitals for more than two (2) years; that as a result of the physical injuries sustained by Annette, she suffered unimaginable physical pain, mental anguish, and her parents also suffered mental anguish, moral shock and spent a considerable sum of money for her treatment.
- The complaint was only filed on January 5, 1975.
- At the pre-trial on May 12, 1975, only Ferrer and counsel were present. As such the Pfleiders were declared in default and the court rendered judgment against them.
- Upon filing a motion for reconsideration, respondent judge, without setting aside the order of default, issued an order absolving defendants from any liability on the grounds that: (a) the complaint states no cause of action because it does not allege that Dennis Pfleider was living with his parents at the time of the vehicular accident, considering that under Article 2180 of the Civil Code, the father and, in case of his death or incapacity the mother, are only responsible for the damages caused by their minor children who live in their company; and (b) that the defense of prescription is meritorious, since the complaint was filed more than four (4) years after the date of the accident, and the action to recover damages based on quasi-delict prescribes in four (4) years. Hence, the instant petition for mandamus.

ISSUES & ARGUMENTS

W/N the defense of prescription had been deemed waived by private respondents' failure to allege the same in their answer.

HOLDING & RATIO DECIDENDI

NO. DEFENSE OF PRESCRIPTION NOT DEEMED WAIVED.

- Where the answer does not take *issue* with the complaint as to dates involved in the defendant's claim of prescription, his failure to specifically plead prescription in the answer does not constitute a waiver of the defense of prescription. The defense of prescription, even if not raised in a motion to dismiss or in the answer, is not deemed waived unless such defense raises *issues* of fact not appearing upon the preceding pleading
- It is true that the defense of prescription can only be considered if the same is invoked as such in the answer of the defendant and that in this particular instance no such defense was invoked because the defendants had been declared in default, but such rule does not obtain when the evidence shows that the cause of action upon which plaintiff's complaint is based is already barred by the statute of limitations
- In the present case, there is no issue of fact involved in connection with the question of prescription. Actions for damages arising from physical injuries because of a tort must be filed within four years. [8] The four-year period begins from the day the quasi-delict is committed or the date of the accident

132 Kramer, Jr. vs. CA | Gancayco, J.:
G.R. No. 83524, October 13, 1989 | 178 SCRA 518

FACTS

- On April 8, 1976, F/B Marjolea, a fishing boat owned by petitioners Ernest Kramer, Jr. and Marta Kramer was navigating its way from Marinduque to Manila.
- Somewhere near the Maricabon Island and Cape Santiago, the boat figured in a collision with an inter-island vessel (M/V Asia Philippines) owned by Trans-Asia Shipping Lines, Inc.
- Due to the collision, F/B Marjolea sank, taking along its fish catch.
- The captains of both vessels filed a protest with the Board of Marine Inquiry of the Philippine Coast Guard *for the purpose of determining the proximate cuase of the maritime collision*
- On October 19, 1981, the Board concluded that the collision was due to the negligence of the employees of private respondent (Trans-Asia).
- On the basis of such decision, the Philippine Coast Guard, on April 29, 1982, suspended M/V Asia Philippines from pursuing his profession as a marine officer.
- On May 30,1985, petitioners filed a complaint for damages in the RTC, Pasay City.
- Private respondent filed a MTD on the ground of prescription based on Art. 1146 of the Civil Code which provides, 'An action based upon quasi-delict must be instituted within 4 years from the day the quasi-delcit was committed.
- The RTC denied the MTD on the basis of the Board's resolution that there was a need to rely on highly technical aspects attendant to such collision, hence, the prescriptive period under the law should begin to run only from April 29, 1982, the date when the negligence of the crew of M/V Asia Philippines had been finally ascertained.
- On appeal to the CA, the said court reversed the RTC's decision and granted the MTD, hence the present petition for certiorari and prohibition.

ISSUES & ARGUMENTS

W/N a complaint for damages instituted by the petitioners against the private respondent arising from a marine collision is barred by the statute of limitations

HOLDING & RATIO DECIDENDI

YES.

- The right of action accrues when there exists a cause of action, which consists of 3 elements, namely:
    - A right in favor of the plaintiff by whatever means and under whatever law it arises or is created
    - An obligation on the part of defendant to respect such right
    - An act or omission on the part of such defendant violative of the right of the plaintiff
- The occurrence of the last element is the time when the cause of action arise
- Aggrieved party need not wait for a determination by an administrative body that the collision was caused by fault or negligence of the other party before he can file action for damages

Petition is DISMISSED.

133 Bayacen vs. CA |
| 103 SCRA 197

FACTS

- On the morning of August 15, 1963, Saturnino Bayasen, the Rural Health Physician in Sagada, Mountain Province, went to barrio Ambasing to visit a patient.
- Two nurses from the Saint Theodore's Hospital in Sagada, viz., Elena Awichen and Dolores Balcita, rode with him in the jeep assigned for the use of the Rural Health Unit as they had requested for a ride to Ambasing.
- Later, at Ambasing, the girls, who wanted to gather flowers, again asked if they could ride with him up to a certain place on the way to barrio Suyo which he intended to visit anyway. Dr. Bayasen again allowed them to ride, Elena sitting herself between him and Dolores.
- On the way, at barrio Langtiw, the jeep went over a precipice About 8 feet below the road, it was blocked by a pine tree. The three were thrown out of the jeep. Elena was found lying in a creek further below. Among other injuries, she suffered a skull fracture which caused her death.
- Bayasen was charged in December 1963 by the Provincial Fiscal of Mountain Province of the crime of Homicide Thru Reckless Imprudence.
- After trial, the Bayasen was found guilty of the charge and was sentenced to an indeterminate penalty.

ISSUE

W/N Bayasen was negligent?

HOLDING & RATIO DECIDENDI

- The proximate cause of the tragedy was the skidding of the rear wheels of the jeep and not the "unreasonable speed" of the Bayasen because there is no evidence on record to prove or support the finding that the Bayasen was driving at "an unreasonable speed".
- It is a well known physical tact that cars may skid on greasy or slippery roads, as in the instant case, without fault on account of the manner of handling the car. Skidding means partial or complete loss of control of the car under circumstances not necessarily implying negligence. It may occur without fault.
- No negligence as a matter of law can, therefore, be charged to the Bayasen. In fact, the moment he felt that the rear wheels of the jeep skidded, he promptly drove it to the left hand side of the road, parallel to the slope of the mountain, because as he said, he wanted to play safe and avoid the embankment.
- Under the particular circumstances of the instant case, Bayasen who skidded could not be regarded as negligent, the skidding being an unforeseen event, so that the Bayasen had a valid excuse for his departure from his regular course. The negligence of the Bayasen not having been sufficiently established, his guilt of the crime charged has not been proven beyond reasonable doubt. He is, therefore, entitled to acquittal.

134 NAPOCOR v. CA | Nocon
G.R. No. 96410, July 3, 1992 | 211 SCRA 162

FACTS

- In the early morning hours of October 27, 1978, at the height of typhoon "Kading", a massive flood covered the towns near Angat Dam, causing several deaths and the loss and destruction of properties of the people residing near the Angat River. Private respondents are residents of such area. They were awakened by the sound of rampaging water all around them. The water came swiftly and strongly that before they could do anything to save their belongings, their houses had submerged, some even swept away by the strong current..
- Private respondents blamed the sudden rush of water to the reckless and imprudent opening of all the three (3) floodgates of the Angat Dam spillway, without prior warning to the people living near or within the vicinity of the dam.
- Petitioners denied private respondents' allegations and contended that they have maintained the water in the Angat Dam at a safe level and that the opening of the spillways was done gradually and after all precautionary measures had been taken. Petitioner NPC further contended that it had always exercised the diligence of a good father in the selection of its officials and employees and in their supervision. It also claimed that written warnings were earlier sent to the towns concerned. At the time typhoon "Kading" hit Bulacan with its torrential rain, a great volume of flood water flowed into the dam's reservoir necessitating the release of the water therein in order to prevent the dam from collapsing and causing the loss of lives and tremendous damage to livestock and properties.
- Petitioners further contended that there was no direct causal relationship between the alleged damages suffered by the respondents and the acts and omissions attributed to the former. That it was the respondents who assumed the risk of residing near the Angat River, and even assuming that respondents suffered damages, the cause was due to a fortuitous event and such damages are of the nature and character of *damnum absque injuria,* hence, respondents have no cause of action against them.
- The Trial Court awarded damages, interest, and attorney's fees. The CA affirmed such ruling.

ISSUE

- **W/N the injury caused to private respondents was due to fortuitous event**.

HOLDING & RATIO DECIDENDI

- No. Act of God or *force majeure,* by definition, are extraordinary events not foreseeable or avoidable, events that could not be foreseen, or which, though foreseen, are inevitable. It is not enough that the event should not have been foreseen or anticipated, as is commonly believed, but it must be one impossible to foresee or to avoid. As a general rule, no person shall be responsible for those events which could not be foreseen or which though foreseen, were inevitable.
- The act of God doctrine strictly requires that the act must be occasioned solely by the violence of nature. Human intervention is to be excluded from creating or entering into the cause of the mischief. When the effect is found to be in part the result of the participation of man, whether due to his active intervention or neglect or failure to act, the whole occurrence is then humanized and removed from the rules applicable to the acts of God.
    - Rainfall was classified only as moderate and couldn't' have caused flooding.
    - Despite announcements of the coming of a powerful typhoon, the water level was maintained at its maximum.
- When the negligence of a person concurs with an act of God producing a loss, such person is not exempt from liability by showing that the immediate cause of the damage was the act of God. To be exempt he must be free from any previous negligence or misconduct by which the loss or damage may have been occasioned.

AYEN QUA

135 NAPOCOR vs. CA|Nocon
G.R. No. 96410,July 3, 1992|

FACTS

- Petition for review on *certiorari* instituted by the National Power Corporation (NPC)from the decision of the Court of Appeals . The appellate court affirmed *in toto* the decision of the Regional Trial Court of Malolos, Bulacan, which awarded damages, interest, attorney's fees and litigation expenses against petitioners
- It appears that in the early morning hours of October 27, 1978, at the height of typhoon "Kading", a massive flood covered the towns near Angat Dam, particularly the town of Norzagaray, causing several deaths and the loss and destruction of houses, farms, plants, working animals and other properties of the people residing near the Angat River.
- Private respondents recalled that on the said day, they were awakened by the sound of rampaging water all around them. The water came swiftly and strongly that before they could do anything to save their belongings, their houses had submerged, some even swept away by the strong current. A number of people were able to save their lives only by climbing trees.
- Private respondents blamed the sudden rush of water to the reckless and imprudent opening of all the three (3) floodgates of the Angat Dam spillway, without prior warning to the people living near or within the vicinity of the dam.

ISSUES & ARGUMENTS

W/N NAPOCOR is liable.

- **Petitioners:** Denied private respondents' allegations and, by way of defense, contended that they have maintained the water in the Angat Dam at a safe level and that the opening of the spillways was done gradually and after all precautionary measures had been taken. Petitioner NPC further contended that it had always exercised the diligence of a good father in the selection of its officials and employees and in their supervision. It also claimed that written warnings were earlier sent to the towns concerned. Petitioners further contended that there was no direct causal relationship between the alleged damages suffered by the respondents and the acts and omissions attributed to the former. That it was the respondents who assumed the risk of residing near the Angat River, and even assuming that respondents suffered damages, the cause was due to a fortuitous event and such damages are of the nature and character of *damnum absque injuria,* hence, respondents have no cause of action against them.

HOLDING & RATIO DECIDENDI

NAPOCOR LIABLE.

- The court does not agree with the petitioners that the decision handed down in *Juan F. Nakpil & Sons, supra*, is not applicable to the present case. The doctrine laid down in the said case is still good law, as far as the concurrent liability of an obligor in case of a *force majeure,* is concerned.
- The case of *National Power Corp. v. Court of Appeals,* as a matter of fact, reiterated the ruling in *Juan F. Nakpil & Sons*. In the former case, this Court ruled that the obligor cannot escape liability, if upon the happening of a fortuitous event or an act of God, a corresponding fraud, negligence, delay or violation or contravention in any manner of the tenor of the obligation as provided in Article 1170 of the Civil Code which results in loss or damage.
- However, the principle embodied in the act of God doctrine strictly requires that the act must be occasioned solely by the violence of nature. Human intervention is to be excluded from creating or entering into the cause of the mischief. When the effect is found to be in part the result of the participation of man, whether due to his active intervention or neglect or failure to act, the whole occurrence is then humanized and removed from the rules applicable to the acts of God. [9]
- In the case at bar, although the typhoon "Kading" was an act of God, petitioners can not escape liability because their negligence was the proximate cause of the loss and damage.
- The evidence shows that as early as October 25, 1978 the newspapers had announced the expected occurrence of a powerful typhoon code-named "Kading". On October 26, 1978, Bulletin Today had as its headline the coming of the typhoon. Despite these announcements, the water level in the dam was maintained at its maximum from October 21, until midnight of October 26, 1978.
- WHEREFORE, finding no reversible error in the Decision appealed from, the same is hereby affirmed *in toto,* with cost against petitioner.

DEANNE REYES

136 Philippine Airlines Inc. vs CA| Regalado
GR No. 120262 July 17, 1997|

FACTS

- On October 23, 1988, private respondent Pantejo, then City Fiscal of Surigao City, boarded a PAL plane in Manila and disembarked in Cebu City where he was supposed to take his connecting flight to Surigao City However, due to typhoon *Osang,* the connecting flight to Surigao City was cancelled.
- To accommodate the needs of its stranded passengers, PAL initially gave out cash assistance of P100.00 and, the next day, P200.00, for their expected stay of two days in Cebu.
- Respondent Pantejo requested instead that he be billeted in a hotel at PAL's expense because he did not have cash with him at that time, but PAL refused.
- Thus, respondent Pantejo was forced to seek and accept the generosity of a co-passenger, an engineer named Andoni Dumlao, and he shared a room with the latter at Sky View Hotel with the promise to pay his share of the expenses upon reaching Surigao.
- On October 25, 1988 when the flight for Surigao was resumed, respondent Pantejo came to know that the hotel expenses of his co-passengers, one Superintendent Ernesto Gonzales and a certain Mrs. Gloria Rocha, an auditor of the Philippine National Bank, were reimbursed by PAL.
- At this point, respondent Pantejo informed Oscar Jereza, PAL's Manager for Departure Services at Mactan Airport and who was in charge of cancelled flights, that he was going to sue the airline for discriminating against him. It was only then that Jereza offered to pay respondent Pantejo P300.00 which, due to the ordeal and anguish he had undergone, the latter decline.

ISSUES & ARGUMENTS

- **W/N PAL can establish the defense of force majeure.**

HOLDING & RATIO DECIDENDI

Yes.

- PAL can establish the defense of force majeure but it is still liable for damages.
- Petitioner theorizes that the hotel accommodations or cash assistance given in case a flight is cancelled is in the nature of an amenity and is merely a privilege that may be extended at its own discretion, but never a right that may be demanded by its passengers. Thus, when respondent Pantejo was offered cash assistance and he refused it, petitioner cannot be held liable for whatever befell respondent Pantejo on that fateful day, because it was merely exercising its discretion when it opted to just give cash assistance to its passengers.
- Assuming *arguendo* that the airline passengers have no vested right to these amenities in case a flight is cancelled due to force majeure, what makes petitioner liable for damages in this particular case and under the facts obtaining herein is its blatant refusal to accord the so-called amenities equally to all its stranded passengers who were bound for Surigao City. No compelling or justifying reason was advanced for such discriminatory and prejudicial conduct.
- More importantly, it has been sufficiently established that it is petitioner's standard company policy, whenever a flight has been cancelled, to extend to its hapless passengers cash assistance or to provide them accommodations in hotels with which it has existing tie-ups. In fact, petitioner's Mactan Airport Manager for departure services, Oscar Jereza, admitted that PAL has an existing arrangement with hotels to accommodate stranded passengers, and that the hotel bills of Ernesto Gonzales were reimbursed obviously pursuant to that policy.

137 Cipriano vs. CA |
G.R. No. | 263 SCRA 711

FACTS

- Cipriano is engaged in rust-roofing of vehicles (Mobilkote) and a restaurant (Lambat) situated adjointly. On a relevant date, an employee of Maclin Electronics brought a Kia Pride to him for such service, which the latter should have claimed on a certain time after the service but failed to do so.
- Cipriano then kept the same in the inner garage to safeguard against theft. However fire broke out from Cipriano's adjoined restaurant, which then burned the premises of Mobilkote, including the Kia car.
- Private respondent then sued for damages which Cipriano denied since there was delay in the claim of the car. CA upheld liability by reason of Cipriano's failure to observe mandate of PD 1572.

ISSUES & ARGUMENTS

- **W/N Cipriano could be held liable for damages despite the fire being a *caso fortuito*.**

HOLDING & RATION DECIDENDI

YES. CIPRIANO LIABLE.

- Violation of a statutory duty is negligence. His failure to insure the cars under his service and the service he renders under the DTI is a condition precedent for his operations. Although the fire is a fortuitous event, the circumstance given as neglect of duty cannot exempt petitioner from the loss.

138 Yobido vs. CA| Romero
G.R. No. 113003 October 17, 1997 |SCRA

FACTS

- Spouses **Tito and Leny Tumboy** and their minor children named **Ardee and Jasmin**, boarded a Yobido Liner bus.
- The left front tire of the bus exploded. The bus fell into a ravine around three (3) feet from the road and struck a tree.
- The incident resulted in the death of 28-year-old **Tito Tumboy** and physical injuries to other passengers.
- A complaint for *breach of contract of carriage, damages and attorney's fees* was filed by Leny and her children against **Alberta Yobido**, the owner of the bus, and **Cresencio Yobido**, its driver
- TC dismissed the petition for lack of merit, because it said the tire blowout was "a *caso fortuito* which is completely an extraordinary circumstance independent of the will" of the defendants who should be relieved of "whatever liability the plaintiffs may have suffered by reason of the explosion pursuant to Article 1174[6] of the Civil Code."
- CA reversed the decision of the TC.
  - "To Our mind, the explosion of the tire is not in itself a fortuitous event. The cause of the blow-out, if due to a factory defect, improper mounting, excessive tire pressure, is not an unavoidable event. On the other hand, there may have been adverse conditions on the road that were unforeseeable and/or inevitable, which could make the blow-out a caso fortuito. The fact that the cause of the blow-out was not known does not relieve the carrier of liability.
  - The fact that the cause of the blow-out was not known does not relieve the carrier of liability. Owing to the statutory presumption of negligence against the carrier and its obligation to exercise the utmost diligence of very cautious persons to carry the passenger safely as far as human care and foresight can provide, it is the burden of the defendants to prove that the cause of the blow-out was a fortuitous event."
  - As enunciated in *Necesito vs. Paras*, the passenger has neither choice nor control over the carrier in the selection and use of its equipment, and the good repute of the manufacturer will not necessarily relieve the carrier from liability.

[6] Art. 1174. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

ISSUES & ARGUMENTS

- **W/N the explosion of a newly installed tire of a passenger vehicle is a fortuitous event that exempts the carrier from liability for the death of a passenger.**
  - **Tumboys:** The violation of the contract of carriage between them and the defendants was brought about by the driver's failure to exercise the diligence required of the carrier in transporting passengers safely to their place of destination.
  - **Leny Tumboy**: Since it was "running fast," she cautioned the driver to slow down but he merely stared at her through the mirror.
  - **Salce (bus conductor**): he bus was running at a speed of "60 to 50" and that it was going slow because of the zigzag road. The left front tire that exploded was a "brand new tire" that he mounted on the bus on April 21, 1988 or only five (5) days before the incident. The Yobido Liner secretary, Minerva Fernando, bought the new Goodyear tire from Davao Toyo Parts on April 20, 1988. The tire blowout that caused the death of Tito Tumboy was a *caso fortuito.*

HOLDING & RATIO DECIDENDI

No. The explosion of a newly installed tire of a passenger vehicle is not a fortuitous event that exempts the carrier from liability for the death of a passenger.

On the Presumption of Negligence:

- Based on Art. 1756 of the CC[7], when a passenger is injured or dies while travelling, the law presumes that the common carrier is negligent.
- This disputable presumption may only be overcome by evidence that the carrier had observed extraordinary diligence as prescribed by Articles 1733[8], 1755 and 1756 of the Civil Code or that the death or injury of the passenger was due to a fortuitous event.

On *Caso Fortuito*:

- Yobido's contention that they should be exempt from liability because the tire blowout was no more than a fortuitous event that could not have been foreseen, must fail.
- A fortuitous event is possessed of the following characteristics:

[7] "Art. 1756. In case of death or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755."

[8] Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Such extraordinary diligence in the vigilance over the goods is further expressed in articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in articles 1755 and 1756.

  - The cause of the unforeseen and unexpected occurrence, or the failure of the debtor to comply with his obligations, must be independent of human will;
  - It must be impossible to foresee the event which constitutes the *caso fortuito*, or if it can be foreseen, it must be impossible to avoid;
  - The occurrence must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and
  - The obligor must be free from any participation in the aggravation of the injury resulting to the creditor.
- Under the circumstances of this case, the explosion of the new tire may not be considered a fortuitous event. There are human factors involved in the situation. The fact that the tire was new did not imply that it was entirely free from manufacturing defects or that it was properly mounted on the vehicle
- **It is settled that an accident caused either by defects in the automobile or through the negligence of its driver is not a *caso fortuito* that would exempt the carrier from liability for damages.**

Proof of Diligence is Essential:

- ***Moreover, a common carrier may not be absolved from liability in case of force majeure or fortuitous event alone. The common carrier must still prove that it was not negligent in causing the death or injury resulting from an accident.***
- They failed to rebut the testimony of Leny Tumboy that the bus was running so fast that she cautioned the driver to slow down. These contradictory facts must, therefore, be resolved in favor of liability in view of the presumption of negligence of the carrier in the law.
- The Yobidos should have shown that it undertook extraordinary diligence in the care of its carrier, such as conducting daily routinary check-ups of the vehicle's parts.

139 Japan Airlines vs. Court of Appeals | Romero, J.
G.R. No. 118664, August 7, 1998 | 294 SCRA 19

FACTS

- On June 13, 1991, private respondent Jose Miranda boarded JAL flight No. JL 001 in San Francisco, California bound for Manila. Likewise, on the same day private respondents Enrique Agana, Maria Angela Nina Agana and Adelia Francisco left Los Angeles, California for Manila via JAL flight No. JL 061. As an incentive for travelling on the said airline, both flights were to make an overnight stopover at Narita, Japan, at the airlines' expense, thereafter proceeding to Manila the following day.
- Upon arrival at Narita, Japan on June 14, 1991, private respondents were billeted at Hotel Nikko Narita for the night. The next day, private respondents, on the final leg of their journey, went to the airport to take their flight to Manila. However, due to the Mt. Pinatubo eruption, unrelenting ashfall blanketed Ninoy Aquino International Airport (NAIA), rendering it inaccessible to airline traffic. Hence, private respondents' trip to Manila was cancelled indefinitely.
- To accommodate the needs of its stranded passengers, JAL rebooked all the Manila-bound passengers on flight No. 741 due to depart on June 16, 1991 and also paid for the hotel expenses for their unexpected overnight stay. On June 16, 1991, much to the dismay of the private respondents, their long anticipated flight to Manila was again cancelled due to NAIA's indefinite closure. At this point, JAL informed the private respondents that it would no longer defray their hotel and accommodation expense during their stay in Narita.
- Since NAIA was only reopened to airline traffic on June 22, 1991, private respondents were forced to pay for their accommodations and meal expenses from their personal funds from June 16 to June 21, 1991. Their unexpected stay in Narita ended on June 22, 1991 when they arrived in Manila on board JL flight No. 741.
- Obviously, still reeling from the experience, private respondents, on July 25, 1991, commenced an action for damages against JAL before the Regional Trial Court of Quezon City, Branch 104. [2] To support their claim, private respondents asserted that JAL failed to live up to its duty to provide care and comfort to its stranded passengers when it refused to pay for their hotel and accommodation expenses from June 16 to 21, 1991 at Narita, Japan. In other words, they insisted that JAL was obligated to shoulder their expenses as long as they were still stranded in Narita. On the other hand, JAL denied this allegation and averred that airline passengers have no vested right to these amenities in case a flight is cancelled due to "force majeure."
- On June 18, 1992, the trial court rendered its judgment in favor of private respondents holding JAL liable for damages
- Undaunted, JAL appealed the decision before the Court of Appeals, which, however, with the exception of lowering the damages awarded affirmed the trial court's finding, [3] thus:
- JAL filed a motion for reconsideration which proved futile and unavailing. [4]
- Failing in its bid to reconsider the decision, JAL has now filed this instant petition.

ISSUES & ARGUMENTS

W/N the JAL, as a common carrier has the obligation to shoulder the hotel and meal expenses of its stranded passengers until they have reached their final destination, even if the delay were caused by "force majeure."

HOLDING & RATIO DECIDENDI

- We are not unmindful of the fact that in a plethora of cases we have consistently ruled that a contract to transport passengers is quite different in kind, and degree from any other contractual relation. It is safe to conclude that it is a relationship imbued with public interest. Failure on the part of the common carrier to live up to the exacting standards of care and diligence renders it liable for any damages that may be sustained by its passengers. However, this is not to say that common carriers are absolutely responsible for all injuries or damages even if the same were caused by a fortuitous event. To rule otherwise would render the defense of "force majeure," as an exception from any liability, illusory and ineffective.
- Accordingly, there is no question that when a party is unable to fulfill his obligation because of "force majeure," the general rule is that he cannot be held liable for damages for non-performance. [6] Corollarily, when JAL was prevented from resuming its flight to Manila due to the effects of Mt. Pinatubo eruption, whatever losses or damages in the form of hotel and meal expenses the stranded passengers incurred, cannot be charged to JAL. Yet it is undeniable that JAL assumed the hotel expenses of respondents for their unexpected overnight stay on June 15, 1991.
- Admittedly, to be stranded for almost a week in a foreign land was an exasperating experience for the private respondents. To be sure, they underwent distress and anxiety during their unanticipated stay in Narita, but their predicament was not due to the fault or negligence of JAL but the closure of NAIA to international flights. Indeed, to hold JAL, in the absence of bad faith or negligence, liable for the amenities of its stranded passengers by reason of a fortuitous event is too much of a burden to assume.
- Furthermore, it has been held that airline passengers must take such risks incident to the mode of travel. [7] In this regard, adverse weather conditions or extreme climatic changes are some of the perils involved in air travel, the consequences of which the passenger must assume or expect. After all, common carriers are not the insurer of all risks. [8]
- The reliance is misplaced. The factual background of the PAL case is different from the instant petition. In that case there was indeed a fortuitous event resulting in the diversion of the PAL flight. However, the unforeseen diversion was worsened when "private respondents (passenger) was left at the airport and could not even hitch a ride in a Ford Fiera loaded with PAL personnel," [10] not to mention the apparent apathy of the PAL station manager as to the predicament of the stranded passengers. [11] In light of these circumstances, we held that if the fortuitous event was accompanied by neglect and malfeasance by the carrier's employees, an action for damages against the carrier is permissible. Unfortunately, for private respondents, none of these conditions are present in the instant petition.

- We are not prepared, however, to completely absolve petitioner JAL from any liability. It must be noted that private respondents bought tickets from the United States with Manila as their final destination. While JAL was no longer required to defray private respondents' living expenses during their stay in Narita on account of the fortuitous event, JAL had the duty to make the necessary arrangements to transport private respondents on the first available connecting flight to Manila. Petitioner JAL reneged on its obligation to look after the comfort and convenience of its passengers when it declassified private respondents from "transit passengers" to "new passengers" as a result of which private respondents were obliged to make the necessary arrangements themselves for the next flight to Manila. Private respondents were placed on the waiting list from June 20 to June 24. To assure themselves of a seat on an available flight, they were compelled to stay in the airport the whole day of June 22, 1991 and it was only at 8:00 p.m. of the aforesaid date that they were advised that they could be accommodated in said flight which flew at about 9:00 a.m. the next day.
- We are not oblivious to the fact that the cancellation of JAL flights to Manila from June 15 to June 21, 1991 caused considerable disruption in passenger booking and reservation. In fact, it would be unreasonable to expect, considering NAIA's closure, that JAL flight operations would be normal on the days affected. Nevertheless, this does not excuse JAL from its obligation to make the necessary arrangements to transport private respondents on its first available flight to Manila. After all, it had a contract to transport private respondents from the United States to Manila as their final destination.
- Consequently, the award of nominal damages is in order. Nominal damages are adjudicated in order that a right of a plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized and not for the purpose of indemnifying any loss suffered by him. [12] The court may award nominal damages in every obligation arising from any source enumerated in article 1157, or in every case where any property right has been invaded. [13]

140 Gotesco Investment Corporation vs. Chatto | Davide
G.R. No. 87584, June 16, 1992 | 210 SCRA 18

FACTS

- Gloria E. Chatto and her 15-year old daughter Lina went to see the movie "Mother Dear" at Superama I theater, owned by Gotesco Investment Corporation. They bought balcony tickets but even then were unable to find seats considering the number of people patronizing the movie. Hardly 10 minutes after entering the theater, the ceiling of the balcony collapsed and pandemonium ensued.
- The Chattos managed to crawl under the fallen ceiling and walk to the nearby FEU hospital where they were confined and treated for a day. Later, they had to transfer to UST hospital, and because of continuing pain in the neck, headache, and dizziness, had to even go to Illinois, USA for treatment.
- Gotesco tried to avoid liability by alleging that the collapse was due to force majeure. It maintained that its theater did not suffer from any structural or construction defect. The trial court awarded actual/compensatory and moral damages and attorney's fees in favor of the Chattos. The CA also found Gotesco's appeal to be without merit. Hence this petition.

ISSUES & ARGUMENTS

- **W/N the cause of the collapse of the balcony ceiling was force majeure**

HOLDING & RATIO DECIDENDI

COLLAPSE OF THE BALCONY CEILING NOT DUE TO FORCE MAJEURE. GOTESCO LIABLE.

- Gotesco's claim that the collapse of the ceiling of the theater was due to force majeure is not even founded on facts because its own witness, Mr. Ong, admitted that he could not give any reason for the collapse. Having interposed it as a defense, it had the burden to prove that the collapse was indeed caused by force majeure. It could not have collapsed without a cause. That Mr. Ong could not offer any explanation does not imply force majeure.
- Spanish and American authorities on the meaning of *force majeure*:

  Inevitable accident or casualty; an accident produced by any physical cause which is irresistible; such as lightning, tempest, perils of the sea, inundation, or earthquake; the sudden illness or death of a person. [Blackstone]

  The event which we could neither foresee nor resist; as, for example, the lightning stroke, hail, inundation, hurricane, public enemy, attack by robbers; [Esriche]

  Any accident due to natural causes, directly, exclusively, without human intervention, such as could not have been prevented by any kind of oversight, pains, and care reasonably to have been expected. [Bouvier]

- Gotesco could have easily discovered the cause of the collapse if indeed it were due to *force majeure*. The real reason why Mr. Ong could not explain the cause is because either he did not actually conduct an investigation or because he is incompetent (not an engineer, but an architect who had not even passed the government's examination).
- The building was constructed barely 4 years prior to the accident. It was not shown that any of the causes denominated as *force majeure* obtained immediately before or at the time of the collapse of the ceiling. Such defects could have been discovered if only Gotesco exercised due diligence and care in keeping and maintaining the premises. But, as disclosed by Mr. Ong, no adequate inspection of the premises before the date of the accident.
- That the structural designs and plans of the building were duly approved by the City Engineer and the building permits and certificate of occupancy were issued do not at all prove that there were no defects in the construction, especially as regards the ceiling, considering that no testimony was offered to prove that it was ever inspected at all.
- And even assuming arguendo that the cause of the collapse was due to *force majeure*, Gotesco would still be liable because the trial court declared it to be guilty of **gross** negligence. As gleaned from Bouvier's definition, for one to be exempt from any liability because of it, he must have exercised care, i.e., he should not have been guilty of negligence.

CHRISSIE MORAL

141 Walter Smith Co. v. Cadwallader Gibson Lumber Co. | Villamor
G.R. No. L-32640, December 29, 1930 | 55 Phil. 517

FACTS

- Defendant owns a steamer under the command of Capt. Lasal. The steamer was in the course of its maneuvers to moor at plaintiff's wharf in Olutanga, Zamboanga, when said steamer struck said wharf, partially demolishing it and throwing the timber piled thereon into the water. As a result, plaintiff sued defendant for the partial destruction of the wharf and for the timber that was piled thereon.
- Trial court held that the defendant was not liable for the partial collapse of the plaintiff's wharf, and for the loss of the timber piled thereon, dismissing the complaint with costs against the plaintiff.

ISSUES & ARGUMENTS

- **W/N defendant is liable.**

HOLDING & RATIO DECIDENDI

NO, CADWALLADER GIBSON LUMBER CO. IS NOT LIABLE.

- The instant case, dealing, as it does, with an obligation arising from *culpa aquiliana* or negligence, must be decided in accordance with articles 1902 and 1903 (now 2176 and 2180) of the Civil Code.
- It is not true that proof of due diligence and care in the selection of and instructions to a servant relieves the master of liability for the former's acts; on the contrary, such proof shows that the liability never existed. As Manresa (vol. VIII, page 68) says, the liability arising from an extra-contractual wrong is always based upon a *voluntary* act or omission, which, while free from any wrongful intent, and due to mere negligence or carelessness, causes damaged to another. A master who takes all possible precaution in selecting his servants or employees, bearing in mind the qualifications necessary for the performance of the duties to be entrusted to them, and instructs them with equal care, complies with his duty to all third parties to whom he is not bound under contract, and incurs no liability if, by reason of the negligence of such servants though it be during the performance of their duties as such, third parties should suffer damages. It is true that under article 1903 of the Civil Code, the law presumes that the master, if regarded as an establishment, has been negligent in the selection of, or instruction to, its servants, but that is a mere *juris tantum* presumption and is destroyed by the evidence of due care and diligence in this respect.
- In a previous case (Bahia v. Litonjua and Leynes), this distinction was clearly stated. It said:

  > From this article two things are apparent: (1) That when an injury is caused by the negligence of a servant or employee there instantly arises a presumption of law that there was negligence on the part of the master or employer either in the selection of the servant or employee, or in supervision over him after the selection, or both; and (2) that the presumption is *juris tantum* and not *juris et de jure*, and consequently, may be rebutted. it follows necessarily that if the employer shows to the satisfaction of the court that in selection and supervision he has exercised the care and diligence of a good father of a family, the presumption is overcome and he is relieved from liability.
  >
  > This theory bases the responsibility of the master ultimately on his *own* negligence and not on that of his servant. This is the notable peculiarity of the Spanish law of negligence. It is, of course, in striking contrast to the American doctrine that, in relations with strangers, the negligence of the servant is conclusively the negligence of the master.

- The evidence shows that Captain Lasal at the time the plaintiff's wharf collapse was a duly licensed captain, authorized to navigate and direct a vessel of any tonnage, and that the defendant contracted his services because of his reputation as a captain. This being so, the presumption of liability against the defendant has been overcome by the exercise of the care and diligence of a good father of a family in selecting Captain Lasal, in accordance with the doctrines laid down by this court in the cases cited above, and the defendant is therefore absolved from all liability.

142 Ong vs. Metropolitan Water District | Bautista Angelo
L-7644 August 29, 1958 |

FACTS

- Metropolitan owns 3 swimming pools at its filters in Balara, Quezon City. It charges the public a certain fee if such wanted to use its pools.
- Dominador Ong, 14 years of age, son of petitioners, went to the pools along with his 2 brothers
- He stayed in the shallow pool, but then he told his brothers that he would get something to drink. His brothers left him and went to the Deep pool
- Around 4pm that day, a bather reported that one person was swimming to long under water
- Upon hearing this, the lifeguard on duty dove into the pool to retrieve Ong's lifeless body. Applying first aid, the lifeguard tried to revive the boy.
- Soon after, male nurse Armando Rule came to render assistance, followed by sanitary inspector Iluminado Vicente who, after being called by phone from the clinic by one of the security guards, boarded a jeep carrying with him the resuscitator and a medicine kit, and upon arriving he injected the boy with camphorated oil. After the injection, Vicente left on a jeep in order to fetch Dr. Ayuyao from the University of the Philippines. Meanwhile, Abaño continued the artificial manual respiration, and when this failed to revive him, they applied the resuscitator until the two oxygen tanks were exhausted
- Investigation was concluded and the cause of death is asphyxia by submersion in water (pagkalunod)
- The parents of Ong bring this action for damages against Metropolitan, alleging negligence on the selection and supervision of its employees and if not negligent, they had the last clear chance to revive Ong.
- It is to be noted that Metropolitan had complete safety measures in place: they had a male nurse, six lifeguards, ring buoys, toy roof, towing line, saving kit and a resuscitator. There is also a sanitary inspector who is in charge of a clinic established for the benefit of the patrons. Defendant has also on display in a conspicuous place certain rules and regulations governing the use of the pools, one of which prohibits the swimming in the pool alone or without any attendant. Although defendant does not maintain a full- time physician in the swimming pool compound, it has however a nurse and a sanitary inspector ready to administer injections or operate the oxygen resuscitator if the need should arise

ISSUES & ARGUMENTS

- **W/N Metropolitan is liable to the Ongs for its negligence**

W/N the last clear chance doctrine may be invoked in this case

HOLDING & RATIO DECIDENDI

NO, METROPOLITAN IS NOT NEGLIGENT.

- Metropolitan has taken all necessary precautions to avoid danger to the lives of its patrons. It has been shown that the swimming pools of appellee are provided with a ring buoy, toy roof, towing line, oxygen resuscitator and a first aid medicine kit. The bottom of the pools is painted with black colors so as to insure clear visibility. There is on display in a conspicuous place within the area certain rules and regulations governing the use of the pools. Appellee employs six lifeguards who are all trained as they had taken a course for that purpose and were issued certificates of proficiency. These lifeguards work on schedule prepared by their chief and arranged in such a way as to have two guards at a time on duty to look after the safety of the bathers. There is a male nurse and a sanitary inspector with a clinic provided with oxygen resuscitator. And there are security guards who are available always in case of emergency.
- The record also shows that when the body of minor Ong was retrieved from the bottom of the pool, the employees of appellee did everything possible to bring him back to life. When they found that the pulse of the boy was abnormal, the inspector immediately injected him with camphorated oil. When the manual artificial respiration proved ineffective they applied the oxygen resuscitator until its contents were exhausted. And while all these efforts were being made, they sent for Dr. Ayuyao from the University of the Philippines who however came late because upon examining the body found him to be already dead. All of the foregoing shows that appellee has done what is humanly possible under the circumstances to restore life to minor Ong and for that reason it is unfair to hold it liable for his death

THE LAST CLEAR CHANCE DOCTRINE IS INAPPLICABLE TO THIS CASE.

- The record does not show how minor Ong came into the big swimming pool. The only thing the record discloses is that minor Ong informed his elder brothers that he was going to the locker room to drink a bottle of coke but that from that time on nobody knew what happened to him until his lifeless body was retrieved. The doctrine of last clear chance simply means that the negligence of a claimant does not preclude a recovery for the negligence of defendant where it appears that the latter, by exercising reasonable care and prudence, might have avoided injurious consequences to claimant notwithstanding his negligence
- Since it is not known how minor Ong came into the big swimming pool and it being apparent that he went there without any companion in violation of one of the regulations of appellee as regards the use of the pools, and it appearing that lifeguard Abaño responded to the call for help as soon as his attention was called to it and immediately after retrieving the body all efforts at the disposal of appellee had been put into play in order to bring him back to life, it is clear that there is no room for the application of the doctrine now invoked by appellants to impute liability to appellee.

GINO CAPATI

143 Fabre V. CA |
G.R. No. 111127 July 26, 1996 |

FACTS

- Petitioners Fabre and his wife were owners of a minibus being used principally in connection with a bus service for school children which they operated in Manila. The couple had a driver Cabil whom they hired in 1981, after trying him out for two weeks. His job was to take school children to and from the St. Scholastica's College in Manila.
- Private respondent Word for the World Christian Fellowship Inc. (WWCF) arranged with petitioners for the transportation of 33 members of its Young Adults Ministry from Manila to La Union and back. The group was scheduled to leave at 5:00 o'clock in the afternoon. However, as several members of the party were late, the bus did not leave until 8:00 o'clock in the evening. Petitioner Cabil drove the minibus.
- The bridge on the usual route was under repair so Cabil took a detour. He is unfamiliar with the route because this is his first time driving to La Union. At 11:30 that night, petitioner Cabil came upon a sharp curve on the highway. The road was slippery because it was raining, causing the bus, which was running at the speed of 50 kilometers per hour, to skid to the left road shoulder. The bus hit the left traffic steel brace and sign along the road and rammed the fence of one Escano, then turned over and landed on its left side, coming to a full stop only after a series of impacts. The bus came to rest off the road. A coconut tree which it had hit fell on it and smashed its front portion.
- Several passengers were injured. Private respondent Antonio was thrown on the floor of the bus and pinned down by a wooden seat which came down by a wooden seat which came off after being unscrewed. It took three persons to safely remove her from this portion. She was in great pain and could not move.

ISSUES & ARGUMENTS

- **W/N** petitioners are liable for the injuries of private respondent?

HOLDING & RATIO DECIDENDI

- The finding that Cabil drove his bus negligently, while his employer, the Fabres, who owned the bus, failed to exercise the diligence of a good father of the family in the selection and supervision of their employee is fully supported by the evidence on record.
- The fact that it was raining and the road was slippery, that it was dark, that he drove his bus at 50 kilometers an hour when even on a good day the normal speed was only 20 kilometers an hour, and that he was unfamiliar with the terrain, Cabil was grossly negligent and should be held liable for the injuries suffered by private respondent Antonio.
- Pursuant to Arts. 2176 and 2180 of the Civil Code his negligence gave rise to the presumption that his employers, the Fabres, were themselves negligent in the selection and supervisions of their employee.
- Due diligence in selection of employees is not satisfied by finding that the applicant possessed a professional driver's license. The employer should also examine the applicant for his qualifications, experience and record of service. Due diligence in supervision, on the other hand, requires the formulation of rules and regulations for the guidance of employees and issuance of proper instructions as well as actual implementation and monitoring of consistent compliance with the rules.
- In the case at bar, the Fabres, in allowing Cabil to drive the bus to La Union, apparently did not consider the fact that Cabil had been driving for school children only, from their homes to the St. Scholastica's College in Metro Manila. They had hired him only after a two-week apprenticeship. They had hired him only after a two-week apprenticeship. They had tested him for certain matters, such as whether he could remember the names of the children he would be taking to school, which were irrelevant to his qualification to drive on a long distance travel, especially considering that the trip to La Union was his first. The existence of hiring procedures and supervisory policies cannot be casually invoked to overturn the presumption of negligence on the part of an employer.
- This case actually involves a contract of carriage. Petitioners, the Fabres, did not have to be engaged in the business of public transportation for the provisions of the Civil Code on common carriers to apply to them. The finding of the trial court and of the appellate court that petitioners are liable under Arts. 2176 and 2180 for *quasi delict*, fully justify findings them guilty of breach of contract of carriage under the Civil Code.

J.C. LERIT

144 PBCom v. CA|
| 269 SCRA 695

FACTS

- Rommel's Marketing Corporatiopn (RMC), represented by its President and General Manager Romeo Lipana filed a case agains PBCom to recover a sum of money representing various deposits it made with the latter. Such amounts were not credited to its account and were instead deposited to the account of onr Bienvenido Cotas, allegedly due to the Gross and inexcusable negligence of the bank.
- Lipana claims to have entrusted RMC funds in the form of cash to his secretary, Yabut. He said that Yabut was to deposit such amount to PBCom. However, what the secretary did was to deposit it in the account of his husband and only wrote RMC's account number in the duplicate copy of the deposit slips.
- This happened for a year without RMC knowing. When it found out about the scam, it filed a collection suit against PBCom.

ISSUES & ARGUMENTS

W/N the Proximate Cause of the loss is the negligence of respondent RMC and Romeo Lipana

HOLDING & RATIO DECIDENDI

The Proximate Cause of the loss is the negligence of PBCom through its teller in validating the deposit slips notwithstanding that the duplicate copy is not completely accomplished.

- Under the last clear chance doctrine, petitioner bank is the liable party. The doctrine states that where both parties are negligent, but the negligent act of he one is appreciably later in time than that of the other, or, when it is impossible to determine whose fault it should be attributed to, the one who had the last clear opportunity to avoid the harm and failed to do so is chargeable with the consequences thereof. Petitioner bank thru its teller, had the last clear opportunity to avert the injury incurred by its client, simply by faithfully observing their self imposed valdation procedure.

145 Reyes vs. CA | De Leon
G.R. No. 118492, June 16, 1992 |

FACTS

- In view of the 20th Asian Racing Conference then scheduled to be held in Sydney, Australia, the Philippine Racing Club, Inc. (PRCI, for brevity) sent four (4) delegates to the said conference. Petitioner Gregorio H. Reyes, as vice-president for finance, racing manager, treasurer, and director of PRCI, sent Godofredo Reyes, the club's chief cashier, to the respondent bank to apply for a foreign exchange demand draft in Australian dollars.
- Godofredo went to respondent bank's Buendia Branch in Makati City to apply for a demand draft in the amount One Thousand Six Hundred Ten Australian Dollars (AU$1,610.00) payable to the order of the 20th Asian Racing Conference Secretariat of Sydney, Australia. He was attended to by respondent bank's assistant cashier, Mr. Yasis, who at first denied the application for the reason that respondent bank did not have an Australian dollar account in any bank in Sydney. Godofredo asked if there could be a way for respondent bank to accommodate PRCI's urgent need to remit Australian dollars to Sydney. Yasis of respondent bank then informed Godofredo of a roundabout way of effecting the requested remittance to Sydney thus: the respondent bank would draw a demand draft against Westpac Bank in Sydney, Australia (Westpac-Sydney for brevity) and have the latter reimburse itself from the U.S. dollar account of the respondent in Westpac Bank in New York, U.S.A. (Westpac-New York for brevity). This arrangement has been customarily resorted to since the 1960's and the procedure has proven to be problem-free. PRCI and the petitioner Gregorio H. Reyes, acting through Godofredo, agreed to this arrangement or approach in order to effect the urgent transfer of Australian dollars payable to the Secretariat of the 20th Asian Racing Conference
- Petitioners spouses Reyes left for Australia to attend the said racing conference. At the registration desk, in the presence of other delegates from various member of the conference secretariat that he could not register because the foreign exchange demand draft for his registration fee had been dishonored for the second time. A discussion ensued in the presence and within the hearing of many delegates who were also registering. Feeling terribly embarrassed and humiliated, petitioner Gregorio H. Reyes asked the lady member of the conference secretariat that he be shown the subject foreign exchange demand draft that had been dishonored as well as the covering letter after which he promised that he would pay the registration fees in cash. In the meantime he demanded that he be given his name plate and conference kit. The lady member of the conference secretariat relented and gave him his name plate and conference kit.
- On November 23, 1988, the petitioners filed in the RTC of Makati, Metro Manila, a complaint for damages against the respondent bank due to the dishonor of the said foreign exchange demand draft issued by the respondent bank

.

ISSUES & ARGUMENTS

- **W/N the bank could be held liable.**

HOLDING & RATIO DECIDENDI

NO

- The petitioners contend that due to the fiduciary nature of the relationship between the respondent bank and its clients, the respondent should have exercised a higher degree of diligence than that expected of an ordinary prudent person in the handling of its affairs as in the case at bar. The appellate court, according to petitioners, erred in applying the standard of diligence of an ordinary prudent person only.
- The evidence shows that the respondent bank exercised that degree of diligence expected of an ordinary prudent person under the circumstances obtaining. Prior to the first dishonor of the subject foreign exchange demand draft, the respondent bank advised Westpac-New York to honor the reimbursement claim of Westpac-Sydney and to debit the dollar account of respondent bank with the former. As soon as the demand draft was dishonored, the respondent bank, thinking that the problem was with the reimbursement and without any idea that it was due to miscommunication, re-confirmed the authority of Westpac-New York to debit its dollar account for the purpose of reimbursing Westpac-Sydney.[13] Respondent bank also sent two (2) more cable messages to Westpac-New York inquiring why the demand draft was not honored
- Banks are duty bound to treat the deposit accounts of their depositors with the *highest degree of care*. But the said ruling applies only to cases where banks act under their fiduciary capacity, that is, as depositary of the deposits of their depositors. But the same higher degree of diligence is not expected to be exerted by banks in commercial transactions that do not involve their fiduciary relationship with their depositors.
- The respondent bank was not required to exert more than the diligence of a good father of a family in regard to the sale and issuance of the subject foreign exchange demand draft. The case at bar does not involve the handling of petitioners' deposit, if any, with the respondent bank. Instead, the relationship involved was that of a buyer and seller, that is, between the respondent bank as the seller of the subject foreign exchange demand draft, and PRCI as the buyer of the same.
- The evidence shows that the respondent bank did everything within its power to prevent the dishonor of the subject foreign exchange demand draft.

146 Crisostomo vs. CA | Ynares-Santiago
G.R. No. 138334, August 25, 2003 | 409 SCRA 528

FACTS

- Petitioner Crisostomo contracted the services of respondent Caravan Travel and Tours International, to arrange and facilitate her booking, ticketing, and accommodation in a tour called "Jewels of Europe." She was given a 5% discount and a waived booking fee because her niece, Meriam Menor, was the company's ticketing manager.
- Menor went to her aunt's residence to deliver Crisostomo's travel documents and plane tickets and get her payment. Menor told her to be in NAIA on Saturday.
- When Crisostomo got to the airport on Saturday, she discovered that the filight she was supposed to take had already departed the previous day. She complained to Menor, and was urged by the latter to take another tour, instead → "British Pageant."
- Upon returning from Europe, Crisostomo demanded P61,421.70 from Caravan Tours, representing the difference between the sun she paid for Jewels and the amount she owed the company for British Pageant. Caravan refused.
- Thus, Crisostomo filed a complaint against Caravan for breach of contract of carriage and damages. The trial court held in favor of Crisostomo, and ordered Caravan to pay her, because it was negligent in erroneously advising Crisostomo of her departure. However, Crisostmo is also guilty of contributory negligence (for failing to verify the exact date and time of departure). CA declared that Crisostomo is more negligent. As a lawyer and well-travelled person, she should have known better. MR of Crisostomo was also denied. Hence this petition.

ISSUES & ARGUMENTS

- **W/N respondent Caravan is guilty of negligence and is liable to Crisostomo for damages.**
    - **Crisostomo**: Respondent did not observe the standard of care required of a common carrier, i.e. extraordinary diligence in the fulfillment of its obligation.
    - **Caravan**: Menor was not negligent. The date and time of departure was legibly written on the plane ticket and the travel papers were given 2 days before the flight. It performed all obligations to enable Crisostomo to join the group and exercised due diligence in its dealings with the latter.

HOLDING & RATIO DECIDENDI

CARVAN NOT LIABLE FOR DAMAGES.

- A contract of carriage or transportation is one whereby a certain person or association of persons obligate themselves to transport persons, things, or news from one place to another for a fixed price.
- Respondent is not engaged in the business of transporting either passengers of goods and is therefore not a common carrier. Respondent's services as a travel agency include procuring tickets and facilitating travel permits or visas as well as booking customers for tours.
- A common carrier is bound by law to carry as far as human care and foresight can provide using the utmost diligence of very cautious persons and with due regard for all circumstances. But since Caravan is a travel agency, it is not bound to observe extraordinary diligence in the performance of its obligations.
- For them, the standard of care required is that of a good father of a family. This connotes reasonable care consistent with that which an ordinarily prudent person would have observed when confronted with a similar situation.
- We do not concur with the finding that Menor's negligene concurred with that of Crisostomo. No evidence to prove Menor's negligence.
- The negligence of the obligor in the performance of the obligations renders him liable for damages for the resulting loss suffered by the obligee. Fault or negligence of an obligor consists in the his failure to exercise due care and prudence in the performance of the obligation. The degree of diligence required depends on the circumstances of the specific obligation and whether one has been negligent is a question of fact that is to be determined in the case.

Petition denied. CA affirmed.

147 Spouses Theis v CA | Hermosisima, Jr.
G.R. No. 126013. February 12, 1997 |

FACTS

- Calson's Development owned three lots in Tagaytay – Parcels Nos. 1, 2, and 3. Adjacent to parcel no. 3 was parcel no. 4, which was not owned by Calsons.
- Calson's built a house on Parcel No. 3. In a subsequent survey, parcel no. 3, where the house was built, was erroneously indicated to be covered by the title to parcel no. 1. Parcel nos. 2 and 3 were mistakenly surveyed to be located where parcel no. 4 was located.
- Unaware of this mistake by which Calson's appeared to be the owner of parcel no. 4, Calson's sold what it thought was parcel nos. 2 and 3 (but what was actually parcel no. 4) to the Theis spouses. Upon execution of the deed of sale, Calson's delivered the certificates of title to parcel nos. 2 and 3 to the spouses. The spouses then went to Germany.
- About three years later, they returned to Tagaytay to plan the construction of their house. It was then that they discovered that parcel no. 4, which was sold to them, was owned by someone else, and **that what was actually sold to them were parcel nos. 2 and 3.** The real parcel no. 3, however, could not have been sold to them since a house had already been built thereon by Calson's even before the execution of the contract, and its construction cost far exceeded the price paid by the spouses for the two parcels of land.
- **The spouses insisted that they wanted parcel no. 4, but this was impossible, since Calson's did not own it.** Calson's offered them the real parcel nos. 1 and 2 instead since these were really what it intended to sell to the spouses. The spouses refused and insisted that they wanted parcel nos. 2 and 3 since the TCTs to these lots were the ones that had been issued in their name. Calson's then offered to return double the amount already paid by the spouses. The spouses still refused. Calson's filed an action to annul the contract of sale.

ISSUES & ARGUMENTS

- **W/N Calson's may rescind the contract on the ground of mistake**

HOLDING & RATIO DECIDENDI

YES.

- Art. 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract."
- Tolentino explains that the concept of error in this article must include both ignorance, which is the absence of knowledge with respect to a thing, and mistake properly speaking, which is a wrong conception about said thing, or a belief in the existence of some circumstance, fact, or event, which in reality does not exist. In both cases, there is a lack of full and correct knowledge about the thing. The mistake committed by the private respondent in selling parcel no. 4 to the petitioners falls within the second type. Verily, such mistake invalidated its consent and as such, annulment of the deed of sale is proper
- Article 1390 of the Civil Code provides that contracts where the consent is vitiated by mistake are annullable. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract. The concept of error includes: (1) ignorance, which is the absence of knowledge with respect to a thing; and (2) mistake, which is a wrong conception about said thing, or a belief in the existence of some fact, circumstance, or event, which in reality does not exist. In both cases, there is a lack of full and correct knowledge about the thing.
- In this case, Calson's committed an error of the second type. This mistake invalidated its consent, and as such, annulment of the deed of sale is proper. The error was an honest mistake, and the good faith of Calson's is evident in the fact that when the mistake was discovered, it immediately offered two other vacant lots to the spouses or to reimburse them with twice the amount paid.
- Petitioners' insistence in claiming parcel no. 3 on which stands a house whose value exceeds the price paid by them is unreasonable. This would constitute unjust enrichment. Moreover, when the witness for the spouses testified, he stated that what was pointed out to the spouses was a vacant lot. Therefore, they could not have intended to purchase the lot on which a house was already built.

JON LINA

148 Gatchalian vs. Delim |
G.R. No. L-56487 October 21, 1991 | 203 SCRA 126

FACTS

- Reynalda Gatchalian boarded Thames mini bus owned by Delim. The bus was headed for Bauang, La Union. On the way, while the bus was running along the highway in Barrio Payocpoc, Bauang, Union, "a snapping sound" was suddenly heard at one part of the bus and, shortly thereafter, the vehicle bumped a cement flower pot on the side of the road, went off the road, turned turtle and fell into a ditch.
- Several passengers, including Gatchalian, were injured. They were promptly taken to Bethany Hospital at San Fernando, La Union, for medical treatment. Upon medical examination, petitioner was found to have sustained physical injuries on the leg, arm and forehead.
- Mrs. Delim paid for all the hospital expenses. She also asked the passengers to sign a document [Joint Affidavit] stating, "That we are no longer interested to file a complaint, criminal or civil against the said driver and owner of the said Thames, because it was an accident and the said driver and owner of the said Thames have gone to the extent of helping us to be treated upon our injuries.
- Even if Gatchalian signed this document, she still filed this case.

ISSUES & ARGUMENTS

W/N the document Delim had Gatchalian sign at the hospital constitutes a valid waiver.

HOLDING & RATIO DECIDENDI

NO. THE DOCUMENT WAS NOT A VALID WAIVER.

- A waiver, to be valid and effective, must in the first place be couched in clear and unequivocal terms which leave no doubt as to the intention of a person to give up a right or benefit which legally pertains to him. A waiver may not casually be attributed to a person when the terms that do not explicitly and clearly evidence an intent to abandon a right vested in such person.
- The circumstances under which the Joint Affidavit was signed by Gatchalian need to be considered. Gatchalian was still reeling from the effects of the vehicular accident, having been in the hospital for only three days, when the purported waiver in the form of the Joint Affidavit was presented to her for signing, while reading the document, she experienced dizziness but since the other passengers who had also suffered injuries signed the document, she too signed without bothering to read the Joint Affidavit in its entirety. Considering these circumstances there appears substantial doubt whether Gatchalian understood fully the import of the Joint Affidavit (prepared by Delim) she signed and whether she actually intended thereby to waive any right of action.
- Moreover, for a waiver to be vlaid, it must not be contrary to law, pubic policy, morals and good customs. In this case, Delim was the owner of the minibus which takes passengers around La Union. She has a contract of carriage with them and is required to exercise extraordinary diligence when fulfilling these contractual duties. To uphold a supposed waiver of any right to claim damages by an injured passenger, under circumstances like those exhibited in this case, would be to dilute and weaken the standard of extraordinary diligence exacted by the law from common carriers and hence to render that standard unenforceable. The waiver is offensive to pulic policy.

MIK MALANG

149 Philippine Carpet Employees Assoc. and Jonathan Barquin vs. Philippines Manufacturing Corp., Raul Rodrigo, and Manuel Trovela | Gonzaga-Reyes
G.R. No. 140269-70, September 14, 2000| 340 SCRA 383

FACTS

- The Philippine Carpet Employees Association (the Union) is the certified sole and exclusive collective bargaining agent of all rank and file employees in Philippine Carpet Manufacturing Corporation (the Company), a local company engaged in the business of carpet and rug making
- Barquin is a union member who was hired by the Company as casual worker (janitor) and was later extended into a probationary employment, as a helper in the Company's weaving department
- The Regional Tripartite Productivity Board (NCR) promulgated Wage Order No. 4 and 4-A granting a two-tier increase in the minimum wage, which prompted the Union to write the Company asking for the across-the-board implementation of the Wage Orders and invoked its "decades old practice" of implementing wage orders across-the-board, but the Company refused their demand
- The Union reiterated its demand, but the Company also reiterated its position
- In the meantime, Barquin received a notice advising him that his services were to be terminated, was placed in forced leave, and paid in full for the duration of the leave
- The Company justified Barquin's termination as a valid retrenchment
- Failing to resolve the issues in the mediation level, the parties submitted the case for voluntary arbitration
- The voluntary arbitrator ruled that Barquin was illegally dismissed to avoid compliance with the wage orders but not entitled to reinstatement because he received his separation pay and voluntarily signed the Deed of Release and Quitclaim and acquiesced to his separation. MR denied
- On appeal, the Court of Appeals ruled that the Company failed to prove that Barquin voluntarily signed the quitclaim
- The Company's MR was partly granted, so the CA set aside the order of reinstatement and that Barquin had the burden to prove that his execution of the Deed of Release and Quitclaim was involuntary
- The Union's MR denied. Hence, this present appeal

ISSUES & ARGUMENTS

W/N the Deed of Release and Quitclaim was valid.

HOLDING & RATIO DECIDENDI

THE DEED OF RELEASE AND QUITCLAIM WAS ILLEGAL AND VOID.

- If the agreement was voluntarily entered into and represents a reasonable settlement of the claims of the employee, it is binding on the parties and may not later be disowned simply because of a change of mind. Such legitimate waivers resulting from voluntary settlements of laborer's claims should be treated and upheld as the law between the parties. *However, when as in this case, the voluntariness of the execution of the quitclaim or release is put into issue, then the claim of employee may still be given due course. The law looks with disfavor upon quitclaims and releases by employees pressured into signing the same by unscrupulous employers minded to evade legal responsibilities*
- It is therefore reversible error to hold, despite such findings, that BARQUIN voluntarily signed the quitclaim for the only logical conclusion that can be drawn is that the Company feigned that it was suffering business losses in order to justify retrenchment and consequently enable it to terminate the services of BARQUIN in order to prevent the wage distortion
- Verily, had the Company not misled BARQUIN into believing that there was a ground to retrench, it is not difficult to believe that he would have thought twice before signing the quitclaim inasmuch there was no reason for the termination of his employment
- BARQUIN's consent to the quitclaim cannot be deemed as being voluntarily and freely given inasmuch as his consent was vitiated by mistake or fraud, we have no recourse but to annul the same. There being no valid quitclaim, BARQUIN is entitled to receive the benefits granted an employee whose dismissal on the ground of retrenchment is declared illegal. BARQUIN is therefore entitled to reinstatement to his former position without loss of seniority rights and other privileges, as there is no evidence to show that reinstatement is no longer possible

Decision is REVERSED and SET ASIDE

150 Dapor v. Biascan| Callejo Sr., J.
G.R. No. 141880. September 27, 2004 |

FACTS

- Spouses Gloria and Mario Biascan were married in civil rights in Quezon City. They were, blessed with four children.
- Mario Biascan, an electrician by profession, worked in Saudi Arabia as an overseas contract worker from 1977 to 1981. It was in 1979 when he met Zenaida Dapar, who was then working as a domestic helper. That first meeting ripened into an intimate relationship. Both being lonely in a foreign land, Zenaida and Mario became lovers, which resulted in the latter's failure to give support to his wife and family.
- Zenaida returned to the Philippines in 1981. Upon Mario's return to the country, he joined Zenaida to live in a rented house. They opened a joint account wherein Zenaida deposited Mario's remittances. They bought a house in hillcrest using the funds in the bank. A TCT was issued in favor of Mario and Zenaida. To this, Gloria filed an action for reconveyance. She alleged that That the inclusion of the name of Zenaida in the said transfer certificate of title and tax declaration, is without any legal basis whatsoever, because sheis not the legal wife of Mario M. Biascan, and that the money used in acquiring the lot and house belonged to Mario M. Biascan. Further, she alleged that the defendant's use of the surname "Biascan" is a usurpation of surname under Article 377 of the New Civil Code of the Philippines, and as such, plaintiff, who is the legal wife of Mario M. Biascan, is entitled to recover damages from defendant.
- Zenaida filed a MTD. She alleged that she had no idea that Mario was a married man and that she tried to leave him as soon as he found out.
- RTC denied the MTD, and held that the law on co-ownership governed the property relations of Mario and Zenaida. It further held that Gloria was not entitled to damages for Zenaida's use of the surname Biascan, because Mario consented to it.

ISSUES & ARGUMENTS

W/N the Zenaida is liable for damages.

HOLDING & RATIO DECIDENDI

Zenaida is not liable for Damages.

- The usurpation of name under Article 377 of the Civil Code implies some injury to the interests of the owner of the name. It consists in the possibility of confusion of identity between the owner and the usurper, and exists when a person designates himself by another name. The elements are as follows: (1) there is an actual use of another's name by the defendant; (2) the use is unauthorized; and (3) the use of another's name is to designate personality or identify a person. None of the foregoing exist in the case at bar. Respondent Gloria Biascan did not claim that the petitioner ever attempted to impersonate her. In fact, the trial court found that respondent Mario Biascan allowed the petitioner to use his surname.:
- It would appear that the very first time that Zenaida Dapar's name had the surname Biascan was when defendant Mario Biascan had executed the affidavit of undertaking in connection with his employment in Saudi Arabia, wherein he designated as his beneficiary Zenaida Dapar Biascan. The undertaking was sworn to by the defendant on April 7, 1982 and which also showed that his effective date of employment in Saudi Arabia was April 1982 and to expire on February 1984 (Exhibit "A"). This is an extrajudicial admission that would not allow proof to the contrary. Zenaida appeared to have no participation in the preparation of said document. Moreover, when the contract to sell and the deed of sale of the property in question were executed, Zenaida Dapar used the surname Biascan and defendant Mario Biascan did not object to the use of such surname. Also, in the joint bank account with the PNB Valenzuela, the name Zenaida Dapar Biascan is described as a joint depositor.

151 Sison vs. David | Concepcion
G.R. No. L-11268, January 28, 1961| 1 SCRA 60

FACTS

- Margarita executed a will constituting several legacies in favor of specified persons and naming her grandnieces and her sister hereafter referred to as Mrs. Teodoro and Mrs. Sison, respectively — as heirs of the residue of her estate. Upon the demise of Margarita proceedings were instituted to settle her estate.
- There was an extrajudicial partition of the properties concerned and the executor caused a lien to be annotated on the back of the TCT's regarding payment of his fees.
- As it turns out the properties were already assigned to a certain company and the latter asked for the said annotation to be removed and to ask compensation from the other properties instead.
- Defendant filed for a petition for bond alleging among others that the movants herein object to the urgent petition ex-parte on the ground that the property to be sold herein is one of the few properties inherited from Margarita David which is not encumbered, because practically all of the properties of the heiress Sison are mortgaged, and the Priscila Estate, Inc., is operating on an overdraft, which is the reason why these properties are to be sold.
- Soon later plaintiff commenced the present action. In his amended complaint therein, he alleged that the averment in the above-quoted paragraph 2 was made with malice and evident intent to put him in ridicule, for defendant knew him (plaintiff) to be the president of Priscila Estate, Inc. and, by the statements contained in said paragraph, the defendant, "in effect, implied with clear malevolence and malignity that plaintiff is incompetent and unfit to manage the affairs of the Priscila Estate, Inc."
- Defendant averred that they were proper and necessary to protect his interests and those of his client Jose Teodoro, Sr.

ISSUES & ARGUMENTS

- **W/N plaintiff has a cause of action with regard to the alleged malicious statements made by defendant during the course of judicial proceeding?**

HOLDING & RATIO DECIDENDI

STATEMENTS MADE IN THE COURSE OF JUDICIAL PROCEEDINGS ARE ABSOLUTELY PRIVILEGED NO MATTER HOW MALICIOUS, HENCE NO ACITON FOR DAMAGES WILL PROSPER.

- At the outset, it should be noted that the pertinency or relevancy essential to the privilege enjoyed in judicial proceedings, does not make it a "qualified privilege" within the legal connotation of the term. Otherwise, all privileged communications in judicial proceedings would be qualified, and no communications therein would be absolutely privileged, for the exemption attached to the privilege in said proceedings never extends to matters which are patently unrelated to the subject of the inquiry. The terms "absolute privilege" and "qualified privilege" have established technical meanings, in connection with civil actions for libel and slander.
- An absolutely privileged communication is one for which, by reason of the occasion on which it is made, *no remedy* is *provided for the damages in a civil action for slander or libel.* It is well settled that the law recognizes this class of communications which is so absolutely privileged that *even* the *existence of express malice does not destroy the privilege* although there are some dicta denying the rule, and some eminent judges, in dealing with particular applications of the rule, have doubted or questioned the rationale or principle of absolutely privileged communications. *As to absolutely privileged communications, a civil action for libel or slander is absolutely barred.* In the case of communications qualifiedly privileged, there must be both an occasion of privilege and the use of that occasion in *good faith.*
- An absolutely privileged communication is one in respect of which, by reason of the occasion on which or the matter in reference to which, it is made, no remedy can be had in a civil action, however hard it may bear upon a person who claims to be injured thereby, and *even though it may have been made maliciously.*
- Apart from the occasion in which or the matter in reference to which it is made, what distinguishes an absolutely privileged communication from one which is only qualifiedly privileged is, therefore, that the latter is actionable upon proof of "actual malice", whereas its existence does not affect the exemption attached to the former, provided that, in the case of judicial proceedings, the derogatory statements in question are pertinent, relevant or related to or connected with the subject matter of the communication involved. It is, thus, clear that utterances made in the course of judicial including all kinds of pleadings, petitions and motions, belong to the class of communications that are absolutely privileged.
- Hence, the "Petition for bond" of defendant herein is absolutely privileged, and no civil action for libel or slander may arise therefrom, unless the contents of the petition are irrelevant to the subject matter thereof.

152 Malit v. People of the Philippines and Judge Ofilada | Relova
G.R. No. L-58681, May 31, 1982

FACTS

- Petitioner Malit was counsel of Ruth Fernandez in an administrative case filed against her by Dr. Macaspac.
- On cross-examination, petitioner asked Dr. Macaspac if she knew the person who "made" a certain exhibit. Dr. Macaspac evaded the question by saying she did not understand the word "made." Petitioner tried to explain by saying that it means "prepared." Notwithstanding, Dr. Macaspac would not answer and, instead, asked petitioner for clarification. This prompted Atty. Malit to say: "I doubt how did you become a Doctor."
- Dr. Macaspac instituted a complaint for slander against herein petitioner.
- An information for unjust vexation was filed.
- Petitioner filed a motion to quash on the ground that the facts charged do not constitute an offense.
- It is the position of petitioner that the statement "I doubt how did you become a doctor" does not constitute an offense as it was uttered at the time he was conducting the cross-examination of Dr. Macaspac; that utterances made in the course of judicial proceedings belong to the class of communication that are absolutely privileged.

ISSUES & ARGUMENTS

W/N the utterance made in the course of judicial proceedings is absolutely privileged communication.

HOLDING & RATIO DECIDENDI

YES. Utterances made in the course of judicial or administrative proceedings belong to the class of communications that are absolutely privileged.

- Well settled is the rule that parties, counsel and witnesses are exempted from liability in libel or slander cases for words otherwise defamatory, uttered or published in the course of judicial proceedings, provided the statements are pertinent or relevant to the case.
- As to the degree of relevancy or pertinency necessary to make alleged defamatory matter privileged, the courts are inclined to be liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevance and impropriety.
- The privilege is granted in aid and for the advantage of the administration of justice. The privilege is not intended so much for the protection of those engaged in the public service and in the enactment and administration of law, as for the promotion of the public welfare, the purpose being that members of the legislature, judges of courts, jurors, lawyers, and witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for the recovery of damages.

TC's orders are reversed and set aside. Respondent is ordered to desist and refrain from proceeding with the trial.

TIN OCAMPO-TAN

153 Proline vs. CA | Bellosillo
G.R. No. 87584, June 16, 1992 | 210 SCRA 18

FACTS

- SUMMARY: This case stemmed from a criminal case for unfair competition filed by Pro Line Sports Center, Inc. (PRO LINE) and Questor Corporation (QUESTOR) against Monico Sehwani, president of Universal Athletics and Industrial Products, Inc. (UNIVERSAL). In that case Sehwani was exonerated. As a retaliatory move, Sehwani and UNIVERSAL filed a civil case for damages against PRO LINE and QUESTOR for what they perceived as the wrongful and malicious filing of the criminal action for unfair competition against them.
- Edwin Dy Buncio, General Manager of PRO LINE, sent a letter-complaint to the NBI regarding the alleged manufacture of fake "Spalding" balls by UNIVERSAL. On 23 February 1981 the NBI applied for a search warrant with Judge Vera anf issued Search Warrant No. 2-81 authorizing the search of the premises of UNIVERSAL in Pasig. In the course of the search, some 1,200 basketballs and volleyballs marked "Spalding" were seized and confiscated by the NBI
- Meanwhile, on 26 February 1981, PRO LINE and QUESTOR filed a criminal complaint for unfair competition against respondent Monico Sehwani together with Robert, Kisnu, Arjan and Sawtri, all surnamed Sehwani, and Arcadio del los Reyes before the Provincial Fiscal of Rizal. The complaint was dropped on 24 June 1981 for the reason that it was doubtful whether QUESTOR had indeed acquired the registration rights over the mark "Spalding" from A.G. Spalding Bros., Inc.,
- After the prosecution rested its case, Sehwani filed a demurrer to evidence arguing that the act of selling the manufactured goods was an essential and constitutive element of the crime of unfair competition under Art. 189 of the Revised Penal Code, and the prosecution was not able to prove that he sold the products. In its Order of 12 January 1981 the trial court granted the demurrer and dismissed the charge against Sehwani
- Thereafter, UNIVERSAL and Sehwani filed a civil case for damages with the Regional Trial Court of Pasig charging that PRO LINE and QUESTOR maliciously and without legal basis committed the following acts to their damage and prejudice

ISSUES & ARGUMENTS

- **Two (2) issues: (a) whether private respondents Sehwani and UNIVERSAL are entitled to recover damages for the alleged wrongful recourse to court proceedings by petitioners PRO LINE and QUESTOR; and, (b) whether petitioners' counterclaim should be sustained.**

HOLDING & RATIO DECIDENDI

PRO LINE and QUESTOR cannot be adjudged liable for damages for the alleged unfounded suit. The complainants were unable to prove two (2) essential elements of the crime of malicious prosecution, namely, absence of probable cause and legal malice on the part of petitioners.

- UNIVERSAL failed to show that the filing of Crim. Case No. 45284 was bereft of probable cause. Probable cause is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.
- The existence of probable cause for unfair competition by UNIVERSAL is derivable from the facts and circumstances of the case. The affidavit of Graciano Lacanaria, a former employee of UNIVERSAL, attesting to the illegal sale and manufacture of "Spalding " balls and seized "Spalding" products and instruments from UNIVERSAL's factory was sufficient *prima facie* evidence to warrant the prosecution of private respondents. That a corporation other than the certified owner of the trademark is engaged in the unauthorized manufacture of products bearing the same trademark engenders a reasonable belief that a criminal offense for unfair competition is being committed.
- Petitioners PRO LINE and QUESTOR could not have been moved by legal malice in instituting the criminal complaint for unfair competition which led to the filing of the Information against Sehwani. Malice is an inexcusable intent to injure, oppress, vex, annoy or humiliate. We cannot conclude that petitioners were impelled solely by a desire to inflict needless and unjustified vexation and injury on UNIVERSAL's business interests. A resort to judicial processes is not *per se* evidence of ill will upon which a claim for damages may be based. A contrary rule would discourage peaceful recourse to the courts of justice and induce resort to methods less than legal, and perhaps even violence
- We are more disposed, under the circumstances, to hold that PRO LINE as the authorized agent of QUESTOR exercised sound judgment in taking the necessary legal steps to safeguard the interest of its principal with respect to the trademark in question. If the process resulted in the closure and padlocking of UNIVERSAL's factory and the cessation of its business operations, these were unavoidable consequences of petitioners' valid and lawful exercise of their right. One who makes use of his own legal right does no injury. *Qui jure suo utitur nullum damnum facit*. If damage results from a person's exercising his legal rights, it is *damnum absque injuria*.

GINO CAPATI

154 Amonoy vs. Gutierrez | Panganiban
G.R. No. 140420| February 15, 2001 |

FACTS

- "This case had its roots in Special Proceedings No. 3103 of Branch I of the CFI of Pasig, Rizal, for the settlement of the estate of the deceased Julio Cantolos, involving six(6) parcels of land situated in Tanay Rizal. Amonoy was the counsel of therein Francisca Catolos, Agnes Catolos, Asuncion Pasamba and Alfonso Formida. On 12 January 1965, the Project of Partition submitted was approved and xxx two (2) of the said lots were adjudicated to Asuncion Pasamba and Alfonso Formilda. The Attorney's fees charged by Amonoy was P27,600.00 and on 20 January 1965 Asuncion Pasamba and Alfonso Formida executed a deed of real estate mortgage on the said two (2) lots adjudicated to them, in favor of Amonoy to secure the payment of his attorney's fees. But it was only on 6 August 1969 after the taxes had been paid, the claims settled and the properties adjudicated, that the estate was declared closed and terminated.
- "Asuncion Pasamba died on 24 February 1969 while Alfonso Fornilda passsed away on 2 July 1969. Among the heirs of the latter was his daughter, plaintiff-appellant Angela Gutierrez.
- "Because his Attorney's fess thus secured by the two lots were not paid, on 21 January 1970 Amonoy filed for their foreclosure in Civil Code4 No. 12726 entitled *Sergio Amonoy vs. Heirs of Asuncion Pasamba and Heirs of Alfonso Fornilda* before the CFI of Pasig, Rizal, and this was assigned to Branch VIII. The heirs opposed, contending that the attorney's fees charged [were] unconscionable and that the attorney's fees charged [were] unconscionable and that the agreed sum was only P11,695.92. But on 28 September 1972 judgment was rendered in favor of Amonoy requiring the heirs to pay within 90 days the P27,600.00 secured by the mortgage, P11,880.00 as value of the harvests, and P9,645.00 as another round of attorney's fees. Failing in that, the two (2) lots would be sold at public auction.
- "They failed to pay. On 6 February 1973, the said lots were foreclosed and on 23 March 1973 the auction sale was held where Amonoy was the highest bidder at P23,760.00. On 2 May 1973 his bid was judicially confirmed. A deficiency was claimed and to satisfy it another execution sale was conducted, and again the highest bidder was Amonoy at P12,137.50.
- "Included in those sold was the lot on which the Gutierrez spouses had their house.
- "More than a year after the Decision in Civil Code No. 12726 was rendered, the said decedent's heirs filed on 19 December 1973 before the CFI of Pasig, Rixal[,] Civil case No. 18731 entitled *Maria Penano, et al vs. Sergio Amonoy, et al,* a suit for the annulment thereof. The case was dismissed by the CFI on 7 November 1977, and this was affirmed by the Court of Appeals on 22 July 1981.
- "Thereafter, the CFI on 25 July 1985 issued a Writ of Possession and pursuant to which a notice to vacate was made on 26 August 1985. On Amonoy's motion of 24 April 1986, the Orders of 25 April 1986 and 6 May 1986 were issued for the demolition of structures in the said lots, including the house of the Gutierrez spouses.
- "On 27 September 1985 a temporary restraining order was granted on 2 June 1986 enjoining the demolition of the petitioners' houses.
- "Then on 5 October 1988 a Decision was rendered in the said G.R. No. L-72306 disposing that:
  "WHEREFORE, Certiorari is granted; the Order of respondent Trial Court, dated 25 July 1985, granting a Writ of Possession, as well as its Orderd, dated 25 April 1986 and 16 May 1986, directing and authorizing respondent Sheriff to demolish the houses of petitioners Angela and Leocadia Fornilda are hereby ordered returned to petitioners unless some of them have been conveyed to innocent third persons."[5]
- But by the time the Supreme Court promulgated the abovementioned Decision, respondents' house had already been destroyed, supposedly in accordance with a Writ of Demolition ordered by the lower court.
- Thus, a Complaint for damages in connection with the destruction of their house was filed by respondents against petitioner before the RTC on December 15, 1989.
- In its January 27, 1993 Decision, the RTC dismissed respondents' suit. On appeal, the CA set aside the lower court's ruling and ordered petitioner to pay respondents P250,000 as actual damages. Petitioner then filed a Motion for Reconsideration, which was also denied.

ISSUES & ARGUMENTS

- **W/N the Court of Appeals was correct was correct in deciding that the petition [was] liable to the respondents for damages."[8]**

HOLDING & RATIO DECIDENDI

- Clearly then, the demolition of respondents' house by petitioner, despite his receipt of the TRO, was not only an abuse but also an unlawful exercise of such right. In insisting on his alleged right, he wantonly violated this Court's Order and wittingly caused the destruction of respondents; house.
- Obviously, petitioner cannot invoke *damnum absque injuria,* a principle premised on the valid exercise of a right.[14] Anything less or beyond such exercise will not give rise to the legal protection that the principle accords. And when damage or prejudice to another is occasioned thereby, liability cannot be obscured, much less abated.
- In the ultimate analysis, petitioner's liability is premised on the obligation to repair or to make whole the damage caused to another by reason of one's act or omission, whether done intentionally or negligently and whether or not punishable by law.

155 Rogelio Mariscal vs. Court of Appeals |Belosillo
G.R. No. 123926, July 22, 1999 | 311 SCRA 51

FACTS

- Bella Catalan filed an annulment case against Mariscal with the RTC of Iloilo on the ground of the marriage having been solemnized without a valid marriage license and it being bigamous.
- Rogelio Mariscal subsequently filed an annulment case against Catalan with the RTC of Digos (Davao Del Sur) on the ground that he was forced to marry her at gunpoint and that they had no valid license.
- Catalan moved for the dismissal of the second case invoking litis pendencia. RTC of Digos denied such but was reversed by the CA.
- Hence this petition by Mariscal.

ISSUES & ARGUMENTS

- **W/N the second civil case should be dismissed on the ground of litis pendencia**
    - **Respondent:** Bigamy committed by Mariscal to be proved in the first case does not necessarily exclude and is different from the force, duress, intimidation, threats and strategy made by Catalan to be proved in the second case.

HOLDING & RATIO DECIDENDI

YES. Litis pendencia is present.

- According to *Victronics Computers, Inc. v. RTC-Br. 63, Makati,* the requisites of litis pendentia are as follows:

    (a) identity of parties, or at least such as representing the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and, (c) the identity in the two (2) cases should be such that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to *res judicata* in the other
- The first two are present, and it is the third one that is the bone of contention. Mariscal contends that there are different grounds for nullification invoked in the two cases. However, what is essential is the identity and similarity of the issues under consideration, which basically in the two cases is the annulment of their marriage.
- Moreover, Mariscal stated in his answer before the RTC Iloilo, the very same he set forth before the RTC Digos which is "*force, violence, intimidation, threats and strategy.*" He cannot deny now that the issues and arguments are identical.
- Indeed the Court is puzzled no end why Mariscal literally shied away from the RTC of Iloilo where he could have just as well ventilated his affirmative and special defenses and litigated his compulsory counterclaim in that court and thus avoided this duplicity of suits which is the matrix upon which *litis pendencia* is laid.

157 Spouses Lim v Uni Tan Marketing | Panganiban,
G.R. No. 147328, February 20, 2002 |

FACTS

- Spouses Anton and Eileen Lim had a case filed against them by Uni Tan Marketing for Unlawful Detainer in the MTC.
- MTC ordered Spouses Lim to vacate or pay rent until they vacate. Spouses lim appealed to RTC.
- RTC overruled MTC and ordered petitioners not liable. Petitioners sought to recover several properties levied upon and sold at public execution.
- RTC finds that petitioners failed to post supersedeas bond and therefore they cannot go against the sheriff.
- Spouses Lim elevates Case to CA, CA dismisses stating the filing was procedurally flawed for failing to attach a copy of duplicate original or certified true copy of MTC decision.

ISSUES & ARGUMENTS

- **W/N There was substantial compliance, there was error on RTC for failing to award actual ,moral and exemplary damages**

HOLDING & RATIO DECIDENDI

Petition has no merit

- Sec. 2 Rule 42 is mandatory and a duplicate original or certified true copy must be attached petitioners did neither and failed to comply with procedural requirements.
- There must be a supersedeas bond to stay execution of judgment as there is immediate execution in this case, it is either supersedeas bond, perfection of appeal or periodic payment to respondent that stays execution.
- No basis for damages as respondents were exercising their rights. Damnum absque injuria is present
- It is petitioners own fault for not following the law in filing their appeal and in filing a supersedeas bond. Their misfortune is their own fault.

158 Ramos v CA | Kapunan
G.R. No. 124354 April 11, 2002| 380 SCRA 467

FACTS

- Erlinda Ramos underwent an operation known as cholecystectomy (removal of stone in her gallbladder) under the hands of Dr. Orlino Hosaka. He was accompanied by Dr. Perfecta Gutierrez, an anesthesiologist which Dr. Hosaka recommended since Ramos (and her husband Rogelio) did not know any.
- The operation was schedule at 9am of June 17, 1985 but was however delayed for three hours due to the late arrival of Dr. Hosaka.
- Dr. Gutierrez subsequently started trying to intubate her. And at around 3pm, Erlinda was seen being wheeled to the Intensive Care Unit (ICU). The doctors explained to petitioner Rogelio that his wife had bronchospasm. Erlinda stayed in the ICU for a month. She was released from the hospital only four months later or on November 15, 1985. Since the ill-fated operation, Erlinda remained in comatose condition until she died on August 3, 1999.
- Petitioners filed with the RTC a civil case for damages; the present petition is the 2nd MR of the private respondents in the SC, the main decision was rendered in December 29, '00.

ISSUES & ARGUMENTS

- **W/N the private respondents should be held liable for the injury caused to Erlinda and her family?**

HOLDING & RATIO DECIDENDI

YES. On the part of Dr. Gutierrez, her failure to exercise the standards of care in the administration of anesthesia on a patient through the non-performance of the preanesthetic/preoperative evaluation prior to an operation. The injury incurred by petitioner Erlinda does not normally happen absent any negligence in the administration of anesthesia and in the use of an endotracheal tube. As was noted in our Decision, the instruments used in the administration of anesthesia, including the endotracheal tube, were all under the exclusive control of private respondents Dr. Gutierrez and Dr. Hosaka. Thus the doctrine of res ipsa loquitor can be applied in this case.

- Such procedure was needed for 3 reasons: (1) to alleviate anxiety; (2) to dry up the secretions and; (3) to relieve pain. Now, it is very important to alleviate anxiety because anxiety is associated with the outpouring of certain substances formed in the body called adrenalin. When a patient is anxious there is an outpouring of adrenalin which would have adverse effect on the patient. One of it is high blood pressure, the other is that he opens himself to disturbances in the heart rhythm, which would have adverse implications. So, we would like to alleviate patient's anxiety mainly because he will not be in control of his body there could be adverse results to surgery and he will be opened up; a knife is going to open up his body. (Dr. Camagay)

On the part of Dr. Hosaka, while his professional services were secured primarily for their performance of acts within their respective fields of expertise for the treatment of petitioner Erlinda, and that one does not exercise control over the other, they were certainly not completely independent of each other so as to absolve one from the negligent acts of the other physician.

- **First**, it was Dr. Hosaka who recommended to petitioners the services of Dr. Gutierrez. In effect, he represented to petitioners that Dr. Gutierrez possessed the necessary competence and skills. Drs. Hosaka and Gutierrez had worked together since 1977. Whenever Dr. Hosaka performed a surgery, he would always engage the services of Dr. Gutierrez to administer the anesthesia on his patient. **Second**, Dr. Hosaka himself admitted that he was the attending physician of Erlinda. Thus, when Erlinda showed signs of cyanosis, it was Dr. Hosaka who gave instructions to call for another anesthesiologist and cardiologist to help resuscitate Erlinda. **Third**, it is conceded that in performing their responsibilities to the patient, Drs. Hosaka and Gutierrez worked as a team. Their work cannot be placed in separate watertight compartments because their duties intersect with each other.
- It is equally important to point out that Dr. Hosaka was remiss in his duty of attending to petitioner Erlinda promptly, for he arrived more than three (3) hours late for the scheduled operation. The cholecystectomy was set for June 17, 1985 at 9:00 a.m., but he arrived at DLSMC only at around 12:10 p.m. In reckless disregard for his patient's well being, Dr. Hosaka scheduled two procedures on the same day, just thirty minutes apart from each other, at different hospitals. Thus, when the first procedure (protoscopy) at the Sta. Teresita Hospital did not proceed on time, Erlinda was kept in a state of uncertainty at the DLSMC.
- The Captain-of –the-Ship doctrine was still applied notwithstanding arguments that such doctrine was being abandoned in the US. That there is a trend in American jurisprudence to do away with the Captain-of-the-Ship doctrine does not mean that this Court will ipso facto follow said trend. From the facts on the record it can be logically inferred that Dr. Hosaka exercised a certain degree of, at the very least, supervision over the procedure then being performed on Erlinda.

On the part of the hospital (DLSMC), since there was NO employer-employee relationship between the hospital and Dr. Gutierrez and Dr. Hosaka established in this case, the hospital cannot be held liable under Art. 2180 of the Civil Code. The contract of the hospital with its consultants is separate and distinct from the contract with its patients.

BYRON PEREZ

159 Cuadra v. Monfort | Makalintal
G.R. L-24101 | Sept. 30, 1970 |

FACTS

- Maria Teresa Cuadra, 12, and Maria Teresa Monfort, 13, were classmates in Grade Six. Their teacher assigned them, together with three other classmates, to weed the grass in the school premises. Maria Teresa Monfort found a plastic headband. Jokingly she said aloud that she had found an earthworm and, to frighten the Cuadra girl, tossed the object at her. At that precise moment the latter turned around to face her friend, and the object hit her right eye.
- Smarting from the pain, she rubbed the injured part and treated it with some powder. The next day, the eye became swollen and it was then that the girl related the incident to her parents, who thereupon took her to a doctor for treatment. She underwent surgical operation twice, first on July 20 and again on August 4, 1962, and stayed in the hospital for a total of twenty-three days, for all of which the parents spent the sum of P1,703.75.
- Despite the medical efforts, however, Maria Teresa Cuadra completely lost the sight of her right eye.
- In the civil suit subsequently instituted by the parents in behalf of their minor daughter against Alfonso Monfort, Maria Teresa Monfort's father, the defendant was ordered to pay P1,703.00 as actual damages; P20,000.00 as moral damages; and P2,000.00 as attorney's fees, plus the costs of the suit.

ISSUES & ARGUMENTS

- **W/N the parents are liable for the acts of their minor child when the act or omission of the child is committed in the absence of the parents.**

HOLDING & RATIO DECIDENDI

NO.

- There is no meticulously calibrated measure applicable; and when the law simply refers to "all the diligence of a good father of the family to prevent damage," it implies a consideration of the attendant circumstances in every individual case, to determine whether or not by the exercise of such diligence the damage could have been prevented.
- There is nothing from which it may be inferred that the *defendant could have prevented the damage by the observance of due care, or that he was in any way remiss in the exercise of his parental authority in failing to foresee such damage, or the act which caused i*t. On the contrary, his child was at school, where it was his duty to send her and where she was, as *he had the right to expect her to be, under the care and supervision of the teacher.*
- The act which caused the injury was concerned, it was an innocent prank not unusual among children at play and which no parent, however careful, would have any special reason to anticipate much less guard against. Nor did it reveal any mischievous propensity, or indeed any trait in the child's character which would reflect unfavorably on her upbringing and for which the blame could be attributed to her parents.
- The victim, no doubt, deserves no little commiseration and sympathy for the tragedy that befell her. But if the defendant is at all obligated to compensate her suffering, the obligation has no legal sanction enforceable in court, but only the moral compulsion of good conscience.

AYEN QUA

160 Elcano vs. Hill | Barredo
G.R. No. L-24803, May 26, 1977| 77 SCRA 98

FACTS

- Reginald Hill was a married minor living and getting subsistence from his father, co-defendant Marvin. He killed Agapito Elcano, son of petitioners, for which he was criminally prosecuted. However, he was acquitted on the ground that his act was not criminal because of "lack of intent to kill, coupled with mistake."
- Subsequently, petitioners filed a civil action for recovery of damages against defendants, which the latter countered by a motion to dismiss. Trial court

ISSUES & ARGUMENTS

- **W/N the action for recovery of damages against Reginald and Marvin Hill is barred by res judicata.**
- **W/N there is a cause of action against Reginald's father, Marvin.**
    - **Respondents**: Marvin Hill is relieved as guardian of Reginald through emancipation by marriage. Hence the Elcanos could not claim against Marvin Hill.

HOLDING & RATIO DECIDENDI

The acquittal of Reginald Hill in the criminal case has not extinguished his liability for *quasi-delict*, hence that acquittal is not a bar to the instant action against him.

- There is need for a reiteration and further clarification of the dual character, criminal and civil, of fault or negligence as a source of obligation, which was firmly established in this jurisdiction in *Barredo vs. Garcia* (73 Phil. 607).
- In this jurisdiction, the separate individuality of a *cuasi-delito* or *culpa aquiliana*, under the Civil Code has been fully and clearly recognized, even with regard to a negligent act for which the wrongdoer could have been prosecuted and convicted in a criminal case and for which, after such a conviction, he could have been sued for civil liability arising from his crime. (p. 617, 73 Phil.)
- Notably, Article 2177 of the New Civil Code provides that: "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."
- Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, if he is actually charged also criminally, to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary. In other words, the extinction of civil liability referred to in Par. (e) of Section 3, Rule 111, refers exclusively to civil liability founded on Article 100 of the Revised Penal Code, whereas the civil liability for the same act considered as a *quasi-delict* only and not as a crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused.

Marvin Hill vicariously liable. However, since Reginald has come of age, as a matter of equity, the former's liability is now merely subsidiary.

- Under Art. 2180, the father and in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company. In the case at bar, Reginald, although married, was living with his father and getting subsistence from him at the time of the killing.
- The joint and solidary liability of parents with their offending children is in view of the parental obligation to supervise minor children in order to prevent damage to third persons. On the other hand, the clear implication of Art. 399, in providing that a minor emancipated by marriage may not sue or be sued without the assistance of the parents is that such emancipation does not carry with it freedom to enter into transactions or do not any act that can give rise to judicial litigation.

Order appealed from REVERSED. Trial court ordered to proceed in accordance with the foregoing opinion.

DANI BOLONG

161 Libi vs. IAC |

FACTS

- Son of Libi spouses, Wendell was a sweetheart of the private respondents (Spouses Gotiong) named Julie Ann who eventually fell out of love from the former (due to being sadistic and irresponsible) which led to a fateful day of their death by a gunshot from a gun owned by Wendell's father.
- The Gotiong's believe that Wendell caused the death of their daughter and himself due to frustration while the Libi's believe that some unknown third party did it in relation to Wendell's work as informer for Anti-Narcotics Unit.
- Spouses Gotiong sued Libi spouses for damages invoking Art. 2180 of the Civil Code for Vicarious liability of Parents with respect to their minor children.
- RTC ruled in favor of Libi's by reason of lack of evidence. CA held the reverse holding them subsidiarliy liable.

ISSUES & ARGUMENTS

- **W/N Libi spouses are subsidiarily liable in the instant case.**

HOLDING & RATIO DECIDENDI

- CA wrongly interpreted the vicarious liability of parents. It must be primary using Article 101 of the RPC. If subsidiary only: the diligence of *bonus pater familias* will not lie since they will answer for the minor at any rate but if primary: it will be direct, hence the defense.
- In this case however, the parents as still failed to discharge themselves of any defense because evidence shows Wendell knew of the location of the keys for the Gunsafe, Libi's do not know of his being a CANU agent and photography of Julie Ann was with the accused upon his death with the gun.

162 Exconde vs. Capuno | Bautista Angelo
G.R. No. L-10134, June 29, 2957 | 101 Phil 843

FACTS

- Dante Capuno was a member of the Boy Scouts organization and a student of the Balintawak Elementary School. He attended a parade in honor of Jose Rizal upon instruction of the city school's supervisor. He boarded a jeep, took hold of the wheel and drove it while the driver sat on his left side. The jeep turned turtle and and two passengers (Isidiro Caperina and Amado Ticzon) died.
- At the time this happened, Dante's father, Delfin was not with him, nor did he know that his son was going to attend a parade.
- Dante was then charged with double homicide through reckless imprudence. After conviction by the RTC and CA, petitioner Sabina Exconde (mother of one of the deceased) filed a separate civil action against Dante and Delfin for damages in the amount of P2,959.00.
- Defendants averred as a defense that Dante should be the only one civilly liable because at the time of the accident he was not under the control, supervision, and custody of Delfin.
- The lower court sustained the defense, and so Exconde appealed, the case certified to the SC.

ISSUES & ARGUMENTS

- **W/N Delfin can be held jointly and severally liable with his son Dante for damages resulting from the death of Isidro caused by the negligent act of his minor son Dante.**

HOLDING & RATIO DECIDENDI

DELFIN JOINTLY AND SEVERALLY LIABLE WITH DANTE.

- Article 1903, 1st and 5th paragraphs: "The father, and, in case of his death or incapacity, the mother, are liable for any damages caused by minor children who live with them." "Teachers and directors of arts and trades are liable for any damages caused by their pupils or apprentices while they are under their custody."
- The 5th paragraph only applies to an institution of arts and trades and not to any academic educational institution. Hence, neither the head of the school, nor the city school's supervisor, could be held liable for the negligent act of Dante because he was not then a student of an institution of arts and trades as provided by law.
- The civil liability imposed upon the father and mother for any damages that may be caused by the minor children is a necessary consequence of the parental authority they exercise over them, which imposes upon parents the "duty of supporting them, keeping them in their company, educating them and instructing them in proportion to their means," while, on the other hand, gives them the "right to correct and punish them in moderation." The only way to relieve them is if they prove that they exercised all the diligence of a good father of a family. This defendants failed to do.

Petition GRANTED. Decision MODIFIED. Defendants Dante and Delfin shall pay Exconde P2,959.00.

Reyes, Dissenting:

- We should affirm the decision relieving the father of liability.
- The words "arts and trades" does not qualify "teachers" but only "heads of establishments."
- Where the parent places the child under the effective authority of the teacher, the latter should be answerable for the torts committed while under his custody, for the very reason that the parent is not supposed to interfere with the discipline of the school nor with the authority and supervision of the teacher while the child is under instruction.
- Delfin could not have properly refused to allow the child to attend the parade, in defiance of school authorities.
- If a teacher was present, he/she should be the one responsible for allowing the minor to drive. If there was no teacher present, the school authorities are the ones answerable.
- The father should not be held liable for a tort that he was in no way able to prevent, and which he had every right to assume the school authorities would avoid.

CHRISSIE MORAL

163 SEVERINO SALEN and ELENA SALBANERA vs. **JOSE BALCE** | Bautista Angelo

G.R. No. L-14414 | April 27, 1960

FACTS

- Plaintiffs brought this action against defendant before the Court of First Instance of Camarines Norte to recover the sum of P2,000.00
- Plaintiffs are the legitimate parents of Carlos Salen who died single from wounds caused by Gumersindo Balce, a legitimate son of defendant.
- Gumersindo Balce was also Single, a minor below 18 years of age, and was living with defendant. As a result of Carlos Salen's death, Gumersindo Balce accused and convicted of homicide and was sentenced to imprisonment and to pay the heirs of the deceased an indemnity in the amount of P2,000.00.
- Upon petition of plaintiff, the only heirs of the deceased, a writ of execution was issued for the payment of the indemnity but it was returned unsatisfied because Gumersindo Balce was insolvent and had no property in his name.
- Thereupon, plaintiffs **demanded upon defendant, father** of Gumersindo, the payment of the indemnity the latter has failed to pay, but defendant refused, thus causing plaintiffs to institute the present action.
- The trial court held that that the civil liability of the son of appellee arises from his criminal liability and, therefore, the subsidiary liability of appellee must be determined under the provisions of the Revised Penal Code, and not under Article 2180 of the new Civil Code which only applies to obligations which arise from quasi-delicts

ISSUES & ARGUMENTS

- **W/N the father can be held subsidiary liable to pay the indemnity of P2,000.00 which his son was sentenced to pay in the criminal case filed against him.**

HOLDING & RATIO DECIDENDI

Yes.

- While the court agrees with the theory that, as a rule, the civil liability arising from a crime shall be governed by the provisions of the Revised Penal Code, it disagrees with the contention that the subsidiary liability of persons for acts of those who are under their custody should likewise be governed by the same Code even in the absence of any provision governing the case, for that would leave the transgression of certain right without any punishment or sanction in the law. Such would be the case if we would uphold the theory of appellee as sustained by the trial court.
- A minor over 15 who acts with discernment is not exempt from criminal liability, for which reason the Code is silent as to the subsidiary liability of his parents should he stand convicted. In that case, resort should be had to the general law which is our Civil Code
- The particular law that governs this case is Article 2180, the pertinent portion of which provides: "The father and, in case of his death or incapacity, the mother, are responsible for damages caused by the minor children who lived in their company."
- To hold that this provision does not apply to the instant case because it only covers obligations which arise from quasi-delicts and not obligations which arise from criminal offenses, would result in the absurdity that while for an act where mere negligence intervenes the father or mother may stand subsidiarily liable for the damage caused by his or her son, no liability would attach if the damage is caused with criminal intent.
- Verily, the void that apparently exists in the Revised Penal Code is subserved by this particular provision of our Civil Code, as may be gleaned from some recent decisions of this Court which cover equal or identical cases.

164 Estanislawa Canlas v Chan Lin Po, Remedios Diala, and LimKoo | Barrera
G.R. No. L-16929, July 31, 1969 | 2 SCRA 973

TC decision affirmed: Petition is dismissed.

FACTS

- June 11 1951: Juanito Chan, son of Chan Lin Po and Remedios Diala, drove and operated a motor vehicle (a truck) along Rizal Ave Ext, Manila in a reckless and imprudent manner thereby causing to hit Nicolas Paras, 65 yo, and ran over his head, crushing it, resulting to his instantaneous death; facs revealed that the truck was registered in the name of Lim Koo.
- At the initial stage of the criminal trial, Petitioner, Estanislawa Canlas (widow of Nicolas, representing also 5 minor children), made a reservation to file a separate civil action.
- TC: Juanito is guilty, serve sentence of 1yr-8mos, plus **5K indeminity.**
- CA: modified, 1yr not less than 4 yrs of imprisonment, indemnity also affirmed.
- In the civil action, same facts were alleged. Defendants disclaimed liability by establishing that Juanito is married and is no longer a minor living in the company of his parents, and that he is also not an employee of Lim Koo. Thus, Neither Juanito's parents can be made liable under vicarious liability (2180 of the NCC) nor the owner of vehicle be the subsidiary liable under 103 of the RPC.
- Civil action: dismissed, since petitioner already tried to execute the indemnity adjudged in the crim action and Juanito already served subsidiary imprisonment by virtue of his inability to pay indemnity. Petitioner insists on the liability of parents and truck owner. MR denied, hence this petition.

ISSUES & ARGUMENTS

- **W/N Respondents can be made liable over the civil liability of Juanito?**

HOLDING & RATIO DECIDENDI

NO.

- 2180 par 5 of the NCC (primary liab-vicarious liab) only applies if the offender is a MINOR LIVING in the COMPANY of his PARENTS. In this case, Juanito was already married and lives independently from his parents
- 103 of the RPC (subsidiary liab) only attaches if EER between the owner and offender is established and that the act happened while he was discharging his duties (as employee). In this case, no evidence was presented to establish such relationship.

NB: The civil complaint was confused with the nature of liability to charge (103 or 2180). Court however clarified that the lower court erred when they adjudged that the civil action is barred by res judicata. The civil action from crim act and indep civil action are of different nature and purpose. The 2 cases affect different parties. In the indep civil action, subsidiary and vicarious liab were being established. Nevertheless, since 2180 of NCC and 103 of RPC was inapplicable, the action was still dismissed.

DIANE LIPANA

165 Tamargo vs. CA| Feliciano
G.R. No. 85044, June 3, 1992|

FACTS

- On 20 October 1982, Adelberto Bundoc, 10 yrs old, shot Jennifer Tamargo with an air rifle causing injuries which resulted in her death.
- A civil complaint for damages was filed by petitioner Macario Tamargo, Jennifer's adopting parent, and petitioner spouses Celso and Aurelia Tamargo, Jennifer's natural parents against respondent spouses Victor and Clara Bundoc, Adelberto's natural parents with whom he was living at the time of the tragic incident.
- In addition to this case for damages, a criminal information for Homicide through Reckless Imprudence was filed against Adelberto Bundoc. Adelberto, however, was acquitted and exempted from criminal liability on the ground that he bad acted without discernment.
- Prior to the incident, or on 10 December 1981, the spouses Sabas and Felisa Rapisura had filed a petition to adopt the minor Adelberto Bundoc in Special Proceedings No. 0373-T before the then Court of First Instance of Ilocos Sur. This petition for adoption was granted on, 18 November 1982, *after* Adelberto had shot and killed Jennifer.
- In their Answer, respondent spouses Bundoc, Adelberto's natural parents, reciting the result of the foregoing petition for adoption, claimed that not they, but rather the adopting parents, namely the spouses Sabas and Felisa Rapisura, were indispensable parties to the action since parental authority had shifted to the adopting parents from the moment the successful petition for adoption was filed.
- Petitioners contended that since Adelberto Bundoc was then actually living with his natural parents, parental authority had not ceased nor been relinquished by the mere filing and granting of a petition for adoption.
- The trial court on 3 December 1987 dismissed petitioners' complaint, ruling that respondent natural parents of Adelberto indeed were not indispensable parties to the action.

ISSUES & ARGUMENTS

- **W/N the effects of adoption, insofar as parental authority is concerned may be given retroactive effect so as to make the adopting parents the indispensable parties in a damage case filed against their adopted child, for acts committed by the latter, when actual custody was yet lodged with the biological parents.**

HOLDING & RATIO DECIDENDI

NO. The biological parents are the indispensable parties.

- It is not disputed that Adelberto Bundoc's voluntary act of shooting Jennifer Tamargo with an air rifle gave rise to a cause of action on *quasi-delict* against him. And consequently, the law imposes civil liability upon the father and, in case of his death or incapacity, the mother, for any damages that may be caused by a *minor child* who lives with them.

  Article 2180 of the Civil Code reads:

  The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

  The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the *minor children who live in their company*.

  xxx xxx xxx

  The responsibility treated of in this Article shall cease when the person herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage. (Emphasis supplied)
- This principle of parental liability is a species of what is frequently designated as vicarious liability, or the doctrine of "imputed negligence" under Anglo-American tort law, where a person is not only liable for torts committed by himself, but also for torts committed by others with whom he has a certain relationship and for whom he is responsible. Thus, parental liability is made a natural or logical consequence of the duties and responsibilities of parents — their parental authority — which includes the instructing, controlling and disciplining of the child.
- The civil liability imposed upon parents for the torts of their minor children living with them, may be seen to be based upon the parental authority vested by the Civil Code upon such parents. The civil law assumes that when an unemancipated child living with its parents commits tortious acts, the parents were negligent in the performance of their legal and natural duty closely to supervise the child who is in their custody and control. Parental liability is, in other words, anchored upon parental authority coupled with presumed parental dereliction in the discharge of the duties accompanying such authority. The parental dereliction is, of course, only presumed and the presumption can be overtuned under Article 2180 of the Civil Code by proof that the parents had exercised all the diligence of a good father of a family to prevent the damage.
- In the instant case, the shooting of Jennifer by Adelberto with an air rifle occured when parental authority was still lodged in respondent Bundoc spouses, the natural parents of the minor Adelberto. It would thus follow that the natural parents who had then actual custody of the minor Adelberto, are the indispensable parties to the suit for damages.
- Spouses Bundoc invokes Article 36 of the Child and Youth Welfare Code which states that the decree of adoption shall be effective on the date the original petition was filed.
- Court is not persuaded. As earlier noted, under the Civil Code, the basis of parental liability for the torts of a minor child is the relationship existing between the parents and the minor child living with them and over whom, the law presumes, the parents exercise supervision and control. Article 58 of the Child and Youth Welfare Code, re-enacted this rule:

  Article 58 *Torts* — Parents and guardians are responsible for the damage caused by the child under their parental authority *in accordance with the civil Code.*

PAT FERNANDEZ

166 Heirs of Delos Santos vs. CA

FACTS

- M/V Mindoro owned by Maritima bound for Aklan sailed in the wee hours of the morning and met a strong typhoon (Welming) causing the ship to sank drowning certain passengers including the decedent of petitioners.
- The Board of Marine Inquiry found that the captain and some members of the crew were negligent in operating the vessel, it then imposed penalty of suspension and license revocation as well as payment for damages, which cannot be enforced against the captain as he also perished along with the vessel.
- The petitioners then sought after the vessel owner but the RTC and CA absolved Maritima using Article 587 of the Code of Commerce limiting the liability of the shipowner.

ISSUES & ARGUMENTS

- **W/N Maritima could be held liable.**

HOLDING & RATIO DECIDENDI

- Yes. The article cannot apply because such only applies when the sole negligence and liability is caused by the ship captain, in this case the company is also negligent.
- The typhoon was already in the knowledge of the captain and Maritima is presumed to know the same prior the trip, yet it still allowed the voyage. It also allowed the ship to be overloaded and that it also failed to show that its ship is seaworthy-having failed to adduce evidence that it properly installed radar in the ship.

167 St. Francis High School vs. CA| Paras
G.R. No. 82465 February 25, 1991 |SCRA

FACTS

- **Ferdinand Castillo,** then a freshman student of Section 1-C at the St. Francis High School, wanted to join a school picnic undertaken by Class I-B and Class I-C at Talaan Beach, Sariaya, Quezon. Ferdinand's parents, respondents spouses **Dr. Romulo Castillo and Lilia Cadiz Castillo**, because of short notice, did not allow their son to join but merely allowed him to bring food to the teachers for the picnic, with the directive that he should go back home after doing so. However, because of persuasion of the teachers, Ferdinand went on with them to the beach.
- During the picnic and while the students, including Ferdinand, were in the water, one of the female teachers was apparently drowning. Some of the students, including Ferdinand, came to her rescue, but in the process, it was Ferdinand himself who drowned. His body was recovered but efforts to resuscitate him ashore failed.
- Thereupon, the Castillo spouses filed a complaint against the **St. Francis High School**, represented by the spouses **Fernando Nantes** and **Rosario Lacandula**, **Benjamin Illumin** (its principal), and the teachers: **Tirso de Chaves, Luisito Vinas, Connie Arquio, Nida Aragones, Yoly Jaro, and Patria Cadiz**, for Damages which respondents allegedly incurred from the death of their 13-year old son, Ferdinand Castillo.
- The TC found in favor of the Castillo spouses and against petitioners-teachers Arquio, de Chaves, Vinas, Aragones, Jaro and Cadiz. On the other hand, the TC dismissed. the case against the St. Francis High School, Benjamin Illumin and Aurora Cadorna.
    - While it is alleged that when defendants Yoly Jaro and Nida Aragones arrived at the picnic site, the drowning incident had already occurred, such fact does not and cannot excuse them from their liability. In fact, it could be said that by coming late, they were remiss in their duty to safeguard the students.
    - Benjamin Illumin had himself not consented to the picnic and in fact he did not join it. Defendant Aurora Cadorna had then her own class to supervise and in fact she was not amongst those allegedly invited by defendant Connie Arquio to supervise class I-C to which Ferdinand Castillo belongs.
- CA
    - St. Francis High School and the school principal, Benjamin Illumin, are liable under Article 2176 taken together with the 1st, 4th and 5th paragraphs of Article 2180 of the Civil Code
    - Under Article 2180, *supra,* the defendant school and defendant school principal must be found jointly and severally liable with the defendants-teachers for the damages incurred by the plaintiffs as a result of the death of Ferdinand. It is the rule that the negligence of the employees in causing the injury or damage gives rise to a presumption of negligence on the part of the owner and/or manager of the establishment (in the present case, St. Francis High School and its principal); and while this presumption is not conclusive, it may be overthrown only by clear and convincing proof that the owner and/or manager exercised the care and diligence of a good father of a family in the selection and/or supervision of the employee or employees causing the injury or damage (in this case, the defendants-teachers). The record does not disclose such evidence as would serve to overcome the aforesaid presumption and absolve the St. Francis High School and its principal from liability.
    - Whether or not the victim's parents had given such permission to their son was immaterial to the determination of the existence of liability on the part of the school and school officials for the damage incurred by the Castillo spouses as a result of the death of their son. What is material to such a determination is whether or not there was negligence on the part of school officials *vis-a-vis* the supervision of the victim's group during the picnic; and, as correctly found by the trial court, an affirmative reply to this question has been satisfactorily established by the evidence, as already pointed out.

ISSUES & ARGUMENTS

- **W/N there was negligence attributable to the school officials which will warrant the award of damages to the Castillo spouses;**
- **W/N Art. 2180, in relation to Art. 2176 of the New Civil Code is applicable to the case at bar;**
- **W/N the award of exemplary and moral damages is proper under the circumstances surrounding the case at bar.**

Castillos:

- The death of their son was due to the failure of the petitioners to exercise the proper diligence of a good father of the family in preventing their son's drowning

HOLDING & RATIO DECIDENDI

No. There was no negligence attributable to the school officials which will warrant the award of damages to the Castillo spouses.

- The school officials are neither guilty of their own negligence or guilty of the negligence of those under them. Consequently, they are not liable for damages.

No. Art. 2180, in relation to Art. 2176 of the New Civil Code is not applicable to the case at bar.

- Before an employer may be held liable for the negligence of his employee, the act or omission which caused damage or prejudice must have occurred while an employee was in the performance of his assigned tasks.
- **In the case at bar, the teachers/petitioners were not in the actual performance of their assigned tasks. The incident happened not within the**

school premises, not on a school day and most importantly while the teachers and students were holding a purely private affair, a picnic. It is clear from the beginning that the incident happened while some members of the I-C class of St. Francis High School were having a picnic at Talaan Beach. This picnic had no permit from the school head or its principal, Benjamin Illumin because this picnic is not a school sanctioned activity neither is it considered as an extra-curricular activity.

- Mere knowledge by petitioner/principal Illumin of the planning of the picnic by the students and their teachers does not in any way or in any manner show acquiescence or consent to the holding of the same.

No. The award of exemplary and moral damages is improper under the circumstances surrounding the case at bar.

- No negligence could be attributable to the petitioners-teachers to warrant the award of damages to the respondents-spouses.
- **Petitioners Connie Arquio the class adviser of I-C, the section where Ferdinand belonged, did her best and exercised diligence of a good father of a family to prevent any untoward incident or damages to all the students who joined the picnic.**
- With these facts in mind, no moral nor exemplary damages may be awarded in favor of respondents-spouses. The case at bar does not fall under any of the grounds to grant moral damages.[9]

Separate Opinion:

Padilla, dissenting:

- Although the excursion may not have been attended by the appropriate school authorities, the presence or stamp of authority of the school nevertheless pervaded by reason of the participation not of one but of several teachers, the petitioners. As found by the court a quo, the excursion was an activity "organized by the teachers themselves, for the students and to which the student, NATURALLY, acceded."
- Having known of the forthcoming activity, petitioner Illumin, as school principal, should have taken appropriate measures to ensure the safety of his students. His silence and negligence in performing his role as principal head of the school that must be construed as an implied consent to such activity.
- **As administrative head (principal) of St. Francis High School, petitioner Illumin acted as the agent of his principal (the school) or its representatives, the petitioners-spouses Nantes and Lacandula. Consequently, and as found by the respondent court. Article 2176 in conjunction with Article 2180, paragraphs (1) and (5) are applicable to the situation.** In the application of these provisions, the negligence of the employee in causing injury or damage gives rise to a presumption of negligence on the part of the owner and/or manager of the establishment. While this presumption is not conclusive, it may be overcome only by clear and convincing evidence that the owner and/or manager exercised the care and diligence of a good father of a family in the selection and/or supervision of the employees causing the injury or damage**. I agree with the respondent court that no proof was presented to absolve the owner and/or manager, herein petitioners-spouses Nantes and Lacandula, and Illumin. Thus, as correctly held by the respondent court, they too must be accountable for the death of Ferdinand Castillo.**

[9] Art. 2217. Moral Damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

168 Go vs. Intermediate Appellate Court | Fernan, C. J.
G.R. No. 68138, May 13, 1991 | 197 SCRA 22

FACTS

- Floverto Jazmin is an American citizen and retired employee of the United States Federal Government. He had been a visitor in the Philippines since 1972 residing at 34 Maravilla Street, Mangatarem, Pangasinan. As *pensionado* of the U.S. government, he received annuity checks in the amounts of $ 67.00 for disability and $ 620.00 for retirement through the Mangatarem post office. He used to encash the checks at the Prudential Bank branch at Clark Air Base, Pampanga.
- In January, 1975, Jazmin failed to receive one of the checks on time thus prompting him to inquire from the post offices at Mangatarem and Dagupan City. As the result of his inquiries proved unsatisfactory, on March 4, 1975, Jazmin wrote the U.S. Civil Service Commission, Bureau of Retirement at Washington, D.C. complaining about the delay in receiving his check. Thereafter, he received a substitute check which he encashed at the Prudential Bank at Clark Air Base.
- Meanwhile, on April 22, 1975, Agustin Go, in his capacity as branch manager of the then Solidbank (which later became the Consolidated Bank and Trust Corporation) in Baguio City, allowed a person named "Floverto Jazmin" to open Savings Account No. BG 5206 by depositing two (2) U. S. treasury checks Nos. 5-449-076 and 5-448-890 in the respective amounts of $1810.00 and $913.40 [1] equivalent to the total amount of P 20,565.69, both payable to the order of Floverto Jasmin of *Maranilla* St., Mangatarem, Pangasinan and drawn on the First National City Bank, Manila.
- The savings account was opened in the ordinary course of business. Thus, the bank, through its manager Go, required the depositor to fill up the information sheet for new accounts to reflect his personal circumstances. The depositor indicated therein that he was Floverto *Jazmin* with mailing address at Mangatarem, Pangasinan and home address at *Maravilla* St., Mangatarem, Pangasinan; that he was a Filipino citizen and a security officer of the US Army with the rank of a sergeant bearing AFUS Car No. H-2711659; that he was married to Milagros Bautista; and that his initial deposit was P3,565.35. He wrote CSA No. 138134 under remarks or instructions and left blank the spaces under telephone number, residence certificate/alien certificate of registration/passport, bank and trade performance and as to who introduced him to the bank. [2] The depositor's signature specimens were also taken.
- Thereafter, the deposited checks were sent to the drawee bank for clearance. Inasmuch as Solidbank did not receive any word from the drawee bank, after three (3) weeks, it allowed the depositor to withdraw the amount indicated in the checks.
- On June 29, 1976 or more than a year later, the two dollar cheeks were returned to Solidbank with the notation that the amounts were altered. [3] Consequently, Go reported the matter to the Philippine Constabulary in Baguio City.
- On August 3, 1976, Jazmin received radio messages requiring him to appear before the Philippine Constabulary headquarters in Benguet on September 7, 1976 for investigation regarding the complaint filed by Go against him for estafa by passing altered dollar checks. Initially, Jazmin was investigated by constabulary officers in Lingayen, Pangasinan and later, at Camp Holmes, La Trinidad, Benguet. He was shown xerox copies of U.S. Government checks Nos. 5-449-076 and 5-448-890 payable to the order of Floverto *Jasmin* in the respective amounts of $1,810.00 and $913.40. The latter amount was actually for only $13.40; while the records do not show the unaltered amount of the other treasury check.
- Jazmin denied that he was the person whose name appeared on the checks; that he received the same and that the signature on the indorsement was his. He likewise denied that he opened an account with Solidbank or that he deposited and encashed therein the said checks. Eventually, the investigators found that the person named "Floverto Jazmin" who made the deposit and withdrawal with Solidbank was an impostor.
- On September 24, 1976, Jazmin filed with the then Court of First Instance of Pangasinan, Branch II at Lingayen a complaint against Agustin Y. Go and the Consolidated Bank and Trust Corporation for moral and exemplary damages in the total amount of P90,000 plus attorney's fees of P5,000. He alleged therein that Go allowed the deposit of the dollar checks and the withdrawal of their peso equivalent "without ascertaining the identity of the depositor considering the highly suspicious circumstances under which said deposit was made; that instead of taking steps to establish the correct identity of the depositor, Go "immediately and recklessly filed (the) complaint for estafa through alteration of dollar check" against him; that Go's complaint was "an act of vicious and wanton recklessness and clearly intended for no other purpose than to harass and coerce the plaintiff into paying the peso equivalent of said dollar checks to the CBTC branch office in Baguio City" so that Go would not be "disciplined by his employer;" that by reason of said complaint, he was "compelled to present and submit himself" to investigations by the constabulary authorities; and that he suffered humiliation and embarrassment as a result of the filing of the complaint against him as well as "great inconvenience" on account of his age (he was a septuagenarian) and the distance between his residence and the constabulary headquarters. He averred that his peace of mind and mental and emotional tranquility as a respected citizen of the community would not have suffered had Go exercised "a little prudence" in ascertaining the identity of the depositor and, for the "grossly negligent and reckless act" of its employee, the defendant CBTC should also be held responsible. [4]
- In its decision of March 27, 1978 [6] the lower court found that Go was negligent in failing to exercise "more care, caution and vigilance" in accepting the checks for deposit and encashment. It noted that the checks were payable to the order of Floverto *Jasmin, Maranilla* St., Mangatarem, Pangasinan and not to Floverto *Jazmin, Maravilla* St., Mangatarem, Pangasinan and that the differences in name and address should have put Go on guard. It held that more care should have been exercised by Go in the encashment of the U.S. treasury checks as there was no time limit for returning them for clearing unlike in ordinary checks wherein a two to three-week limit is allowed.
- Finding that the plaintiff had sufficiently shown that prejudice had been caused to him in the form of mental anguish, moral shock and social humiliation on account of the defendants' gross negligence, the court, invoking Articles 2176, 2217 and

2219 (10) in conjunction with Article 21 of the Civil Code, ruled in favor of the plaintiff.

- The defendants appealed to the Court of Appeals. On January 24, 1984, said court (then named Intermediate Appellate Court) rendered a decision [7] finding as evident negligence Go's failure to notice the substantial difference in the identity of the depositor and the payee in the check, concluded that Go's negligence in the performance of his duties was "the proximate cause why appellant bank was swindled" and that denouncing the crime to the constabulary authorities "merely aggravated the situation." It ruled that there was a cause of action against the defendants although Jazmin had nothing to do with the alteration of the checks, because he suffered damages due to the negligence of Go. Hence, under Article 2180 of the Civil Code, the bank shall be held liable for its manager's negligence.
- The appellate court, however, disallowed the award of moral and exemplary damages and granted nominal damages instead.
- Accordingly, the appellate court ordered Go and Consolidated Bank and Trust Corporation to pay jointly and severally Floverto Jazmin only NOMINAL DAMAGES in the sum of Three Thousand Pesos (P 3,000.00) with interest at six (6%) percent *per annum* until fully paid and One Thousand Pesos (P 1,000.00) as attorney's fees and costs of litigation.
- Go and the bank filed a motion for the reconsideration of said decision contending that in view of the finding of the appellate court that "denouncing a crime is not negligence under which a claim for moral damages is available," the award of nominal damages is unjustified as they did not violate or invade Jazmin's rights. Corollarily, there being no negligence on the part of Go, his employer may not be held liable for nominal damages.
- The motion for reconsideration having been denied, Go and the bank interposed the instant petition for review on *certiorari* arguing primarily that the employer bank may not be held "co-equally liable" to pay nominal damages in the absence of proof that it was negligent in the selection of and supervision over its employee. [8]

ISSUES & ARGUMENTS

- **W/N the respondent appellate court erred in awarding nominal damages ans attorney's fees to private respondent.**

HOLDING & RATIO DECIDENDI

Although this Court has consistently held that there should be no penalty on the right to litigate and that error alone in the filing of a case be it before the courts or the proper police authorities, is not a ground for moral damages, [9] we hold that under the peculiar circumstances of this case, private respondent is entitled to an award of damages.

- Indeed, it would be unjust to overlook the fact that petitioners' negligence was the root of all the inconvenience and embarrassment experienced by the private respondent albeit they happened after the filing of the complaint with the constabulary authorities. Petitioner Go's negligence in fact led to the swindling of his employer. Had Go exercised the diligence expected of him as a bank officer and employee, he would have noticed the glaring disparity between the payee's name and address on the treasury checks involved and the name and address of the depositor appearing in the bank's records. The situation would have been different if the treasury checks were tampered with only as to their amounts because the alteration would have been unnoticeable and hard to detect as the herein altered check bearing the amount of $ 913.40 shows. But the error in the name and address of the payee was very patent and could not have escaped the trained eyes of bank officers and employees. There is therefore, no other conclusion than that the bank through its employees (including the tellers who allegedly conducted an identification check on the depositor) was grossly negligent in handling the business transaction herein involved.
- While at that stage of events private respondent was still out of the picture, it definitely was the start of his consequent involvement as his name was illegally used in the illicit transaction. Again, knowing that its viability depended on the confidence reposed upon it by the public, the bank through its employees should have exercised the caution expected of it.
- In crimes and *quasi-delicts*, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant. [10] As Go's negligence was the root cause of the complained inconvenience, humiliation and embarrassment, Go is liable to private respondents for damages.
- Anent petitioner bank's claim that it is not "co-equally liable" with Go for damages, under the fifth paragraph of Article 2180 of the Civil Code, "(E)mployers shall be liable for the damages caused by their employees . . . acting within the scope of their assigned tasks." Pursuant to this provision, the bank is responsible for the acts of its employee unless there is proof that it exercised the diligence of a good father of a family to prevent the damage. [11] Hence, the burden of proof lies upon the bank and it cannot now disclaim liability in view of its own failure to prove not only that it exercised due diligence to prevent damage but that it was not negligent in the selection and supervision of its employees.

JAY DUHAYLONGSOD

169 PSBA v. Court of Appeals | Padilla
G.R. No. 84698 February 4, 1992| 205 SCRA 729

FACTS

- Carlitos Bautista was a third year commerce student in PSBA. In Aug 30, 1985, he was stabbed while on the 2nd floor of the school, causing his death. It was established that the assailants were not students of PSBA.
- The parents of Carlitos filed a damage suit against PSBA and its school authorities for the death of their child.
- Petitioners filed a motion to dismiss, alleging that since they are presumably sued under Article 2180 of the Civil Code, the complaint states no cause of action against them, as jurisprudence on the subject is to the effect that *academic institutions*, such as the PSBA, are beyond the ambit of the rule in the afore-stated article.
- RTC dismissed the MTD. CA affirmed. The CA ratiocinated as follows:

  > Article 2180 (formerly Article 1903) of the Civil Code is an adoption from the old Spanish Civil Code. The comments of Manresa and learned authorities on its meaning should give way to present day changes. The law is not fixed and flexible (*sic*); it must be dynamic. In fact, the greatest value and significance of law as a rule of conduct in (*sic*) its flexibility to adopt to changing social conditions and its capacity to meet the new challenges of progress.Construed in the light of modern day educational system, Article 2180 cannot be construed in its narrow concept as held in the old case of *Exconde vs. Capuno* and *Mercado vs. Court of Appeals*; hence, the ruling in the *Palisoc* case that it should apply to all kinds of educational institutions, academic or vocational.At any rate, the law holds the teachers and heads of the school staff liable unless they relieve themselves of such liability pursuant to the last paragraph of Article 2180 by "proving that they observed all the diligence to prevent damage." This can only be done at a trial on the merits of the case.

ISSUES & ARGUMENTS

- **W/N PSBA and its school authorities are vicariously liable for the death of Carlitos Bautista inside its premises.**

HOLDING & RATIO DECIDENDI

NO, THEY ARE NOT LIABLE.

- Article 2180, in conjunction with Article 2176 of the Civil Code, establishes the rule of *in loco parentis*. This Court discussed this doctrine in the afore-cited cases of *Exconde, Mendoza, Palisoc* and, more recently, in *Amadora vs. Court of Appeals*. [6] In all such cases, it had been stressed that the law (Article 2180) plainly provides that the damage should have been caused or inflicted by *pupils or students* of he educational institution sought to be held liable for the acts of its pupils or students while in its custody. However, this material situation does not exist in the present case for, as earlier indicated, the assailants of Carlitos *were not students of the PSBA,* for whose acts the school could be made liable.

170 Jose V. CA |
G.R. 118441 January 18, 2000 |

FACTS

- Petitioner Manila Central Bus Lines Corporation (MCL) is the operator-lessee of a public utility bus (hereafter referred to as Bus 203) with plate number NVR-III-TB-PIL and body number 203. Bus 203 is owned by the Metro Manila Transit Corporation and is insured with the Government Service Insurance System.
- On February 22, 1985, at around six o'clock in the morning, Bus 203, then driven by petitioner Armando Jose, collided with a red Ford Escort driven by John Macarubo on MacArthur Highway, in Marulas, Valenzuela, Metro Manila. Bus 203 was bound for Muntinlupa, Rizal, while the Ford Escort was headed towards Malanday, Valenzuela on the opposite lane. As a result of the collision, the left side of the Ford Escort's hood was severely damaged while its driver, John Macarubo, and its lone passenger, private respondent Rommel Abraham, were seriously injured. The driver and conductress of Bus 203 rushed Macarubo and Abraham to the nearby Fatima Hospital where Macarubo lapsed into a coma. Despite surgery, Macarubo failed to recover and died five days later. Abraham survived, but he became blind on the left eye which had to be removed. In addition, he sustained a fracture on the forehead and multiple lacerations on the face, which caused him to be hospitalized for a week.
- On March 26, 1985, Rommel Abraham, represented by his father, Felixberto, instituted Civil Case No. 2206-V-85 for damages against petitioners MCL and Armando Jose in the Regional Trial Court, Branch 172, Valenzuela.
- On July 17, 1986, the spouses Jose and Mercedes Macarubo, parents of the deceased John Macarubo, filed their own suit for damages in the same trial court.

ISSUES & ARGUMENTS

- **W/N MCL is liable?**

HOLDING & RATIO DECIDENDI

No.

- Under the circumstances of this case, we hold that proof of due diligence in the selection and supervision of employees is not required. Before the presumption of the employer's negligence in the selection and supervision of its employees can arise, the negligence of the employee must first be established. While the allegations of negligence against the employee and that of an employer-employee relation in the complaint are enough to make out a case of quasi-delict under Art. 2180 of the Civil Code, the failure to prove the employee's negligence during the trial is fatal to proving the employer's vicarious liability. In this case, private respondents failed to prove their allegation of negligence against driver Armando Jose who, in fact, was acquitted in the case for criminal negligence arising from the same incident.
- For the foregoing reasons, we hold that the appellate court erred in holding petitioners liable to private respondents. The next question then is whether, as the trial court held, private respondent Juanita Macarubo is liable to petitioners.
- Article 2180 of the Civil Code makes the persons specified therein responsible for the quasi-delicts of others. The burden is upon MCL to prove that Juanita Macarubo is one of those specified persons who are vicariously liable for the negligence of the deceased John Macarubo.
- In its third-party complaint, MCL alleged that Juanita Macarubo was the registered owner of the Ford Escort car and that John Macarubo was the "authorized driver" of the car. Nowhere was it alleged that John Macarubo was the son, ward, employee or pupil of private respondent Juanita Macarubo so as to make the latter vicariously liable for the negligence of John Macarubo. The allegation that John Macarubo was "the authorized driver" of the Ford Escort is not equivalent to an allegation that he was an employee of Juanita Macarubo. That John Macarubo was the "authorized driver" of the car simply means that he drove the Ford Escort with the permission of Juanita Macarubo..
- Nor did MCL present any evidence to prove that Juanita Macarubo was the employer of John Macarubo or that she is in any way liable for John Macarubo's negligence under Art. 2180 of the Civil Code. For failure to discharge its burden, MCL's third-party complaint should be dismissed.

J.C. LERIT

171 Castilex vs. Vasquez | Kapunan
G.R. No. 129329, July 31, 2001 | 362 SCRA 56

FACTS

- On 28 August 1988, at around 1:30 to 2:00 in the morning, Romeo So Vasquez, was driving a Honda motorcycle around Fuente Osmeña Rotunda. He was traveling counter-clockwise, (the normal flow of traffic in a rotunda) but without any protective helmet or goggles. He was also only carrying a Student's Permit to Drive at the time.
- Upon the other hand, Benjamin Abad was a production manager of Castilex Industrial Corporation, registered owner of the Toyota Hi-Lux Pick-up with plate no. GBW-794 which Abad drove car out of a parking lot. Instead of going around the Osmeña rotunda he went against the flow of the traffic in proceeding to his route to General Maxilom St. or to Belvic St..
- The motorcycle of Vasquez and the pick-up of Abad collided with each other causing severe injuries to Vasquez. Abad stopped his vehicle and brought Vasquez to the Southern Islands Hospital and later to the Cebu Doctor's Hospital.
- On September 5, 1988, Vasquez died at the Cebu Doctor's Hospital. Abad signed an acknowledgment of Responsible Party wherein he agreed to pay whatever hospital bills, professional fees and other incidental charges Vasquez may incur.

ISSUES & ARGUMENTS

- **W/N Castilex may be held vicariously liable for the death resulting from the negligent operation by a managerial employee of a company-issued vehicle.**
- Petitioner CASTILEX presumes said negligence but claims that it is not vicariously liable for the injuries and subsequent death caused by ABAD

HOLDING & RATIO DECIDENDI

No.

- The fifth paragraph of article 2180 states **Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.**
- In order for this paragraph to apply, it must be shown that the employee was acting within the scope of his assigned tasks. Here it was not sufficiently proven that such was the case.
- Jurisprudence provides:
    - An employee who uses his employer's vehicle in going from his work to a place where he intends to eat or in returning to work from a meal is not ordinarily acting within the scope of his employment in the absence of evidence of some special business benefit to the employer. Evidence that by using the employer's vehicle to go to and from meals, an employee is enabled to reduce his time-off and so devote more time to the performance of his duties supports the finding that an employee is acting within the scope of his employment while so driving the vehicle.
    - Traveling to and from the place of work is ordinarily a personal problem or concern of the employee, and not a part of his services to his employer. Hence, in the absence of some special benefit to the employer other than the mere performance of the services available at the place where he is needed, the employee is not acting within the scope of his employment even though he uses his employer's motor vehicle.
    - An employer who loans his motor vehicle to an employee for the latter's personal use outside of regular working hours is generally not liable for the employee's negligent operation of the vehicle during the period of permissive use, even where the employer contemplates that a regularly assigned motor vehicle will be used by the employee for personal as well as business purposes and there is some incidental benefit to the employer. Even where the employee's personal purpose in using the vehicle has been accomplished and he has started the return trip to his house where the vehicle is normally kept, it has been held that he has not resumed his employment, and the employer is not liable for the employee's negligent operation of the vehicle during the return trip.
- In this case , ABAD did some overtime work at the petitioner's office, which was located in Cabangcalan, Mandaue City. Thereafter, he went to Goldie's Restaurant in Fuente Osmeña, Cebu City, which is about seven kilometers away from petitioner's place of business. At the Goldie's Restaurant, ABAD took some snacks and had a chat with friends. It was when ABAD was leaving the restaurant that the incident in question occurred. Thus ABAD was engaged in affairs of his own or was carrying out a personal purpose not in line with his duties at the time he figured in a vehicular accident.
- It was then about 2:00 a.m. of 28 August 1988, way beyond the normal working hours. ABAD's working day had ended; his overtime work had already been completed. His being at a place which, as petitioner put it, was known as a "haven for prostitutes, pimps, and drug pushers and addicts," had no connection to petitioner's business; neither had it any relation to his duties as a manager. Rather, using his service vehicle even for personal purposes was a form of a fringe baenefit or one of the perks attached to his position.
- Since there is paucity of evidence that ABAD was acting within the scope of the functions entrusted to him, petitioner CASTILEX had no duty to show that it exercised the diligence of a good father of a family in providing ABAD with a service vehicle. Thus, justice and equity require that petitioner be relieved of vicarious liability for the consequences of the negligence of ABAD in driving its vehicle

GINO CAPATI

172 Franco vs. IAC |
G.R. No. 71137 October 5, 1989 |

FACTS

- Yulo was driving a Franco Bus when he swerved to the opposite lane to avoid colliding with a parked truck. The Franco Bus took the lane of an incoming Isuzu Mini Bus driven by Lugue. The two vehicles collided, resulting in the deaths of both drivers and two passengers of the Mini Bus. The owner of the Isuzu Mini Bus, the wife of one of the passengers who died, and the wife of the driver of the Mini Bus filed an action for damages against Mr. and Mrs. Franco, owners of the Franco Transportation Company.
- The spouses set up the defense that they exercised the diligence of a good father of a family in selecting and supervising their employees, including the deceased driver. The RTC held that this defense of due diligence could not be invoked by the spouses since the case was one for criminal negligence punishable under Article 102 and 103 of the Revised Penal Code and not from Article 2180 of the Civil Code. It held the spouses liable for damages to the family of the deceased. The CA agreed with the lower court.

ISSUES & ARGUMENTS

- **W/N spouses Franco, as employer, may invoke the defense of diligence of a good father of a family in denying their liabilities against the victims.**

HOLDING & RATIO DECIDENDI

YES. The action is predicated upon quasi delict, not upon crime. Hence, the defense of due diligence can be invoked by the defendants. However, in this case, the spouses were not able to prove such due diligence. Therefore, they are liable for damages under Article 2180 of the Civil Code.

- Distinction should be made between the subsidiary liability of the employer under the RPC and the employer's primary liability under the Civil Code, which is quasi-delictual or tortious in character. The first type of liability is governed by Articles 102 and 103 of the RPC, which provide that employers have subsidiary civil liability in default of their employees who commit felonies in the discharge of their duties.
- The second kind is governed by Articles 2176, 2177, and 2180 of the Civil Code on the vicarious liability of employers for those damages caused by their employees acting within the scope of their assigned tasks. In this second kind, the employer's liability ceases upon proof that he observed all the diligence of a good father of a family to prevent damage. Under Article 103 of the RPC, the liability of the employer is subsidiary to the liability of the employee. Before the employer's subsidiary liability may be proceeded against, it is imperative that there should be a criminal action where the employee's criminal negligence are proved. Without such criminal action being instituted, the employer's liability cannot be predicated under Article 103. In this case, there was no criminal action instituted because the driver who should stand as accused died in the accident. Therefore, there is no basis for the employer's subsidiary liability, without the employee's primary liability. It follows that the liability being sued upon is based not on crime, but on culpa aquiliana, where the defense of the exercise of the diligence of a good father of a family may be raised by the employer.
- The employers are liable since they failed to prove that they exercised the diligence of a good father of a family in selecting and/or supervising the driver. They admitted that the only kind of supervision given to the drivers referred to the running time between the terminal points of the line. They only had two inspectors whose duties were only ticket inspections. There is no evidence that they were really safety inspectors.

173 China Airlines vs. CA |
G.R. No. 45985 May 18, 1990 | 185 SCRA 449

FACTS

- Panganiban was Vice President and General Manager of Rentokil Inc., a local insecticide company. He had a meeting with a certain Peng Siong Lim, President of the Union Taiwan Chemical Corporation, scheduled at 9:00 a.m. on June 11, 1988.
- He bought a China Arilines ticket to Tapei through his travel agent. His travel agent coursed the transaction to the Philippine Airlines Office in Manila Hotel which was the ticket sales agent of China Airlines, here in the Philippines. The officer who aided in the sale was Mr. Espiritu.
- The ticket stated that the flight was to leave at 5:20pm of June 10. When Panganiban arrived at airport an hour earlier than the time of the flight. The attendant, however, informed him that the flight had left at 10:20 AM. Philippine Airlines arranged that he be in the next flight to Tapei on the following day.
- Unknown to the Philippine Airlines officer in Manila Hotel, all flights of China Airlines to Tapei were changed from 5:20 PM to 10L20 AM starting April 1988. PAL had not changed their protocol even if China Airline had sent them printed copies of change in protocol.
- Panganiban filed a complaint against China Airlines for damages because he allegedly experienced humiliation, besmirched reputation, embarrassment, mental anguish, wounded feelings and sleepless nights, inasmuch as when he went to the airport, he was accompanied by his business associates, close friends and relatives.
- The Court found China Airlines liable for damages.

ISSUES & ARGUMENTS

- **W/N the Court was correct in holding China Airlines liable for the damage caused by Mr. Espiritu who was an employee of Philippine Airlines.**
    - **Petitioner**: Mr. Espiritu was liable for the injury in misinforming the travel agent of Panganiban. He is an employee of Philippine Airlines. This Airline (ChinaAir) notified PAL of the changes in schedules early or. Therefore they cannot be held solidarily liable.
    - **Respondent**: It is an admitted fact that PAL is an authorized agent of CAL. In this relationship, the responsibility of defendant PAL for the tortious act of its agent or representative is inescapable.

HOLDING & RATIO DECIDENDI

CHINA AIRLINES IS NOT LIABLE FOR NEGLIGENCE OF EMPLOYEE OF ITS TICKETING AGENT (ANOTHER AIRLINE). ONLY PHILIPPINE AIRLINES IS LIABLE.

- There is indeed no basis whatsoever to hold China Airlines liable on a quasi-delict or culpa aquiliana. The court a quo absolved China Airlines of any liability for fault or negligence. China Airlines did not contribute to the negligence committed Philippine Airlines and Roberto Espiritu.
- China Airlines was not the employer of Philippine Airlines or Espiritu. It has been established in jurisprudence that there is a need to ascertain the existence of an employer-employee relationship before an employer may be vicariously liable under Article 2180 of the Civil Code.
- PAL is liable for negligence of its employees even if PAL was acting as ticketing agents of China Airlines. There is no question that the contractual relation between both airlines is one of agency. In an action premised on the employee's negligence, whereby Pagsibigan seeks recovery for the resulting damages from both PAL and Espiritu without qualification, what is sought to be imposed is the direct and primary liability of PAL as an employer under said Article 2180.

174 Go vs. Intermediate Appellate Court | Fernan, C. J.
G.R. No. 68138, May 13, 1991 | 197 SCRA 22

FACTS

- Floverto Jazmin is an American citizen and retired employee of the United States Federal Government. He had been a visitor in the Philippines since 1972 residing at 34 Maravilla Street, Mangatarem, Pangasinan. As *pensionado* of the U.S. government, he received annuity checks in the amounts of $ 67.00 for disability and $ 620.00 for retirement through the Mangatarem post office. He used to encash the checks at the Prudential Bank branch at Clark Air Base, Pampanga.
- In January, 1975, Jazmin failed to receive one of the checks on time thus prompting him to inquire from the post offices at Mangatarem and Dagupan City. As the result of his inquiries proved unsatisfactory, on March 4, 1975, Jazmin wrote the U.S. Civil Service Commission, Bureau of Retirement at Washington, D.C. complaining about the delay in receiving his check. Thereafter, he received a substitute check which he encashed at the Prudential Bank at Clark Air Base.
- Meanwhile, on April 22, 1975, Agustin Go, in his capacity as branch manager of the then Solidbank (which later became the Consolidated Bank and Trust Corporation) in Baguio City, allowed a person named "Floverto Jazmin" to open Savings Account No. BG 5206 by depositing two (2) U. S. treasury checks Nos. 5-449-076 and 5-448-890 in the respective amounts of $1810.00 and $913.40 [1] equivalent to the total amount of P 20,565.69, both payable to the order of Floverto Jasmin of *Maranilla* St., Mangatarem, Pangasinan and drawn on the First National City Bank, Manila.
- The savings account was opened in the ordinary course of business. Thus, the bank, through its manager Go, required the depositor to fill up the information sheet for new accounts to reflect his personal circumstances. The depositor indicated therein that he was Floverto *Jazmin* with mailing address at Mangatarem, Pangasinan and home address at *Maravilla* St., Mangatarem, Pangasinan; that he was a Filipino citizen and a security officer of the US Army with the rank of a sergeant bearing AFUS Car No. H-2711659; that he was married to Milagros Bautista; and that his initial deposit was P3,565.35. He wrote CSA No. 138134 under remarks or instructions and left blank the spaces under telephone number, residence certificate/alien certificate of registration/passport, bank and trade performance and as to who introduced him to the bank. [2] The depositor's signature specimens were also taken.
- Thereafter, the deposited checks were sent to the drawee bank for clearance. Inasmuch as Solidbank did not receive any word from the drawee bank, after three (3) weeks, it allowed the depositor to withdraw the amount indicated in the checks.
- On June 29, 1976 or more than a year later, the two dollar cheeks were returned to Solidbank with the notation that the amounts were altered. [3] Consequently, Go reported the matter to the Philippine Constabulary in Baguio City.
- On August 3, 1976, Jazmin received radio messages requiring him to appear before the Philippine Constabulary headquarters in Benguet on September 7, 1976 for investigation regarding the complaint filed by Go against him for estafa by passing altered dollar checks. Initially, Jazmin was investigated by constabulary officers in Lingayen, Pangasinan and later, at Camp Holmes, La Trinidad, Benguet. He was shown xerox copies of U.S. Government checks Nos. 5-449-076 and 5-448-890 payable to the order of Floverto *Jasmin* in the respective amounts of $1,810.00 and $913.40. The latter amount was actually for only $13.40; while the records do not show the unaltered amount of the other treasury check.
- Jazmin denied that he was the person whose name appeared on the checks; that he received the same and that the signature on the indorsement was his. He likewise denied that he opened an account with Solidbank or that he deposited and encashed therein the said checks. Eventually, the investigators found that the person named "Floverto Jazmin" who made the deposit and withdrawal with Solidbank was an impostor.
- On September 24, 1976, Jazmin filed with the then Court of First Instance of Pangasinan, Branch II at Lingayen a complaint against Agustin Y. Go and the Consolidated Bank and Trust Corporation for moral and exemplary damages in the total amount of P90,000 plus attorney's fees of P5,000. He alleged therein that Go allowed the deposit of the dollar checks and the withdrawal of their peso equivalent "without ascertaining the identity of the depositor considering the highly suspicious circumstances under which said deposit was made; that instead of taking steps to establish the correct identity of the depositor, Go "immediately and recklessly filed (the) complaint for estafa through alteration of dollar check" against him; that Go's complaint was "an act of vicious and wanton recklessness and clearly intended for no other purpose than to harass and coerce the plaintiff into paying the peso equivalent of said dollar checks to the CBTC branch office in Baguio City" so that Go would not be "disciplined by his employer;" that by reason of said complaint, he was "compelled to present and submit himself" to investigations by the constabulary authorities; and that he suffered humiliation and embarrassment as a result of the filing of the complaint against him as well as "great inconvenience" on account of his age (he was a septuagenarian) and the distance between his residence and the constabulary headquarters. He averred that his peace of mind and mental and emotional tranquility as a respected citizen of the community would not have suffered had Go exercised "a little prudence" in ascertaining the identity of the depositor and, for the "grossly negligent and reckless act" of its employee, the defendant CBTC should also be held responsible. [4]
- In its decision of March 27, 1978 [6] the lower court found that Go was negligent in failing to exercise "more care, caution and vigilance" in accepting the checks for deposit and encashment. It noted that the checks were payable to the order of Floverto *Jasmin, Maranilla* St., Mangatarem, Pangasinan and not to Floverto *Jazmin, Maravilla* St., Mangatarem, Pangasinan and that the differences in name and address should have put Go on guard. It held that more care should have been exercised by Go in the encashment of the U.S. treasury checks as there was no time limit for returning them for clearing unlike in ordinary checks wherein a two to three-week limit is allowed.
- Finding that the plaintiff had sufficiently shown that prejudice had been caused to him in the form of mental anguish, moral shock and social humiliation on account of the defendants' gross negligence, the court, invoking Articles 2176, 2217 and

2219 (10) in conjunction with Article 21 of the Civil Code, ruled in favor of the plaintiff.

- The defendants appealed to the Court of Appeals. On January 24, 1984, said court (then named Intermediate Appellate Court) rendered a decision [7] finding as evident negligence Go's failure to notice the substantial difference in the identity of the depositor and the payee in the check, concluded that Go's negligence in the performance of his duties was "the proximate cause why appellant bank was swindled" and that denouncing the crime to the constabulary authorities "merely aggravated the situation." It ruled that there was a cause of action against the defendants although Jazmin had nothing to do with the alteration of the checks, because he suffered damages due to the negligence of Go. Hence, under Article 2180 of the Civil Code, the bank shall be held liable for its manager's negligence.
- The appellate court, however, disallowed the award of moral and exemplary damages and granted nominal damages instead.
- Accordingly, the appellate court ordered Go and Consolidated Bank and Trust Corporation to pay jointly and severally Floverto Jazmin only NOMINAL DAMAGES in the sum of Three Thousand Pesos (P 3,000.00) with interest at six (6%) percent *per annum* until fully paid and One Thousand Pesos (P 1,000.00) as attorney's fees and costs of litigation.
- Go and the bank filed a motion for the reconsideration of said decision contending that in view of the finding of the appellate court that "denouncing a crime is not negligence under which a claim for moral damages is available," the award of nominal damages is unjustified as they did not violate or invade Jazmin's rights. Corollarily, there being no negligence on the part of Go, his employer may not be held liable for nominal damages.
- The motion for reconsideration having been denied, Go and the bank interposed the instant petition for review on *certiorari* arguing primarily that the employer bank may not be held "co-equally liable" to pay nominal damages in the absence of proof that it was negligent in the selection of and supervision over its employee. [8]

ISSUES & ARGUMENTS

- **W/N the respondent appellate court erred in awarding nominal damages ans attorney's fees to private respondent.**

HOLDING & RATIO DECIDENDI

Although this Court has consistently held that there should be no penalty on the right to litigate and that error alone in the filing of a case be it before the courts or the proper police authorities, is not a ground for moral damages, [9] we hold that under the peculiar circumstances of this case, private respondent is entitled to an award of damages.

- Indeed, it would be unjust to overlook the fact that petitioners' negligence was the root of all the inconvenience and embarrassment experienced by the private respondent albeit they happened after the filing of the complaint with the constabulary authorities. Petitioner Go's negligence in fact led to the swindling of his employer. Had Go exercised the diligence expected of him as a bank officer and employee, he would have noticed the glaring disparity between the payee's name and address on the treasury checks involved and the name and address of the depositor appearing in the bank's records. The situation would have been different if the treasury checks were tampered with only as to their amounts because the alteration would have been unnoticeable and hard to detect as the herein altered check bearing the amount of $ 913.40 shows. But the error in the name and address of the payee was very patent and could not have escaped the trained eyes of bank officers and employees. There is therefore, no other conclusion than that the bank through its employees (including the tellers who allegedly conducted an identification check on the depositor) was grossly negligent in handling the business transaction herein involved.
- While at that stage of events private respondent was still out of the picture, it definitely was the start of his consequent involvement as his name was illegally used in the illicit transaction. Again, knowing that its viability depended on the confidence reposed upon it by the public, the bank through its employees should have exercised the caution expected of it.
- In crimes and *quasi-delicts*, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant. [10] As Go's negligence was the root cause of the complained inconvenience, humiliation and embarrassment, Go is liable to private respondents for damages.
- Anent petitioner bank's claim that it is not "co-equally liable" with Go for damages, under the fifth paragraph of Article 2180 of the Civil Code, "(E)mployers shall be liable for the damages caused by their employees . . . acting within the scope of their assigned tasks." Pursuant to this provision, the bank is responsible for the acts of its employee unless there is proof that it exercised the diligence of a good father of a family to prevent the damage. [11] Hence, the burden of proof lies upon the bank and it cannot now disclaim liability in view of its own failure to prove not only that it exercised due diligence to prevent damage but that it was not negligent in the selection and supervision of its employees.

JAY DUHAYLONGSOD

175 Soliman vs. Tuazon | Feliciano
G.R. No. 66207, May 18, 1992 | 209 SCRA 47

FACTS

- Petitioner Soliman Jr. filed a civil complaint for damages against respondents Republic Central Colleges, R.L. Security Agency, and Solomon, a security guard at Republic.
- The complaint alleges that one morning, while Soliman was in the premises of Republic, as he was still a regular enrolled student, Solomon with intent to kill attacked and shot him in the abdomen. It is further alleged that such wound would have caused his death, were it not for timely medical assistance, and because of this he may not be able to attend his regular classes and perform his usual work from three to four months.
- Republic Colleges filed a motion to dismiss, contending that Soliman had no action against it. It averred that it should be free from liability because it was not the employer of the security guard. Moreover, Article 2180 (7th paragraph) did not apply, since such holds teachers and heads responsible only for damages caused by their pupils and students/apprentices.
- The MTD was granted by the judge. Hence this instant petition.

ISSUES & ARGUMENTS

- **W/N Republic Central Colleges may be held liable for damages.**

HOLDING & RATIO DECIDENDI

REPUBLIC CENTRAL COLLEGES MAY NOT BE HELD LIABLE FOR DAMAGES UNDER ARTICLE 2180 (AS AN EMPLOYER). HOWEVER, IT MAY BE LIABLE ON THE BASIS OF AN IMPLIED CONTRACT.

- Under **Article 2180** of the NCC, **employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.** Also, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils, their students or apprentices, so long as they remain in their custody.
- **There is no basis to hold Republic liable under Article 2180. The employer of security guard Solomon was R.L. Security Agency Inc.** Where the security agency, as here, recruits, hires and assigns the work of its watchmen or security guards, the agency is the employer of such guards or watchmen. Liability for illegal or harmful acts committed by the security guards attaches to the employer agency, and not to the clients or customers of such agency.
- The fact that a client company may give instructions or directions to the security guards assigned to it, does not, by itself, render the client responsible as an employer.
- Solomon was neither a pupil nor a student of Republic. Hence, the provision with regard to the liability of teachers and heads is also not available to make Republic liable for damages.
- Nevertheless, Republic may be held liable on the basis of an implied contract between it and Soliman, because of its obligation to maintain peace and order within the campus premises and to prevent the breakdown thereof. Should this be the case, the school may still avoid liability by proving that the breach of its contractual obligation to the students was not due to its negligence, here statutorily defined to be the omission of that degree of diligence which is required by the nature of obligation and corresponding to the circumstances of person, time and place.
- Respondent trial judge was in serious error when he supposed that petitioner could have no cause of action other than one based on Article 2180 of the Civil Code. Respondent trial judge should not have granted the motion to dismiss but rather should have, in the interest of justice, allowed petitioner to prove acts constituting breach of an obligation *ex contractu* or *ex lege* on the part of respondent Colleges.

Petition GRANTED. Order REVERSED AND SET ASIDE. Case REMANDED to the court a quo for further proceedings.

KATH MATIBAG

176 Castilex v. Vazquez | Kapunan
G.R. No. 132266. December 21, 1999

FACTS

- Between 1:30 to 2:00 am , Romeo Vazquez was driving a motorcycle while Benjamin Abad was driving a pick-up owned by CAstilex. Instead of going around the Rotunda, he made a shortcut. He traversed against the flow of traffic. As a reslt thereof, the pick-up collided with the motorcycle resulting in the severe injuries of Vazquez. While in the hospital, Vazquez died.

ISSUES & ARGUMENTS

- **W/N as employer of Abad, Castilex should be held liable for the damage caused by its employee**

HOLDING & RATIO DECIDENDI

Castilex is not Liable.

- Under Article 2180, *Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry*. In order for this paragraph to apply, it must be shown that the employee was acting within the scope of his assigned tasks. Here it was not sufficiently proven that such was the case.
- It is the obligation of the plaintiff to prove that the employee is not acting within the scope of its duty.Jurisprudence provides that*, an employer who loans his motor vehicle to an employee for the latter's personal use outside of regular working hours is generally not liable for the employee's negligent operation of the vehicle during the period of permissive use, even where the employer contemplates that a regularly assigned motor vehicle will be used by the employee for personal as well as business purposes and there is some incidental benefit to the employer. Even where the employee's personal purpose in using the vehicle has been accomplished and he has started the return trip to his house where the vehicle is normally kept, it has been held that he has not resumed his employment, and the employer is not liable for the employee's negligent operation of the vehicle during the return trip.*
- In this case, Abad did some overtime work at the petitioner's office, and after he went out to grab some dinner. It was when he left the restaurant that the incident in question occurred. Abad was engaged in affairs of his own or was carrying out a personal purpose not in line with his duties at the time he figured in a vehicular accident.

177 Jose V. CA |
G.R. 118441 January 18, 2000 |

FACTS

- Petitioner Manila Central Bus Lines Corporation (MCL) is the operator-lessee of a public utility bus (hereafter referred to as Bus 203) with plate number NVR-III-TB-PIL and body number 203. Bus 203 is owned by the Metro Manila Transit Corporation and is insured with the Government Service Insurance System.
- On February 22, 1985, at around six o'clock in the morning, Bus 203, then driven by petitioner Armando Jose, collided with a red Ford Escort driven by John Macarubo on MacArthur Highway, in Marulas, Valenzuela, Metro Manila. Bus 203 was bound for Muntinlupa, Rizal, while the Ford Escort was headed towards Malanday, Valenzuela on the opposite lane. As a result of the collision, the left side of the Ford Escort's hood was severely damaged while its driver, John Macarubo, and its lone passenger, private respondent Rommel Abraham, were seriously injured. The driver and conductress of Bus 203 rushed Macarubo and Abraham to the nearby Fatima Hospital where Macarubo lapsed into a coma. Despite surgery, Macarubo failed to recover and died five days later. Abraham survived, but he became blind on the left eye which had to be removed. In addition, he sustained a fracture on the forehead and multiple lacerations on the face, which caused him to be hospitalized for a week.
- On March 26, 1985, Rommel Abraham, represented by his father, Felixberto, instituted Civil Case No. 2206-V-85 for damages against petitioners MCL and Armando Jose in the Regional Trial Court, Branch 172, Valenzuela.
- On July 17, 1986, the spouses Jose and Mercedes Macarubo, parents of the deceased John Macarubo, filed their own suit for damages in the same trial court.

ISSUES & ARGUMENTS

- **W/N MCL is liable?**

HOLDING & RATIO DECIDENDI

No.

- Under the circumstances of this case, we hold that proof of due diligence in the selection and supervision of employees is not required. Before the presumption of the employer's negligence in the selection and supervision of its employees can arise, the negligence of the employee must first be established. While the allegations of negligence against the employee and that of an employer-employee relation in the complaint are enough to make out a case of quasi-delict under Art. 2180 of the Civil Code, the failure to prove the employee's negligence during the trial is fatal to proving the employer's vicarious liability. In this case, private respondents failed to prove their allegation of negligence against driver Armando Jose who, in fact, was acquitted in the case for criminal negligence arising from the same incident.
- For the foregoing reasons, we hold that the appellate court erred in holding petitioners liable to private respondents. The next question then is whether, as the trial court held, private respondent Juanita Macarubo is liable to petitioners.
- Article 2180 of the Civil Code makes the persons specified therein responsible for the quasi-delicts of others. The burden is upon MCL to prove that Juanita Macarubo is one of those specified persons who are vicariously liable for the negligence of the deceased John Macarubo.
- In its third-party complaint, MCL alleged that Juanita Macarubo was the registered owner of the Ford Escort car and that John Macarubo was the "authorized driver" of the car. Nowhere was it alleged that John Macarubo was the son, ward, employee or pupil of private respondent Juanita Macarubo so as to make the latter vicariously liable for the negligence of John Macarubo. The allegation that John Macarubo was "the authorized driver" of the Ford Escort is not equivalent to an allegation that he was an employee of Juanita Macarubo. That John Macarubo was the "authorized driver" of the car simply means that he drove the Ford Escort with the permission of Juanita Macarubo..
- Nor did MCL present any evidence to prove that Juanita Macarubo was the employer of John Macarubo or that she is in any way liable for John Macarubo's negligence under Art. 2180 of the Civil Code. For failure to discharge its burden, MCL's third-party complaint should be dismissed.

J.C. LERIT

178 Victory Liner vs. Heirs of Malecdan | Mendoza
G.R. No. 154278, December 27, 2002 |

FACTS

- Malecdan was a 75 year-old farmer. While crossing the National Highway on his way home from the farm, a Dalin Liner bus on the southbound lane stopped to allow him and his carabao to pass. However, as Andres was crossing the highway, a bus of petitioner Victory Liner, driven by Joson bypassed the Dalin bus. In so doing, respondent hit the old man and the carabao on which he was riding. As a result, Malecdan was thrown off the carabao, while the beast toppled over. The Victory Liner bus sped past the old man, while the Dalin bus proceeded to its destination without helping him.
- The incident was witnessed by Malecdan's neighbor, Lorena, who was resting in a nearby waiting shed after working on his farm. Malecdan sustained a wound on his left shoulder, from which bone fragments protruded. He was taken by Lorena and another person to the Hospital where he died a few hours after arrival. The carabao also died soon afterwards. Subsequently, a criminal complaint for reckless imprudence resulting in homicide and damage to property was filed against the Victory Liner bus driver Joson.
- Private respondents brought this suit for damages in the Regional Trial Court, which, in a decision rendered on July 17, 2000, found the driver guilty of gross negligence in the operation of his vehicle and Victory Liner, Inc. also guilty of gross negligence in the selection and supervision of Joson, Jr. Petitioner and its driver were held liable for damages.

ISSUES & ARGUMENTS

- **W/N Victory Liner as employer of the driver Joson is vicariously liable for the heirs of the victim Malecdan.**

HOLDING & RATIO DECIDENDI

VICTORY LINER IS VICARIOUSLY LIABLE FOR THE NEGLIGENCE OF ITS EMPLOYEE DRIVER.

- Article 2180 provides for the solidary liability of an employer for the quasi-delict committed by an employee. The responsibility of employers for the negligence of their employees in the performance of their duties is primary and, therefore, the injured party may recover from the employers directly, regardless of the solvency of their employees.
- Employers may be relieved of responsibility for the negligent acts of their employees acting within the scope of their assigned task only if they can show that "they observed all the diligence of a good father of a family to prevent damage." For this purpose, they have the burden of proving that they have indeed exercised such diligence, both in the selection of the employee and in the supervision of the performance of his duties.
- In the selection of prospective employees, employers are required to examine them as to their qualifications, experience and service records. With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation and impose disciplinary measures for breaches thereof. These facts must be shown by concrete proof, including documentary evidence.
- In the instant case, petitioner presented the results of Joson, Jr.'s written examination, actual driving tests, x-ray examination, psychological examination, NBI clearance, physical examination, hematology examination, urinalysis, student driver training, shop training, birth certificate, high school diploma and reports from the General Maintenance Manager and the Personnel Manager showing that he had passed all the tests and training sessions and was ready to work as a professional driver. However, as the trial court noted, petitioner did not present proof that Joson, Jr. had nine years of driving experience.

Petition denied. Decision of Court of Appeals Affirmed.

179 Delsan Transport Lines Inc. v C&A Construction | Ynares-Santiago.
G.R. No. 156034, October 1, 2003 |

FACTS

- NHA contracted with C&A to build a deflector wall for Vitas Reclamation Area in Vitas, Tondo. Project was finished in 1994. In October 20, 1994 12mn Captain Jusep of Delsan lines owned ship M/V Delsan express received information that there was a typhoon coming in from Japan. At 8.35AM M/V Delsan Express attempted to get into North Harbor but could not. 10.00AM M/V Delsan Express dropped anchor off of Vitas 4 miles away from Napocor barge. M/V Delsan Express nearly collided with the Napocor barge but managed to avoid it and instead hit the deflector wall causing almost 500,000 in damage. Petitioner refused to pay and thus a civil case was filed against Delsan by C&A. TC Ruled emergency rule applied, CA found captain negligent.

ISSUES & ARGUMENTS

- **W/N Captain Jusep is negligent**
- **W/N under Art. 2180 Delsan liable for the quasi-delict**

HOLDING & RATIO DECIDENDI

Captain Jusep is negligent by waiting for 8.35AM before bringing the ship to North Harbor

Petitioners are vicariously liable under 2180

- Art. 2176 of the Civil Code states that whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Captain Jusep received the report 12MN and waited for more than 8 hours to move the ship, he likewise ignored the weather report and in all angles failed to take action to prevent the damage.
- **Under Art. 2180 whenever an employee's negligence causes damage or injury to another there arises a presumption *juris tantum* that the employer failed to exercise due diligence of a good father of a family in the selection and supervision of its employees.**
- **Petitioner failed to present evidence that showed it formulated guidelines/rules for the proper performance of functions of employees and any monitoring system.**
- **Not necessary to state petitioner is negligent in selecting or supervising employees as negligence is presumed by operation of law. Allegations of negligence of the employee and existence of employer-employee relationship in complaint are enough to make out a case of quasi-delict under 2180.**

180 Cerezo vs. Tuazon| Carpio
G.R. No. 141538, March 23, 2004 | 426 SCRA 167

FACTS

- A Country Bus Lines passenger bus collided with a tricycle.
- Tricycle driver Tuazon filed a complaint for Damages against Foronda, the bus driver, Mrs. Cerezo, the owner of the bus line, and Atty. Cerezo her husband.
- Summons was never served against Foronda, and thus, the Court never acquired jurisdiction over him.
- Tuazon failed to show that the business benefitted the family pursuant to Art. 121(3) of the Family Code, hence Atty. Cerezo was not held liable and Mrs. Cerezo was held to be the only one liable.
- Instead of an appeal, Mrs. Cerezo filed an action for relief of judgment. When such was denied, the Cerezo spouses filed certiorari before the CA. And subsequently, certiorari before the SC.
- One of Mrs. Cerezo's contentions is that the court did not acquire jurisdiction over Foronda whose negligence was the main issue and that he was an indispensible party whose presence was compulsory.

ISSUES & ARGUMENTS

- **W/N Mrs. Cerezo may be held to be solely liable as the employer with the negligent employee impleaded in the case.**

HOLDING & RATIO DECIDENDI

Yes, Mrs. Cerezo's liability is not only solidary but also primary and direct, as an employer

- The same negligent act may produce civil liability arising from a delict under Article 103 of the Revised Penal Code, or may give rise to an action for a quasi-delict under Article 2180 of the Civil Code. An aggrieved party may choose between the two remedies. An action based on a quasi-delict may proceed independently from the criminal action.
- Tuazon chose to file an action based on quasi-delict. In his complaint, Tuazon alleged that Mrs. Cerezo, "without exercising due care and diligence in the supervision and management of her employees and buses," hired Foronda as her driver. Tuazon became disabled because of Foronda's "recklessness, gross negligence and imprudence," aggravated by Mrs. Cerezo's "lack of due care and diligence in the selection and supervision of her employees, particularly Foronda."
- Art. 2180 states that Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
- An employer's liability based on a quasi-delict is primary and direct, while the employer's liability based on a delict is merely subsidiary.
- Contrary to Mrs. Cerezo's assertion, Foronda is not an indispensable party to the case. An indispensable party is one whose interest is affected by the court's action in the litigation, and without whom no final resolution of the case is possible.
- The responsibility of two or more persons who are liable for a quasi-delict is solidary. Where there is a solidary obligation on the part of debtors, each debtor is liable for the entire obligation. Therefore, jurisdiction over Foronda is not even necessary as Tuazon may collect damages from Mrs. Cerezo alone.

MARICE PACHECO

181 Yambao vs. Zuniga |
G.R. No. 146173. December 11, 2003|

FACTS

- Cecilia Yambao is the registered owner of "Lady Cecil and Rome Trans" passenger bus with Plate No. CVK 606, with a public transport franchise to ply the Novaliches-via Quirino-Alabang route.
- The bus owned by Yambao was being driven by her driver, one Ceferino G. Venturina along the northbound lane of Epifanio delos Santos Avenue (EDSA), within the vicinity of Bagong Barrio, Kalookan City. With Venturina was the bus conductor, Fernando Dumaliang. Suddenly, the bus bumped Herminigildo Zuñiga, a pedestrian. Such was the force of the impact that the left side of the front windshield of the bus was cracked. Zuñiga was rushed to the Quezon City General Hospital where he was given medical attention, but due to the massive injuries sustained, he succumbed shortly thereafter.
- Private respondents, as heirs of the victim, filed a Complaint against petitioner and her driver, Venturina, for damages.The complaint essentially alleged that Venturina drove the bus in a reckless, careless and imprudent manner, in violation of traffic rules and regulations, without due regard to public safety, thus resulting in the victim's premature death.
- The petitioner vehemently denied the material allegations of the complaint. She tried to shift the blame for the accident upon the victim, theorizing that Herminigildo bumped into her bus, while avoiding an unidentified woman who was chasing him. She further alleged that she was not liable for any damages because as an employer, she exercised the proper diligence of a good father of a family, both in the selection and supervision of her bus driver.

ISSUES & ARGUMENTS

- **W/N Cecilia Yambao exercised the proper diligence of a good father of a family both in the selection and supervision of her bus driver**

HOLDING & RATIO DECIDENDI

Cecilia did not exercise the proper diligence of a good father of a family both in the selection and supervision of her bus driver

Petitioner's claim that she exercised due diligence in the selection and supervision of her driver, Venturina, deserves but scant consideration. Her allegation that before she hired Venturina she required him to submit his driver's license and clearances is worthless, in view of her failure to offer in evidence certified true copies of said license and clearances. Bare allegations, unsubstantiated by evidence, are not equivalent to proof under the rules of evidence. Moreover, as the court a quo aptly observed, petitioner contradicts herself. She declared that Venturina applied with her sometime in January 1992 and she then required him to submit his license and clearances. However, the record likewise shows that she did admit that Venturina submitted the said requirements only on May 6, 1992, or on the very day of the fatal accident itself. In other words, petitioner's own admissions clearly and categorically show that she did not exercise due diligence in the selection of her bus driver.

Case law teaches that for an employer to have exercised the diligence of a good father of a family, he should not be satisfied with the applicant's mere possession of a professional driver's license; he must also carefully examine the applicant for employment as to his qualifications, his experience and record of service. Petitioner failed to present convincing proof that she went to this extent of verifying Venturina's qualifications, safety record, and driving history. The presumption juris tantum that there was negligence in the selection of her bus driver, thus, remains unrebutted.

Nor did petitioner show that she exercised due supervision over Venturina after his selection. For as pointed out by the Court of Appeals, petitioner did not present any proof that she drafted and implemented training programs and guidelines on road safety for her employees. In fact, the record is bare of any showing that petitioner required Venturina to attend periodic seminars on road safety and traffic efficiency. Hence, petitioner cannot claim exemption from any liability arising from the recklessness or negligence of Venturina.

In sum, petitioner's liability to private respondents for the negligent and imprudent acts of her driver, Venturina, under Article 2180 of the Civil Code is both manifest and clear. Petitioner, having failed to rebut the legal presu

mption of negligence in the selection and supervision of her driver, is responsible for damages, the basis of the liability being the relationship of pater familias or on the employer's own negligence. Thus, this Court has no option but to uphold the ruling of the appellate court.

VP PADILLA

182 Spouses Hernandez v Dolor | Ynares-Santiago.
G.R. No. 160286, June 30, 2004 |

FACTS

- December 19, 1986 Lorenzo Dolor Jr. was driving an owner type jeep heading to Anilao, he collided with a passenger jeep driven by petitioner Juan Gonzales. Dolor and a passenger died, with several injured
- Respondents filed a complaint against Gonzales being negligent and that petitioners were negligent in selecting and supervising their employees.
- TC found that Gonzales only received his license 3 months prior to accident, before that he had a student permit. Gonzales was driving at a fast pace and that the owner type jeep was moving at a moderate speed. TC rendered decision holding petitioners liable. CA affirmed and modified ruling

ISSUES & ARGUMENTS

- **W/N CA was correct in finding spouses Hernandez solidarily liable with Gonzales although they were not in the jeep when the accident occurred**

HOLDING & RATIO DECIDENDI

Petition denied Spouses Hernandez are liable

- "Employers shall be liable for the damage caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry" as per Art. 2180. Art. 2194 states responsibility of two or more persons who are liable for quasi-delict is solidary.
- Petitioners are practicing boundary system in order to hide employer-employee relationship.

183 Ernesto Martin vs. CA and MERALCO | Cruz
G.R. No. 82248, January 30, 1992 | 205 SCRA 591

FACTS

- Ernesto was the owner of a private bearing license. Around 2 am, May 11, 1982, while being driven by Nestor Martin, it crashed into a MERALCO electric post. MERALCO then demanded reparation from Ernesto and upon rejection, sued him[10] for damages based on tort[11], alleging that he was the employer of Nestor.
- Ernesto's main defense was that Nestor was not his employee. RTC ruled in favor of MERALCO which the CA affirmed.

ISSUES & ARGUMENTS

- **Who bears the burden of proving employer-employee relationship between the owner of the car and the driver at the time of the accident?**

HOLDING & RATIO DECIDENDI

HE WHO ALLEGES MUST PROVE HIS ALLEGATION! MERALCO had the burden of proof, or the duty to present evidence on the fact in issue necessary to establish his claim as required by Rule 131, Sec 1 of the Revised Rules of Court.

- Whether or not engaged in any business or industry, the employer under Article 2180 is liable for torts provided the following are shown: (1) employment relationship and (2) employee was acting within the scope of his assigned task when the tort complained of was committed.
- No evidence whatsoever was adduced by MERALCO to show the employment relationship. Trial court merely *presumed* its existence. It even shifted the burden to Ernesto by saying that "he did not present any proof to substantiate his allegation."
- Although the law recognizes *presumption juris (law)* or *presumption hominis (fact)*, both are not applicable in the case at bar. There is no law directing the deduction made by the courts below from the particular facts presented to them by the parties. Neither is there a sufficient base from the facts proved, or not denied for the inference that the petitioner is the employer of Nestor.
- The case of *Amor v. Soberano* was missaplied because the vehicle involved in that case was a 6x6 truck, which reasonably raised the factual presumption that it was engaged in business and that its driver was employed by the owner of the vehicle.

[10] Nestor was not impleaded!
[11] Art 2180, Civil Code: Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, and even though the former are not engaged in any business or industry.

184 Filamer Christian Institute vs. CA and Kapunan| Fernan
G.R. No. 75112, October 16, 1990 |190 SCRA 485

FACTS

- Potenciano Kapunan, Sr., an eighty-two-year old retired schoolteacher (now deceased), was struck by the Pinoy jeep owned by petitioner Filamer and driven by its alleged employee, Funtecha as Kapunan, Sr. was walking along Roxas Avenue, Roxas City at 6:30 in the evening of October 20, 1977. As a result of the accident, Kapunan was hospitalized for a total of twenty days.
- Evidence showed that at the time of the accident, the jeep had only one headlight functioning and that Funtecha only had a student driver's permit, having persuaded Allan Masa, the authorized driver, to turn over the wheels to him.
- Kapunan instituted a criminal case against Funtecha alone for serious physical injuries through reckless imprudence. He then commenced a civil case for damages naming as defendants Filamer and Funtecha. Also included was Agustin Masa, director and president of Filamer Christian Institute. Allan Masa was not impleaded as co-defendant.
- The trial court rendered judgment finding not only Filamer and Funtecha to be at fault but also Allan Masa, a non-party. On appeal, the Appellate Court affirmed the trial court's decision in toto

ISSUES & ARGUMENTS

W/N FILAMER IS LIABLE AS FUNTECHA'S EMPLOYER?
Petitioner: It cannot be held responsible for the 201ortuous act of Funtecha on the ground that there is no existing employer-employee relationship between them.

HOLDING & RATIO DECIDENDI

NO, FILAMER IS NOT LIABLE

- Art. 2180 provides that "xxx Employers shall be liable for the damages caused by their employees and household helpers **acting within the scope of their assigned tasks**, even though the former are not engaged in any business or industry."
- In disclaiming responsibility, Filamer has invoked Section 14, Rule X of Book III of the Labor Code which reads:
    - Sec. 14 Working scholars. – There is no employer-employee relationship between students on the one hand, and schools…on the other, where students work for the latter in exchange for the privilege to study free of charge…"
- Under the just-quoted provision of law, Filamer cannot be considered as Funtecha's employer. Funtecha belongs to that special category of students who render service to the school in exchange for free tuition. Funtecha worked for petitioner for two hours daily for five days a week. He was assigned to clean the school passageways from 4-6am with sufficient time to prepare for his 7:30 am classes. He was not included in the company payroll.
- Even if we were to concede the status of an employee on Funtecha, it has been satisfactorily shown that at the time of the accident, he was not acting within the scope of his supposed employment. Taking the wheels of the Pinoy jeep was not within the ambit of the janitorial services for which he was employed.

185 Filamer Christian Institute vs. IAC| Gutierrez
G.R. No. 75112, August 17, 1992 |

FACTS

- Funtecha was a working student, being a part-time janitor and a scholar of petitioner Filamer. He was, in relation to the school, an employee even if he was assigned to clean the school premises for only two (2) hours in the morning of each school day.
- Having a student driver's license, Funtecha requested the driver, Allan Masa, and was allowed, to take over the vehicle while the latter was on his way home one late afternoon.
- The place where Allan lives is also the house of his father, the school president, Agustin Masa. Moreover, it is also the house where Funtecha was allowed free board while he was a student of Filamer Christian Institute.
- Allan Masa turned over the vehicle to Funtecha only after driving down a road, negotiating a sharp dangerous curb, and viewing that the road was clear.
- According to Allan's testimony, a fast moving truck with glaring lights nearly hit them so that they had to swerve to the right to avoid a collision. Upon swerving, they heard a sound as if something had bumped against the vehicle, but they did not stop to check. Actually, the Pinoy jeep swerved towards the pedestrian, Potenciano Kapunan who was walking in his lane in the direction against vehicular traffic, and hit him.
- Allan affirmed that Funtecha followed his advise to swerve to the right. At the time of the incident (6:30 P.M.) in Roxas City, the jeep had only one functioning headlight.
- Driving the vehicle to and from the house of the school president where both Allan and Funtecha reside is an act in furtherance of the interest of the petitioner-school. Allan's job demands that he drive home the school jeep so he can use it to fetch students in the morning of the next school day.
- In learning how to drive while taking the vehicle home in the direction of Allan's house, Funtecha definitely was not having a joy ride. Funtecha was not driving for the purpose of his enjoyment or for a "frolic of his own" but ultimately, for the service for which the jeep was intended by the petitioner school.
- Therefore, the Court is constrained to conclude that the act of Funtecha in taking over the steering wheel was one done for and in behalf of his employer for which act the petitioner-school cannot deny any responsibility by arguing that it was done beyond the scope of his janitorial duties. The clause "within the scope of their assigned tasks" for purposes of raising the presumption of liability of an employer, includes any act done by an employee, in furtherance of the interests of the employer or for the account of the employer at the time of the infliction of the injury or damage.

ISSUES & ARGUMENTS

- **W/N Filamer is liable as Funtecha's employer.**

HOLDING & RATIO DECIDENDI

Yes, Filamer is liable

- There is evidence to show that there exists in the present case an extra-contractual obligation arising from the negligence or reckless imprudence of a person "whose acts or omissions are imputable, by a legal fiction, to other(s) who are in a position to exercise an absolute or limited control over (him)."
- Funtecha is an employee of petitioner Filamer. He need not have an official appointment for a driver's position in order that the petitioner may be held responsible for his grossly negligent act, it being sufficient that the act of driving at the time of the incident was for the benefit of the petitioner. Hence, the fact that Funtecha was not the school driver or was not acting within the scope of his janitorial duties does not relieve the petitioner of the burden of rebutting the presumption *juris tantum* that there was negligence on its part either in the selection of a servant or employee, or in the supervision over him. The petitioner has failed to show proof of its having exercised the required diligence of a good father of a family over its employees Funtecha and Allan.
- An employer is expected to impose upon its employees the necessary discipline called for in the performance of any act indispensable to the business and beneficial to their employer. In the present case, the petitioner has not shown that it has set forth such rules and guidelines as would prohibit any one of its employees from taking control over its vehicles if one is not the official driver or prohibiting the driver and son of the Filamer president from authorizing another employee to drive the school vehicle. Furthermore, the petitioner has failed to prove that it had imposed sanctions or warned its employees against the use of its vehicles by persons other than the driver.
- The actual driver of the school jeep, Allan Masa, was not made a party defendant in the civil case for damages. As far as the injured pedestrian, plaintiff Potenciano Kapunan, was concerned, it was Funtecha who was the one driving the vehicle and presumably was one authorized by the school to drive. For the purpose of recovering damages under the prevailing circumstances, it is enough that the plaintiff and the private respondent heirs were able to establish the existence of employer-employee relationship between Funtecha and petitioner Filamer and the fact that Funtecha was engaged in an act not for an independent purpose of his own but in furtherance of the business of his employer. A position of responsibility on the part of the petitioner has thus been satisfactorily demonstrated.

186 Metro Manila Transit Corp v CA | Regalado, J.
G.R. No. 104408 June 21, 1993 | 223 SCRA 521

FACTS

- At about 6am of August 28, 1979, Nenita Custodio boarded as a paying passenger a public utility jeepney with plate No. D7 305 PUJ Pilipinas 1979, then driven by defendant Agudo Calebag and owned by his co-defendant Victorino Lamayo, bound for her work at Dynetics Incorporated located in Bicutan, Taguig, Metro Manila, where she then worked as a machine operator earning P16.25 a day. While the passenger jeepney was travelling at a fast clip along DBP Avenue, Bicutan, Taguig, Metro Manila another fast moving vehicle, a Metro Manila Transit Corp. (MMTC, for short) bus bearing plate no. 3Z 307 PUB (Philippines) "79 driven by defendant Godofredo C. Leonardo was negotiating Honeydew Road, Bicutan, Taguig, Metro Manila bound for its terminal at Bicutan. As both vehicles approached the intersection of DBP Avenue and Honeydew Road they failed to slow down and slacken their speed; neither did they blow their horns to warn approaching vehicles. As a consequence, a collision between them occurred, the passenger jeepney ramming the left side portion of the MMTC bus. The collision impact caused plaintiff-appellant Nenita Custodio to hit the front windshield of the passenger jeepney and (he was thrown out therefrom, falling onto the pavement unconscious with serious physical injuries. She was brought to the Medical City Hospital where she regained consciousness only after one (1) week. Thereat, she was confined for twenty-four (24) days, and as a consequence, she was unable to work for three and one half months (31/2).
- Assisted by her parents (for she was then a minor), Custodio filed a complaint for damages against the drivers and owners of the two vehicles. The said defendants were passing the blame to one another. MMTC established its defense of having exercised due diligence in the selection and supervision of its employees through the testimonies of its training officer, Milagros Garbo, and transport supervisor, Christian Baustista.
- The lower court ruled in favor of Custodio and held all of the defendants solidarily liable (with Calebag being declared in default) with the exception of MMTC on the ground that it was not only careful and diligent in choosing and screening applicants for job openings but was also strict and diligent in supervising its employees. With Custodio's MR denied, they appealed to the CA, which modified the decision and held MMTC solidarily liable with the other defendants. MR denied.

ISSUES & ARGUMENTS

- **Was MMTC able to establish its due diligence in the selection and supervision of its employees?**

HOLDING & RATIO DECIDENDI

NO. Respondent court was definitely correct in ruling that ". . . due diligence in the selection and supervision of employee (is) not proved by mere testimonies to the effect that its applicant has complied with all the company requirements before one is admitted as an employee but without proof thereof."

- A thorough and scrupulous review of the records of this case reveals that the conclusion of respondent Court of Appeals is more firmly grounded on jurisprudence and amply supported by the evidence of record than that of the court below. It is procedurally required for each party in a case to prove his own affirmative assertion by the degree of evidence required by law. In civil cases, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is, therefore, incumbent on the plaintiff who is claiming a right to prove his case. Corollarily, defendant must likewise prove own allegation to buttress its claim that it is not liable.
- Coming now to the case at bar, while there is no rule which requires that testimonial evidence, to hold sway, must be corroborated by documentary evidence, or even subject evidence for that matter, **inasmuch as the witnesses' testimonies dwelt on mere generalities, we cannot consider the same as sufficiently persuasive proof that there was observance of due diligence in the selection and supervision of employees**. Petitioner's attempt to prove its *diligentissimi patris familias* in the selection and supervision of employees through oral evidence must fail as it was unable to buttress the same with any other evidence, object or documentary, which might obviate the apparent biased nature of the testimony.
- **Whether or not the diligence of a good father of a family has been observed by petitioner is a matter of proof which under the circumstances in the case at bar has not been clearly established. It is not felt by the Court that there is enough evidence on record as would overturn the presumption of negligence, and for failure to submit all evidence within its control, assuming the putative existence thereof, petitioner MMTC must suffer the consequences of its own inaction and indifference.**
- Petitioner attempted to essay in detail the company's procedure for screening job applicants and supervising its employees in the field, through the testimonies of Milagros Garbo, as its training officer, and Christian Bautista, as its transport supervisor, both of whom naturally and expectedly testified for MMTC. It then concluded with its sweeping pontifications that "thus, there is no doubt that considering the nature of the business of petitioner, it would not let any applicant-drivers to be (sic) admitted without undergoing the rigid selection and training process with the end (in) view of protecting the public in general and its passengers in particular; . . . thus, there is no doubt that applicant had fully complied with the said requirements otherwise Garbo should not have allowed him to undertake the next set of requirements . . . and the training conducted consisting of seminars and actual driving tests were satisfactory otherwise he should have not been allowed to drive the subject vehicle." These statements strike us as both presumptuous and in

the nature of *petitio principii*, couched in generalities and shorn of any supporting evidence to boost their verity. As earlier observed, respondent court could not but express surprise, and thereby its incredulity, that witness Garbo neither testified nor presented any evidence that driver Leonardo had complied with or had undergone all the clearances and trainings she took pains to recite and enumerate. The supposed clearances, results of seminars and tests which Leonardo allegedly submitted and complied with were never presented in court despite the fact that, if true, then they were obviously in the possession and control of petitioner.

Discussion on the vicarious liability of employer

- The basis of the employer's vicarious liability has been explained under this ratiocination:

  > The responsibility imposed by this article arises by virtue of a presumption *juris tantum* of negligence on the part of the persons made responsible under the article, derived from their failure to exercise due care and vigilance over the acts of subordinates to prevent them from causing damage. Negligence is imputed to them by law, unless they prove the contrary. Thus, the last paragraph of the article says that such responsibility ceases if is proved that the persons who might be held responsible under it exercised the diligence of a good father of a family (*diligentissimi patris familias*) to prevent damage. It is clear, therefore, that it is not representation, nor interest, nor even the necessity of having somebody else answer for the damages caused by the persons devoid of personality, but it is the non-performance of certain duties of precaution and prudence imposed upon the persons who become responsible by civil bond uniting the actor to them, which forms the foundation of such responsibility.

- **The above rule is, of course, applicable only where there is an employer-employee relationship**, although it is not necessary that the employer be engaged in business or industry. Whether or not engaged in any business or industry, the employer under Article 2180 is liable for torts committed by his employees within the scope of their assigned tasks. But, **it is necessary first to establish the employment relationship. Once this is done, the plaintiff must show, to hold the employer liable, that the employee was acting within the scope of his assigned task when the tort complained of was committed. It is only then that the defendant, as employer, may find it necessary to interpose the defense of due diligence in the selection and supervision of employees.** ***The diligence of a good father of a family required to be observed by employers to prevent damages under Article 2180 refers to due diligence in the selection and supervision of employees in order to protect the public.***
- With the allegation and subsequent proof of negligence against the defendant driver and of an employer-employee relation between him and his co-defendant MMTC in this instance, the case in undoubtedly based on a quasi-delict under Article 2180. When the employee causes damage due to his own negligence while performing his own duties, there arises the *juris tantum* presumption that the employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family. For failure to rebut such legal presumption of negligence in the selection and supervision of employees, the employer is likewise responsible for damages, the basis of the liability being the relationship of *pater familias* or on the employer's own negligence.
- It should be borne in mind that the legal obligation of employers to observe due diligence in the selection and supervision of employees is not to be considered as an empty play of words or a mere formalism, as appears to be the fashion of the times, since the non-observance thereof actually becomes the basis of their vicarious liability under Article 2180.
- **On the matter of selection of employees, Campo vs. Camarote, supra, lays down this admonition:**

  > **. . . . In order that the owner of a vehicle may be considered as having exercised all diligence of a good father of a family, he should not have been satisfied with the mere possession of a professional driver's license; he should have carefully examined the applicant for employment as to his qualifications, his experience and record of service. These steps appellant failed to observe; he has therefore, failed to exercise all due diligence required of a good father of a family in the choice or selection of driver.**

- **Due diligence in the supervision of employees, on the other hand, includes the formulation of suitable rules and regulations for the guidance of employees and the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions.**
- In order that the defense of due diligence in the selection and supervision of employees may be deemed sufficient and plausible, it is not enough to emptily invoke the existence of said company guidelines and policies on hiring and supervision. As the negligence of the employee gives rise to the presumption of negligence on the part of the employer, the latter has the burden of proving that it has been diligent not only in the selection of employees but also in the actual supervision of their work. The mere allegation of the existence of hiring procedures and supervisory policies, without anything more, is decidedly not sufficient to overcome presumption.

CA decision is hereby affirmed.

TEL VIRTUDEZ

187 Valenzuela vs. CA| Kapunan
G.R. No. 115024, February 7, 1996 | 362 SCRA 56

FACTS

- At around 2:00 in the morning of June 24, 1990, plaintiff Ma. Lourdes Valenzuela was driving a blue Mitsubishi lancer with Plate No. FFU 542 along Aurora Blvd. with a companion, Cecilia Ramon, heading towards the direction of Manila. Before reaching A. Lake Street, she noticed she had a flat tire and stopped at a lighted place to solicit help if needed. She parked along the sidewalk, about 1½ feet away, put on her emergency lights, alighted from the car, and went to the rear to open the trunk. She was standing at the left side of the rear of her car when she was suddenly bumped by a 1987 Mitsubishi Lancer driven by defendant Richard Li and registered in the name of defendant Alexander Commercial, Inc. Because of the impact plaintiff was thrown against the windshield of the car of the defendant and then fell to the ground. She was pulled out from under defendant's car. She was brought to the UERM Medical Memorial Center where she was found to have a "traumatic amputation, leg, left up to distal thigh (above knee)." She was confined in the hospital for twenty (20) days and was eventually fitted with an artificial leg. The expenses for the hospital confinement (P 120,000.00) and the cost of the artificial leg (P27,000.00) were paid by defendants from the car insurance.
- Defendant Richard Li denied that he was negligent. He said he was travelling at 55 kph; considering that it was raining, visibility was affected and the road was wet. Traffic was light. He testified that he was driving along the inner portion of the right lane of Aurora Blvd. towards the direction of Araneta Avenue, when he was suddenly confronted, in the vicinity of A. Lake Street, San Juan, with a car coming from the opposite direction, travelling at 80 kph, with "full bright lights." Temporarily blinded, he swerved to the right to avoid colliding with the oncoming vehicle, and bumped plaintiff's car, which he did not see because it was midnight blue in color, with no parking lights or early warning device, and the area was poorly lighted. He alleged in his defense that the left rear portion of plaintiff's car was protruding as it was then "at a standstill diagonally" on the outer portion of the right lane towards Araneta Avenue (par. 18, Answer). He confirmed the testimony of plaintiff's witness that after being bumped the car of the plaintiff swerved to the right and hit another car parked on the sidewalk. Defendants counterclaimed for damages, alleging that plaintiff was reckless or negligent, as she was not a licensed driver.

ISSUES & ARGUMENTS

- **W/N the court should sustain the version of plaintiff or defendant**
- **W/N there was contributory negligence on the part of Valenzuela**
- **W/N Alexander Commercial Inc. can be held solidarily liable with Li**

HOLDING & RATIO DECIDENDI

Sustain Plaintiff

- The version presented by defendant could not be sustained as witnesses in the area testified that he was driving very fast and zigzagging. Also the facts as he narrated are highly unprobable seeing as the street was actually well lighted. Had he been traveling at a slow speed, he would have been able to stop in time so as not to hit the plaintiff even if the road was wet. The only reason why he would not have been able to do so would be if he was intoxicated which slows down reactions.

No

- Li contends that Valenzuela should not have parked on the side of the road and looked for a parking space.
- The court rationalized using the emergency rule which states "An individual who suddenly finds himself in a situation of danger and is required to act without much time to consider the best means that may be adopted to avoid the impending danger, is not guilty of negligence if he fails to undertake what subsequently and upon reflection may appear to be a better solution, unless the emergency was brought by his own negligence." Valenzuela could not have been expected to go to a side street where the chances of finding help would have been lower.

No

- Although the Li was an employee of American, no proof was adduced as Li claimed, that he was out late that night on a social call in the exercise of his functions as assistant manager.

188 Filipinas Broadcasting Network Inc. vs. AMEC-BCCM |
GR 141994, 17 January 2005|

FACTS

- "Exposé" is a radio documentary program hosted by Carmelo 'Mel' Rima ("Rima") and Hermogenes 'Jun' Alegre ("Alegre"). Exposé is aired every morning over DZRC-AM which is owned by Filipinas Broadcasting Network, Inc. ("FBNI"). "Exposé" is heard over Legazpi City, the Albay municipalities and other Bicol areas.
- In the morning of 14 and 15 December 1989, Rima and Alegre exposed various alleged complaints from students, teachers and parents against Ago Medical and Educational Center-Bicol Christian College of Medicine ("AMEC") and its administrators. Claiming that the broadcasts were defamatory, AMEC and Angelita Ago ("Ago"), as Dean of AMEC's College of Medicine, filed a complaint for damages against FBNI, Rima and Alegre on 27 February 1990. The complaint further alleged that AMEC is a reputable learning institution.
- With the supposed exposés, FBNI, Rima and Alegre "transmitted malicious imputations, and as such, destroyed plaintiffs' (AMEC and Ago) reputation." AMEC and Ago included FBNI as defendant for allegedly failing to exercise due diligence in the selection and supervision of its employees, particularly Rima and Alegre.
- On 18 June 1990, FBNI, Rima and Alegre, through Atty. Rozil Lozares, filed an Answer alleging that the broadcasts against AMEC were fair and true. FBNI, Rima and Alegre claimed that they were plainly impelled by a sense of public duty to report the "goings-on in AMEC, [which is] an institution imbued with public interest." Thereafter, trial ensued.
- During the presentation of the evidence for the defense, Atty. Edmundo Cea, collaborating counsel of Atty. Lozares, filed a Motion to Dismiss on FBNI's behalf. The trial court denied the motion to dismiss. Consequently, FBNI filed a separate Answer claiming that it exercised due diligence in the selection and supervision of Rima and Alegre. FBNI claimed that before hiring a broadcaster, the broadcaster should (1) file an application; (2) be interviewed; and (3) undergo an apprenticeship and training program after passing the interview.
- FBNI likewise claimed that it always reminds its broadcasters to "observe truth, fairness and objectivity in their broadcasts and to refrain from using libelous and indecent language." Moreover, FBNI requires all broadcasters to pass the Kapisanan ng mga Brodkaster sa Pilipinas ("KBP") accreditation test and to secure a KBP permit.
- On 14 December 1992, the trial court rendered a Decision finding FBNI and Alegre liable for libel except Rima. The trial court held that the broadcasts are libelous per se. The trial court rejected the broadcasters' claim that their utterances were the result of straight reporting because it had no factual basis. The broadcasters did not even verify their reports before airing them to show good faith. In holding FBNI liable for libel, the trial court found that FBNI failed to exercise diligence in the selection and supervision of its employees. In absolving Rima from the charge, the trial court ruled that Rima's only participation was when he agreed with Alegre's exposé. The trial court found Rima's statement within the "bounds of freedom of speech, expression, and of the press."
- Both parties, namely, FBNI, Rima and Alegre, on one hand, and AMEC and Ago, on the other, appealed the decision to the Court of Appeals. The Court of Appeals affirmed the trial court's judgment with modification. The appellate court made Rima solidarily liable with FBNI and Alegre. The appellate court denied Ago's claim for damages and attorney's fees because the broadcasts were directed against AMEC, and not against her. FBNI, Rima and Alegre filed a motion for reconsideration which the Court of Appeals denied in its 26 January 2000 Resolution. Hence, FBNI filed the petition for review.

ISSUES & ARGUMENTS

- **Whether FBNI is solidarily liable with Rima and Alegre**

HOLDING & RATIO DECIDENDI

YES, UNDER ART 2219 of NCC

- As operator of DZRC-AM and employer of Rima and Alegre, FBNI is solidarily liable to pay for damages arising from the libelous broadcasts. As stated by the CA, "recovery for defamatory statements published by radio or television may be had from the **owner of the station**, a licensee, **the operator of the station**, or a person who procures, or participates in, the making of the defamatory statements." An employer and employee are solidarily liable for a defamatory statement by the employee within the course and scope of his or her employment, at least when the employer authorizes or ratifies the defamation. In this case, Rima and Alegre were clearly performing their official duties as hosts of FBNI's radio program Exposé when they aired the broadcasts. FBNI neither alleged nor proved that Rima and Alegre went beyond the scope of their work at that time. There was likewise no showing that FBNI did not authorize and ratify the defamatory broadcasts.
- Moreover, there is insufficient evidence on record that FBNI exercised due diligence in the **selection *and* supervision** of its employees, particularly Rima and Alegre. FBNI merely showed that it exercised diligence in the **selection** of its broadcasters without introducing any evidence to prove that it observed the same diligence in the **supervision** of Rima and Alegre. FBNI did not show how it exercised diligence in supervising its broadcasters. FBNI's alleged constant reminder to its broadcasters to "observe truth, fairness and objectivity and to refrain from using libelous and indecent language" is not enough to prove due diligence in the supervision of its broadcasters. Adequate training of the broadcasters on the industry's code of conduct, sufficient information on libel laws, and continuous evaluation of the broadcasters' performance are but a few of the many ways of showing diligence in the supervision of broadcasters.
- FBNI claims that it "has taken all the precaution in the **selection** of Rima and Alegre as broadcasters, bearing in mind their qualifications." However, no clear and convincing evidence shows that Rima and Alegre underwent FBNI's "regimented process" of application. Furthermore, FBNI admits that Rima and Alegre had

deficiencies in their KBP accreditation, which is one of FBNI's requirements before it hires a broadcaster. Significantly, membership in the KBP, while voluntary, indicates the broadcaster's strong commitment to observe the broadcast industry's rules and regulations.

- Clearly, these circumstances show FBNI's lack of diligence in selecting ***and*** supervising Rima and Alegre. Hence, FBNI is solidarily liable to pay damages together with Rima and Alegre.

189 Estacion v. Bernardo | Austria-Martinez
G.R. No. 144723, Feb. 27, 2006 |

FACTS

In the afternoon of October 16, 1982, respondent Noe was going home to Dumaguete from Cebu, *via* Bato and Tampi. At Tampi, he boarded a Ford Fiera passenger jeepney with plate no. NLD 720 driven by respondent Geminiano Quinquillera (Quinquillera), owned by respondent Cecilia Bandoquillo (Bandoquillo), and was seated on the extension seat placed at the center of the Fiera. From San Jose, an old woman wanted to ride, so respondent Noe offered his seat. Since the Fiera was already full, respondent Noe hung or stood on the left rear carrier of the vehicle. Somewhere along Barangay Sto. Niño, San Jose, Negros Oriental, between kilometers 13 and 14, the Fiera began to slow down and then stopped by the right shoulder of the road to pick up passengers. Suddenly, an Isuzu cargo truck, owned by petitioner and driven by Gerosano, which was traveling in the same direction, hit the rear end portion of the Fiera where respondent Noe was standing. Due to the tremendous force, the cargo truck smashed respondent Noe against the Fiera crushing his legs and feet which made him fall to the ground. A passing vehicle brought him to the Silliman University Medical Center where his lower left leg was amputated.

Police investigation reports showed that respondent Noe was one of the 11 passengers of the Fiera who suffered injuries; that when the Fiera stopped to pick up a passenger, the cargo truck bumped the rear left portion of the Fiera; that only one tire mark from the front right wheel of the cargo truck was seen on the road. A sketch of the accident was drawn by investigator Mateo Rubia showing the relative positions of the two vehicles, their distances from the shoulder of the road and the skid marks of the right front wheel of the truck measuring about 48 feet.

Respondent Noe, through his guardian *ad litem* Arlie Bernardo, filed with the RTC of Dumaguete City a complaint for damages arising from *quasi delict* against petitioner as the registered owner of the cargo truck and his driver Gerosano.

ISSUES & ARGUMENTS

WHETHER THE COURT OF APPEALS ERRED IN NOT FINDING THAT PETITIONER LARRY ESTACION EXERCISED THE DUE DILIGENCE OF A GOOD FATHER OF A FAMILY TO PREVENT DAMAGE

WHETHER THE COURT OF APPEALS ERRED IN NOT HOLDING THAT PETITIONER LARRY ESTACION EXERCISED DUE DILIGENCE IN THE SELECTION AND SUPERVISION OF HIS EMPLOYEE AND IN MAINTAINING HIS CARGO TRUCK ROADWORTHY AND IN GOOD OPERATING CONDITION;

HOLDING & RATIO DECIDENDI

As the employer of Gerosano, petitioner is primarily and solidarily liable for the *quasi-delict* committed by the former. Petitioner is presumed to be negligent in the selection and supervision of his employee by operation of law and may be relieved of responsibility for the negligent acts of his driver, who at the time was acting within the scope of his assigned task, only if he can show that he observed all the diligence of a good father of a family to prevent damage.

Petitioner failed to show that he examined driver Gerosano as to his qualifications, experience and service records. In fact, the testimony of driver Gerosano in his cross-examination showed the non-observance of these requirements. Gerosano testified that petitioner was his first employer in Dumaguete and that he was accepted by petitioner on the very day he applied for the job;[29] that his driver's license was issued in Mindanao where he came from[30] and that while petitioner asked him about his driving record in Mindanao, he did not present any document of his driving record.[31] Such admission clearly established that petitioner did not exercise due diligence in the selection of his driver Gerosano.

Moreover, the fact that petitioner's driver Gerosano was driving in an efficient manner when petitioner was with him in his first two trips would not conclusively establish that Gerosano was not at all reckless. It could not be considered as due diligence in the supervision of his driver to exempt petitioner from liability. In the supervision of his driver, petitioner must show that he had formulated training programs and guidelines on road safety for his driver which the records failed to show. We find that petitioner failed to rebut the presumption of negligence in the selection and supervision of his employees. Moreover, there was also no proof that he exercised diligence in maintaining his cargo truck roadworthy and in good operating condition. While petitioner's mechanic driver testified that he made a routine check up on October 15, 1982, one day before the mishap happened, and found the truck operational, there was no record of such inspection.

DIKKI SIAN

190 Mercury Drug Corporation and Rolando J. Del Rosario vs. Spouses Huang, and Stephen Huang | Puno
June 22, 2007

FACTS

- Petitioner Mercury Drug is the registered owner of a Mitsubishi truck, with petitioner del Rosario as driver. Respondents Richard and Carmen Huang are parents of respondent Stephen Huang, who owned a Sedan.
- The two vehicles got into an accident as they were traversing a highway. The Sedan was on the left innermost lane while the truck was on the next lane to its right, when the latter swerved to its left and slammed in the front right side of the car. As a consequence, the car was wrecked and Stephen Huang incurred massive injuries and became paralyzed.
- The parents of Stephen faulted Del Rosario for committing gross negligence and reckless imprudence, and Mercury Drug for failing to exercise the diligence of a good father of a family in the selection and supervision of its driver.
- The RTC found the petitioners jointly and severally liable for damages. The CA affirmed, hence this appeal.

ISSUES & ARGUMENTS

- **W/N Mercury Drug is liable as employer of Del Rosario.**

HOLDING & RATIO DECIDENDI

Mercury Drug is liable.

- Mercury Drug is jointly and solidarily liable with Del Rosario, as the employer of the latter. In order to be relieved of such liability, Mercury should show that it exercised the diligence of a good father of a family, both in the selection and supervision of the employee in the performance of his duties. Mercury failed in both respects.
- In selecting employees, the employer is required to examine them as to their qualifications, experience and service records. With respect to supervision, the employer should formulate standard operating procedures, monitor their implementation and impose disciplinary measures for their breach. To establish such, concrete proof, such as documentary evidence must be submitted by him.
- In the case at bar, it was shown that Del Rosario didn't take driving tests and psychological exams when he applied for the position of a Truck Man. In addition, Mercury didn't present Del Rosario's NBI and police clearances. Next, the last seminar attended by the driver occurred a long 12 years before the accident occurred. Lastly, Mercury didn't have a backup driver for long trips. When the accident happened Del Rosario has been out on the road for more than 13 hours.
- As to negligence with regard to supervision over its employees, Mercury didn't impose any sanction on Del Rosario when the latter reported to the former about the incident. Hence, Mercury didn't exercise due diligence.
- In the end, the SC found that Mercury and Del Rosario are jointly and solidarily liable to the Huangs.

J.R. RUIZ

191 Merrit vs. Government of the Philippine Islands |

FACTS

- When the plaintiff, riding on a motorcycle, was going toward the western part of Calle Padre Faura, passing along the west side thereof at a speed of ten to twelve miles an hour, upon crossing Taft Avenue and when he was ten feet from the southwestern intersection of said streets, the General Hospital ambulance, upon reaching said avenue, instead of turning toward the south, after passing the center thereof, so that it would be on the left side of said avenue, as is prescribed by the ordinance and the Motor Vehicle Act, turned suddenly and unexpectedly and long before reaching the center of the street, into the right side of Taft Avenue, without having sounded any whistle or horn, by which movement it struck the plaintiff, who was already six feet from the southwestern point or from the post place there.
- By reason of the resulting collision, the plaintiff was so severely injured that, according to Dr. Saleeby, who examined him on the very same day that he was taken to the General Hospital, he was suffering from a depression in the left parietal region, a would in the same place and in the back part of his head, while blood issued from his nose and he was entirely unconscious.
- As a consequence of the loss the plaintiff suffered in the efficiency of his work as a contractor, he had to dissolved the partnership he had formed with the engineer. Wilson, because he was incapacitated from making mathematical calculations on account of the condition of his leg and of his mental faculties, and he had to give up a contract he had for the construction of the Uy Chaco building.
- As the negligence which caused the collision is a tort committed by an agent or employee of the Government, the inquiry at once arises whether the Government is legally-liable for the damages resulting therefrom.

ISSUES & ARGUMENTS

- **W/N the Government is liable?**

HOLDING & RATIO DECIDENDI

- Paragraph 5 of article 1903 of the Civil Code reads:

  The state is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding article shall be applicable.

- The supreme court of Spain in defining the scope of this paragraph said:

- That the obligation to indemnify for damages which a third person causes to another by his fault or negligence is based, as is evidenced by the same Law 3, Title 15, Partida 7, on that the person obligated, by his own fault or negligence, takes part in the act or omission of the third party who caused the damage. It follows therefrom that the state, by virtue of such provisions of law, is not responsible for the damages suffered by private individuals in consequence of acts performed by its employees in the discharge of the functions pertaining to their office, because neither fault nor even negligence can be presumed on the part of the state in the organization of branches of public service and in the appointment of its agents; on the contrary, we must presuppose all foresight humanly possible on its part in order that each branch of service serves the general weal an that of private persons interested in its operation. Between these latter and the state, therefore, no relations of a private nature governed by the civil law can arise except in a case where the state acts as a judicial person capable of acquiring rights and contracting obligations. (Supreme Court of Spain, January 7, 1898; 83 Jur. Civ., 24.)

- It is, therefore, evidence that the State (the Government of the Philippine Islands) is only liable, according to the above quoted decisions of the Supreme Court of Spain, for the acts of its agents, officers and employees when they act as special agents within the meaning of paragraph 5 of article 1903, supra, and that the chauffeur of the ambulance of the General Hospital was not such an agent.

192 Mendoza v. De Leon |Trent
G.R. L-9596 | Feb. 11, 1916

FACTS

- Plaintiff was the grantee of an exclusive lease privilege under Act No. 1643 of the Philippine Commission. After a little over one year, plaintiff was forcibly ejected under and pursuant to a resolution adopted by the defendants-members of the municipal council of Villasis, Pangasinan.
- Thus, plaintiff brought action against such individual members for damages. Act No. 1643 provides that the use of each fishery, fish-breeding ground, ferry, stable, market, and slaughterhouse belonging to any municipality or township shall be let to the highest bidder annually or for such longer period not exceeding five years as may have been previously approved by the provincial board of the province in which the municipality or township is located.

ISSUE:

- **W/N the municipality is liable for acts of its officers or agents in the performance of governmental functions**.

HOLDING & RATIO DECIDENDI

- It depends. In this case, it is not liable.
- When the acts of its officers come within the powers which it has as agent of the state, it is exempt from liability for its own acts and the acts of its officers; if the acts of the officer or agent of the city are for the special benefits of the corporation in its private or corporate interest, such officer is deemed the agent or servant of the city, but where the act is not in relation to a private or corporate interest of the municipality, but for the benefit of the public at large, such acts by the agents and servants are deemed to be acts by public or state officers, and for the public benefit. Governmental affairs do not lose their governmental character by being delegated to the municipal governments. The state being immune for injuries suffered by private individuals in the administration of strictly governmental functions, like immunity is enjoyed by the municipality in the performance of the same duties, unless it is expressly made liable by statute.
- A municipality is not exempt from liability for the negligent performance of its corporate or proprietary or business functions. In the administration of its patrimonial property, it is to be regarded as a private corporation or individual so far as its liability to third persons on contract or in tort is concerned. Its contracts, validly entered into, may be enforced and damages may be collected from it for the torts of its officers or agents within the scope of their employment in precisely the same manner and to the same extent as those of private corporations or individuals. As to such matters the principles of *respondeat superior* applies. It is for these purposes that the municipality is made liable to suits in the courts.
- The *leasing of a municipal ferry to the highest bidder for a specified period of time is not a governmental but a corporate function*. Such a lease, when validly entered into, constitutes a contract with the lessee which the municipality is bound to respect.
- It cannot be said that in rescinding the contract with the plaintiff, thereby making the municipality liable to an action for damages for no valid reason at all, the defendant councilors were honestly acting for the interests of the municipality. The defendants are liable jointly and severally for the damages sustained by the plaintiff from the rescission of his contract of lease of the ferry privilege in question.

AYEN QUA

193 Fontanilla vs. Maliaman | Paras
G.R. No. L-55963, December 1, 1989|

FACTS

- It appears that on August 21, 1976 at about 6:30 P.M., a pickup owned and operated by respondent National Irrigation Administration, a government agency bearing Plate No. IN-651, then driven officially by Hugo Garcia, an employee of said agency as its regular driver, bumped a bicycle ridden by Francisco Fontanilla, son of herein petitioners, and Restituto Deligo, at Maasin, San Jose City along the Maharlika Highway. As a result of the impact, Francisco Fontanilla and Restituto Deligo were injured and brought to the San Jose City Emergency Hospital for treatment. Fontanilla was later transferred to the Cabanatuan Provincial Hospital where he died.
- Garcia was then a regular driver of respondent National Irrigation Administration who, at the time of the accident, was a licensed professional driver and who qualified for employment as such regular driver of respondent after having passed the written and oral examinations on traffic rules and maintenance of vehicles given by National Irrigation Administration authorities.
- This petition is an off-shot of the action (Civil Case No. SJC-56) instituted by petitioners-spouses on April 17, 1978 against respondent NIA before the then Court of First Instance of San Jose City, for damages in connection with the death of their son resulting from the accident.
- The trial court rendered judgment which directed respondent National Irrigation Administration to pay damages (death benefits) and actual expenses to petitioners
- Respondent National Irrigation Administration thus appealed said decision to the Court of Appeals
- Instead of filing the required brief in the aforecited Court of Appeals case, petitioners filed the instant petition with this Court.

ISSUES & ARGUMENTS

- **W/N the award of moral damages, exemplary damages and attorney's fees is legally proper in a complaint for damages based on quasi-delict which resulted in the death of the son of herein petitioners.**

HOLDING & RATIO DECIDENDI

Yes.

- Art. 2176 thus provides:

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

- Paragraphs 5 and 6 of Art. 21 80 read as follows:

  > Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even the though the former are not engaged in any business or industry.
  >
  > The State is responsible in like manner when it acts through a special agent.; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Art. 2176 shall be applicable.

- The liability of the State has two aspects. namely:

  > 1. Its public or governmental aspects where it is liable for the tortious acts of special agents only.
  >
  > 2. Its private or business aspects (as when it engages in private enterprises) where it becomes liable as an ordinary employer. (p. 961, Civil Code of the Philippines; Annotated, Paras; *1986 Ed.*).

- In this jurisdiction, the State assumes a limited liability for the damage caused by the tortious acts or conduct of its special agent.
- Under the aforequoted paragrah 6 of Art. 2180, the State has voluntarily assumed liability for acts done through special agents. The State's agent, if a public official, must not only be specially commissioned to do a particular task but that such task must be foreign to said official's usual governmental functions. If the State's agent is not a public official, and is commissioned to perform non-governmental functions, then the State assumes the role of an ordinary employer and will be held liable as such for its agent's tort. Where the government commissions a private individual for a special governmental task, it is acting through a special agent within the meaning of the provision. (Torts and Damages, Sangco, p. 347, 1984 Ed.)
- Certain functions and activities, which can be performed only by the government, are more or less generally agreed to be "governmental" in character, and so the State is immune from tort liability. On the other hand, a service which might as well be provided by a private corporation, and particularly when it collects revenues from it, the function is considered a "proprietary" one, as to which there may be liability for the torts of agents within the scope of their employment.
- The National Irrigation Administration is an agency of the government exercising proprietary functions, by express provision of Rep. Act No. 3601
- Indubitably, the NIA is a government corporation with juridical personality and not a mere agency of the government. Since it is a corporate body performing non-governmental functions, it now becomes liable for the damage caused by the accident resulting from the tortious act of its driver-employee. In this particular case, the NIA assumes the responsibility of an ordinary employer and as such, it becomes answerable for damages. This assumption of liability, however, is predicated upon the existence of negligence on the part of respondent NIA. The negligence referred to here is the negligence of supervision.
- It should be emphasized that the accident happened along the Maharlika National Road within the city limits of San Jose City, an urban area. Considering the fact that the victim was thrown 50 meters away from the point of impact, there is a strong

indication that driver Garcia was driving at a high speed. This is confirmed by the fact that the pick-up suffered substantial and heavy damage as above-described and the fact that the NIA group was then "in a hurry to reach the campsite as early as possible", as shown by their not stopping to find out what they bumped as would have been their normal and initial reaction.

- Evidently, there was negligence in the supervision of the driver for the reason that they were travelling at a high speed within the city limits and yet the supervisor of the group, Ely Salonga, failed to caution and make the driver observe the proper and allowed speed limit within the city. Under the situation, such negligence is further aggravated by their desire to reach their destination without even checking whether or not the vehicle suffered damage from the object it bumped, thus showing imprudence and reckelessness on the part of both the driver and the supervisor in the group.
- Considering the foregoing, respondent NIA is hereby directed to pay herein petitioners-spouses the amounts of P12,000.00 for the death of Francisco Fontanilla; P3,389.00 for hospitalization and burial expenses of the aforenamed deceased; P30,000.00 as moral damages; P8,000.00 as exemplary damages and attorney's fees of 20% of the total award.

194 Palisoc vs. Brillantes | Teehankee
G.R. No. L-29025, October 4, 1971 | 41 SCRA 557

FACTS

- Deceased Dominador Palisoc and the defendant Virgilio L. Daffon were classmates at the Manila Technical Institute, and on the afternoon of March 10, 1966, between two and three o'clock, they, together with another classmate Desiderio Cruz were in the laboratory room located on the ground floor. Desiderio Cruz and Virgilio L. Daffon were working on a machine while Dominador Palisoc was merely looking on at them. Daffon made a remark to the effect that Palisoc was acting like a foreman. Because of this remark Palisoc slapped slightly Daffon on the face. Daffon, in retaliation, gave Palisoc a strong flat blow on the face, which was followed by other fist blows on the stomach. Palisoc retreated apparently to avoid the fist blows, but Daffon followed him and both exchanged blows until Palisoc stumbled on an engine block which caused him to fall face downward. Palisoc became pale and fainted. First aid was administered to him but he was not revived, so he was immediately taken to a hospital. He never regained consciousness; finally he died.
- Plaintiffs-appellants as parents of the deceased had filed on May 19, 1966, the action below for damages. Defendants, per the trial court's decision, are: "Defendant Antonio C. Brillantes, at the time when the incident which gave rise to his action occurred was a member of the Board of Directors of the institute; the defendant Teodosio Valenton, the president thereof; the defendant Santiago M. Quibulue, instructor of the class to which the deceased belonged; and the defendant Virgilio L. Daffon, a fellow student of the deceased. At the beginning the Manila Technical Institute was a single proprietorship, but lately on August 2, 1962, it was duly incorporated."
- The trial court found defendant Daffon liable for the *quasi delict* under Article 2176 of the Civil Code however absolved from liability the three other defendants-officials of the Manila Technical Institute citing that Article 2180 is not applicable in the case at hand.

ISSUES & ARGUMENTS

- **W/N the trial court erred in absolving the defendant-school officials.**

HOLDING & RATIO DECIDENDI

YES, DEFENDANTS-SCHOOL OFFICIALS ARE LIABLE UNDER ART. 2180

- The lower erred in law in absolving defendants-school officials on the ground that they could be held liable under Article 2180, Civil Code, only if the student who inflicted the fatal fistblows on his classmate and victim "lived and boarded with his teacher or the other defendants officials of the school." As stated above, the phrase used in the cited article — "so long as (the students) remain in their custody" means the protective and supervisory custody that the school and its heads and teachers exercise over the pupils and students for as long as they are at attendance in the school, including recess time. **There is nothing in the law that requires that for such liability to attach the pupil or student who commits the tortious act must live and board *in the school*, as erroneously held by the lower court**, and the dicta in *Mercado* (as well as in *Exconde*) on which it relied, must now be deemed to have been set aside by the present decision.
- Defendants Valenton and Quibulue as president and teacher-in-charge of the school must therefore be held jointly and severally liable for the *quasi-delict* of their co-defendant Daffon in the latter having caused the death of his classmate, the deceased Dominador Palisoc. **The unfortunate death resulting from the fight between the protagonists-students could have been avoided, had said defendants but complied with their duty of providing adequate supervision over the activities of the students in the school premises to protect their students from harm, whether at the hands of fellow students or other parties.** At any rate, the law holds them liable unless they relieve themselves of such liability, in compliance with the last paragraph of Article 2180, Civil Code, by "(proving) that they observed all the diligence of a good father of a family to prevent damage." In the light of the factual findings of the lower court's decision, said defendants failed to prove such exemption from liability. .

BON ARCILLA

195 Amadoras vs. CA |

FACTS

- Alfredo Amadora is a student of Colegio de San Jose Recoletos. While he was in the school's auditorium he was shot to death by a classmate in the name of Pablito Daffon. The latter was then convicted of homicide through reckless imprudence.
- The victim's parents sued for damages under Art. 2180 against the school, the principal, dean for boys, the Physics teacher, the accused, his parents and some other students along with their parents.
- Later, the complaint against the other students and their parents were dropped. The Amadoras contend that the presence of Alfredo was by reason of a Physics experiment, hence the student is still under custody of the school at the time of the incident.
- The school, however, denies liability since his presence was merely to submit the Physics project and that the semester had already ended.

ISSUES & ARGUMENTS

- **W/N private respondents are liable**

HOLDING & RATIO DECIDENDI

No.

- Article 2180 applies to schools whether academic or non-academic. The student is deemed in the custody of the school as long as he is under the control and influence of the school and is within its premises, whether the school semester has just begun or has ended.
- The liability of the article is by the head superior in-charge to the student and not by the school who could be liable under respondeat superior. Both have the defense of bonus pater familias. In this case the evidence did not support who the in-charge teacher was other than the fact he submitted his Physics report.
- And even if the Physics teacher was in fact in charge there is no showing that he was negligent in the supervision and discipline of the accused. The private respondents properly adduced evidence to prove they exercised bonus pater familias.

196 Salvosa vs. IAC| Padilla
G.R. No. 70458 October 5, 1988 |SCRA

FACTS

- Petitioner **Baguio Colleges Foundation (BCF)** is an academic institution and an institution of arts and trade.
- Petitioner **Benjamin Salvosa** is the President and Chairman of the Board of BCF.
- The Baguio Colleges Foundation ROTC Unit had **Jimmy B. Abon** as its duly appointed armorer. As armorer of the ROTC Unit, **Abon** received his appointment from the AFP. Not being an employee of the BCF, he also received his salary and orders from the AFP. **Abon** was also a commerce student of the BCF.
- On 3 March 1977, at around 8:00 p.m., in the parking space of BCF, **Abon** shot **Napoleon Castro** a student of the University of Baguio with an unlicensed firearm which the former took from the armory of the ROTC Unit of the BCF. As a result, **Castro** died and **Abon** was prosecuted for, and convicted of the crime of Homicide by Military Court.
- The **heirs of Castro** sued for damages.
- TC sentenced **Abon, Salvosa and BCF**, jointly and severally liable to pay the **heirs of Castro**.
- CA affirmed with modification in the amount of damages.

ISSUES & ARGUMENTS

- **W/N Salvosa and BCF can be held solidarity liable with Abon for damages under Article 2180[12] of the Civil Code, as a consequence of the tortious act of Abon.**
  - **TC and CA**: Yes. **Abon** was in the protective and supervisory custody of the **BCF** when he shot **Castro** as he must have been attending night classes and therefore that hour in the evening was just about dismissal time for him or soon thereafter. The time interval is safely within "recess time".

HOLDING & RATIO DECIDENDI

No. Abon cannot be considered to have been "at attendance in the school," or in the custody of BCF, when he shot Castro. Logically, therefore, Salvosa and BCF cannot under Art. 2180 of the Civil Code be held solidarity liable with Abon for damages resulting from his acts.

- Rationale behind Art. 2180: So long as the student remains in the custody of a teacher, the latter "stands, to a certain extent, in loco parentis [as to the student] and [is] called upon to exercise reasonable supervision over the conduct of the [student].
- Art. 2180 — 'so long as (the students) remain in their custody' means the protective and supervisory custody that the school and its heads and teachers exercise over the pupils and students for as long as they are *at attendance in the school*, including recess time.
- A "recess…at attendance in the school," contemplates a situation of temporary adjournment of school activities where the student still remains within call of his mentor and is not permitted to leave the school premises, or the area within which the school activity is conducted.
- **A student *not* "at attendance in the school" cannot be in "recess" thereat.**
- **The mere fact of being enrolled or being in the premises of a school without more does not constitute "attending school" or being in the "protective and supervisory custody' of the school, as contemplated in the law.**
- Moreover, **Abon** was supposed to be working in the armory with definite instructions from his superior, the ROTC Commandant, when he shot **Castro**.

[12] Teachers or heads of establishments of arts and trades are liable for "damages caused by their pupils and students or apprentices, **so long as they remain in their custody.**"

197 Phil. School of Business Administration v CA | Padilla
February 4, 1992 | 205 SCRA 729

FACTS

- A stabbing incident which caused the death of Carlitos Bautista while on the second-floor premises of the Philippine School of Business Administration (PSBA) prompted the parents of the deceased to file suit in the RTC for damages against the said PSBA and its corporate officers.
- At the time of his death, Carlitos was enrolled in the third year commerce course at the PSBA. It was established that his assailants were not members of the school's academic community
- Specifically, the suit impleaded the PSBA and its president, VP, treasurer, and Chief of Security
- Substantially, the plaintiffs (now private respondents) sought to adjudge them liable for the victim's untimely demise due to their alleged negligence, recklessness and lack of security precautions, means and methods before, during and after the attack on the victim.
- Petitioners herein sought to have the suit dismissed, alleging that since they are presumably sued under Article 2180 of the Civil Code, the complaint states no cause of action against them, as jurisprudence on the subject is to the effect that *academic institutions*, such as the PSBA, are beyond the ambit of the rule in the afore-stated article
- The TC overruled the petitioner's contention and dismissed their petition. This was affirmed by the CA
- The respondent appellate court primarily anchored its decision on the law of *quasi-delicts*, as enunciated in Articles 2176 and 2180 of the Civil Code

ISSUES & ARGUMENTS

- **W/N the court erred in dismissing the petition.**

HOLDING & RATIO DECIDENDI

Yes. (But the court did not agree with the premise of the CA for holding such)

- Article 2180, in conjunction with Article 2176 of the Civil Code, establishes the rule of *in loco parentis*.
- It had been stressed that the law (Article 2180) plainly provides that the damage should have been caused or inflicted by *pupils or students* of he educational institution sought to be held liable for the acts of its pupils or students while in its custody. This material situation does not exist in the present case. However, this does not necessarily follow that the school is exculpated from liability.
- When an academic institution accepts students for enrollment, there is established a *contract* between them, resulting in bilateral obligations which both parties are bound to comply with.
- Certainly, no student can absorb the intricacies of physics or higher mathematics or explore the realm of the arts and other sciences when bullets are flying or grenades exploding in the air or where there looms around the school premises a constant threat to life and limb.
- Necessarily, the school must ensure that adequate steps are taken to maintain peace and order within the campus premises and to prevent the breakdown thereof.
- A perusal of Article 2176 shows that obligations arising from quasi-delicts or tort, also known as extra-contractual obligations, arise only between parties not otherwise bound by contract, whether express or implied.
- However, this impression has not prevented this Court from determining the existence of a tort even when there obtains a contract. In *Air France vs. Carrascoso*, the private respondent was awarded damages for his unwarranted expulsion from a first-class seat aboard the petitioner airline.
- In the circumstances obtaining in the case at bar, however, there is, as yet, no finding that the contract between the school and Bautista had been breached thru the former's negligence in providing proper security measures. This would be for the trial court to determine. And, even if there be a finding of negligence, the same could give rise generally to a breach of contractual obligation only.
- It would not be equitable to expect of schools to anticipate *all* types of violent trespass upon their premises, for notwithstanding the security measures installed, the same may still fail against an individual or group determined to carry out a nefarious deed inside school premises and environs. Should this be the case, the school may still avoid liability by proving that the breach of its contractual obligation to the students was not due to its negligence.

198 Mercado vs. Court of Appeals | Labrador
G.R. No. 87584, May 30, 1960 | 108 Phil. 414

FACTS

- Augusto Mercado and Manuel Quisumbing, Jr. are both pupils of the Lourdes Catholic School, Kanlaon, Quezon City.
- A 'pitogo' (an empty nutshell used by children as a piggy bank) belonged to Augusto Mercado but he lent it to Benedicto Lim and in turn Benedicto lent it to Renato Legaspi.
- Renato was not aware that the 'pitogo' belonged to Augusto.
- Manuel Quisumbing, Jr. thought it was Benedicto's, so when Augusto attempted to get the 'pitogo' from Renato, Manuel, Jr. told him not to do so because Renato was better at putting the chain into the holes of the 'pitogo'.
- Augusto resented his remark and pushed Manuel, Jr., which started the fight.
- After successive blows to Manuel, Jr., Augusto cut him on the right cheek with a piece of razor.
- Manuel, Jr. and his father filed a complaint against Ciriaco Mercado, Augusto's father.

ISSUES & ARGUMENTS

- **W/N the teacher or head of the school should be held responsible instead of the father?**
    - **Petitioner:** Since the incident occurred in the school during recess time, through no fault of the father.

HOLDING & RATIO DECIDENDI

NO. CHILDREN WERE NOT IN THEIR CUSTODY.

- Petitioner rests his claim on the last paragraph of Art. 2180 of the Civil Code:
    - "Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody."
- That clause contemplates a situation where the pupil lives and boards with the teacher, such that the control, direction and influence on the pupil supersedes those of the parents.
- In these circumstances the control or influence over the conduct and actions of the pupil would pass from the father and mother to the teacher; and so would the responsibility for the torts of the pupil.
- Such a situation does not appear in the case at bar; the pupils appear to go to school during school hours and go back to their homes with their parents after school is over.

199 Ylarde v Aquino | GANCAYCO, J
G.R. No. L-33722, July 29, 1988 | 163 SCRA 697

FACTS

- June 11 1951: Juanito Chan, son of Chan Lin Po and Remedios Diala, drove and operated a motor vehicle (a truck) along Rizal Ave Ext, Manila in a reckless and imprudent manner thereby causing to hit Nicolas Paras, 65 yo, and ran over his head, crushing it, resulting to his instantaneous death; facs revealed that the truck was registered in the name of Lim Koo.
- At the initial stage of the criminal trial, Petitioner, Estanislawa Canlas (widow of Nicolas, representing also 5 minor children), made a reservation to file a separate civil action.
- TC: Juanito is guilty, serve sentence of 1yr-8mos, plus **5K indeminity.**
- CA: modified, 1yr not less than 4 yrs of imprisonment, indemnity also affirmed.
- In the civil action, same facts were alleged. Defendants disclaimed liability by establishing that Juanito is married and is no longer a minor living in the company of his parents, and that he is also not an employee of Lim Koo. Thus, Neither Juanito's parents can be made liable under vicarious liability (2180 of the NCC) nor the owner of vehicle be the subsidiary liable under 103 of the RPC.
- Civil action: dismissed, since petitioner already tried to execute the indemnity adjudged in the crim action and Juanito already served subsidiary imprisonment by virtue of his inability to pay indemnity. Petitioner insists on the liability of parents and truck owner. MR denied, hence this petition.

ISSUES & ARGUMENTS

- **W/N Respondents can be made liable over the civil liability of Juanito?**

HOLDING & RATIO DECIDENDI

NO.

- 2180 par 5 of the NCC (primary liab-vicarious liab) only applies if the offender is a MINOR LIVING in the COMPANY of his PARENTS. In this case, Juanito was already married and lives independently from his parents
- 103 of the RPC (subsidiary liab) only attaches if EER between the owner and offender is established and that the act happened while he was discharging his duties (as employee). In this case, no evidence was presented to establish such relationship.

NB: The civil complaint was confused with the nature of liability to charge (103 or 2180). Court however clarified that the lower court erred when they adjudged that the civil action is barred by res judicata. The civil action from crim act and indep civil action are of different nature and purpose. The 2 cases affect different parties. In the indep civil action, subsidiary and vicarious liab were being established. Nevertheless, since 2180 of NCC and 103 of RPC was inapplicable, the action was still dismissed.

TC decision affirmed: Petition is dismissed.

TIN DINO

200 Joseph Saladuga vs. Far Eastern University
GR 179337, April 30, 2008/Ynares-Santiago J.

FACTS

- Petitioner is a sophomore law student in the respondent school.
- While at the school premises, he was shot by the security of said school Alejandro Rosete of Galaxy Management Corporation
- He was rushed to the FEU hospital due to the wound
- Since no charges were filed against Rosete, he was released by the police.
- Petitoner though filed a complaint for damages on galaxy and FEU
- FEU appealed this decision

ISSUES & ARGUMENTS

- **W/N FEU should pay damages.**

HOLDING & RATIO DECIDENDI

Yes

- It is undisputed that petitioner was enrolled as a sophomore law student in respondent FEU. As such, there was created a contractual obligation between the two parties. On petitioner's part, he was obliged to comply with the rules and regulations of the school. On the other hand, respondent FEU, as a learning institution is mandated to impart knowledge and equip its students with the necessary skills to pursue higher education or a profession. At the same time, it is obliged to ensure and take adequate steps to maintain peace and order within the campus.
    - It is settled that in culpa contractual, the mere proof of the existence of the contract and the failure of its compliance justify, prima facie, a corresponding right of relief.
    - In the instant case, we find that, when petitioner was shot inside the campus by no less the security guard who was hired to maintain peace and secure the premises, there is a prima facie showing that respondents failed to comply with its obligation to provide a safe and secure environment to its students.
- In order to avoid liability, however, respondents aver that the shooting incident was a fortuitous event because they could not have reasonably foreseen nor avoided the accident caused by Rosete as he was not their employee; and that they complied with their obligation to ensure a safe learning environment for their students by having exercised due diligence in selecting the security services of Galaxy.
    - After a thorough review of the records, we find that respondents failed to discharge the burden of proving that they exercised due diligence in providing a safe learning environment for their students. They failed to prove that they ensured that the guards assigned in the campus met the requirements stipulated in the Security Service Agreement. Indeed, certain documents about Galaxy were presented during trial; however, no evidence as to the qualifications of Rosete as a security guard for the university was offered.
    - Respondents also failed to show that they undertook steps to ascertain and confirm that the security guards assigned to them actually possess the qualifications required in the Security Service Agreement. It was not proven that they examined the clearances, psychiatric test results, 201 files, and other vital documents enumerated in its contract with Galaxy.

201 Afialda v. Hisole | Reyes
G.R. No. L-2075 November 29, 1949| 85 PHIL 67

FACTS

- Loreto Afialda was employed by the Hisole spouses as the caretaker of their carabaos
- One fateful day, while tending to the carabaos, Afialda was gored by one of them, he died.

ISSUES & ARGUMENTS

- **W/N the Hisole spouses are liable for damages as owners of the carabaos**
    - **Petitioner:** Widow of Afialda contends that the civil Code provides that the possessor of an animal is liable for any damage it may cause, even if such animal should escape from him or stray away.
    - **Respondent:** Spouses posit that there was an assumption of risk, therefore they are not liable.

HOLDING & RATIO DECIDENDI

NO THE SPOUSES ARE NOT LIABLE

- The animal was in the custody and under the control of the caretaker who was paid to work as such. It was his business to try to prevent the animal from causing injury or damage to anyone, including himself.
- Being injured by the animal under those circumstances was one of the risks of his occupation, which he had voluntarily assumed and for which he must take the consequences.
- The owner of an animal is only answerable for damages caused to a stranger, and for that damage caused to the caretaker of the animal, the owner would be liable only if he had been negligent or at fault under article 1902 of the Civil Code
- It is essential that there be fault or negligence on the part of the defendants as the owners of the animal that cased the damage. [But the complaint contains no allegation of those points]

202 Vestil vs. IAC |
G.R. No. 74431 November 6, 1989 |

FACTS

- On July 29, 1915, Theness was bitten by a dog while she was playing with a child of the petitioners in the house of the late Vicente Miranda, the father of Purita Vestil.
- She was rushed to the hospital but although she was discharged after nine days, she was readmitted one week later. She died of bronchopneumonia.
- Uys sued vestals for damager.

ISSUES & ARGUMENTS

- **W/N Vestil is responsible for the dog bite.**

HOLDING & RATIO DECIDENDI

Yes.

Art. 2183. The possessor of an animal or whoever may make use of the same is responsible for the damage which it may cause, although it may escape or be lost. This responsibility shall cease only in case the damage should come from force majeure or from the fault of the person who has suffered damage.

- Vestil is not really the owner of the house, which was still part of Vicente Miranda's estate. She and her husband were its possessors at the time of the incident in question. There is evidence showing that she and her family regularly went to the house, once or twice weekly and used it virtually as a second house. Interestingly, her own daughter was playing in the house with Theness when she was bitten by the dog.The dog remained in the house even after the death of Vicente Miranda in 1973 and until 1975, when the incident in question occurred. Also, the vestils offered to assist the Uys with their hospitalization expenses although Purita said she knew them only casually.
- The contention that broncho pneumonia is not related to the dog bite is belied by the statement of the doctors that it is a complication which may arise from rabies. Theness showed signs of hydrophobia, a symptom of rabies.
- Lastly, the court ruled that for 2183 applies not only to wild and vicious animals but also tame

"According to Manresa the obligation imposed by Article 2183 of the Civil Code is not based on the negligence or on the presumed lack of vigilance of the possessor or user of the animal causing the damage. It is based on natural equity and on the principle of social interest that he who possesses animals for his utility, pleasure or service must answer for the damage which such animal may cause."

203 Chapman vs. Underwood | Moreland, J.:
G.R. No. 9010, March 28, 1914 | 27 PHIL 375

FACTS

- At the time of the accident, there was a single-track street-car line running along Calle Herran, with occasional switches to allow cars to meet and pass each other
    - One of these switches was located at the scene of the accident
- Chapman was visiting a friend (Creveling), in front of whose house the accident happened
- Chapmen wanted to board a certain 'San Marcelino' car from Sta. Ana bound to Manila
    - He was told by Creveling that the car was approaching so he immediately passed from the gate into the street to signal and board the car
    - He attempted to board the front platform but seeing he could not reach it without extra exertion, stopped beside the car, facing toward the rear platform, and waited for it to come abreast him in order to board
    - While in that position, he was struck from behind and run over by Underwood's automobile (driven by his chauffer, a competent driver)
- The trial court found for the defendant, hence the present petition.

ISSUES & ARGUMENTS

- **W/N Underwood, the owner of an automobile, would be responsible for the acts of a competent driver, whether present or not, where the automobile causing the injury is a part of a business enterprise and is being driven in furtherance f the owner's business at the time the injury complained of is caused.**

HOLDING & RATIO DECIDENDI

NO.

- The owner of an automobile, present in the vehicle, is not liable for the negligent acts of a competent driver unless such acts are continued for such a length of time as to give the owner a reasonable opportunity to observe them and to direct the driver to desist therefrom, and fail to do so
- If a competent driver of an automobile in which the owner thereof is at the time present, by a sudden act of negligence, without the owner having a reasonable opportunity to prevent the act or its continuance, violates the law, the owner of the automobile is not responsible, either civilly or criminally, 223herefore
    - The act complained of must be continued in the presence of the owner for such a length of time that he, by acquiescence, makes his driver's act his own

204 First Malayan Leasing v CA | GRIÑO-AQUINO. *J.*:
G. R. No. 91378 June 9, 1992 |

FACTS

- The importance of motor vehicle registration in determining who should be liable for the death or injuries suffered by passengers or third persons as a consequence of the operation of a motor vehicle.
- On June 26, 1984, Crisostomo B. Vitug filed a civil case against First Malayan Leasing and Finance Corporation (FMLFC for short), to recover damages for physical injuries, loss of personal effects, and the wreck of his car as a result of a three-vehicle collision
- Vitug's car was at a full stop at the intersection of New York Street and Epifanio delos Santos Avenue (EDSA) in Cubao, Quezon City, northward-bound, the on-coming Isuzu cargo truck bumped, a Ford Granada car behind him with such force that the Ford car was thrown on top of Vitug's car crushing its roof. The cargo truck thereafter struck Vitug's car in the rear causing the gas tank to explode and setting the car ablaze.
- Stunned by the impact. Vitug was fortunately extricated from his car by solicitous bystanders before the vehicle exploded. However, two of his passengers were burned to death.
- Vitug's car, valued at P70,000, was a total loss and he lost valuables amounting to almost P50 k, which included GP watch, a gold Cross pen, necklace with a diamond pendant, a pair of Bally shoes and a pair of Christian Dior eyeglasses.
- Upon his physician's advice, he received further medical treatment in the United States which cost him US$2,373.64 for his first trip, and US$5,596.64 for the second.
- At the time of the accident the Isuzu cargo truck was registered in the name of the First Malayan Leasing and Finance Corporation (FMLFC) but the latter denied any liability, alleging that it was not the owner of the truck. Neither the employer of the driver Crispin Sicat, because it had sold the truck to Vicente Trinidad, after the latter had paid all his monthly amortizations.

ISSUES & ARGUMENTS

- **W/N FMLFC is liable as the registered owner of the Isuzu truck even if it has already sold the same to Trinidad**

HOLDING & RATIO DECIDENDI

Yes

- This Court has consistently ruled that regardless of who the *actual* owner of a motor vehicle might be, the registered owner is the operator of the same with respect to the public and third persons, and as such, directly and primarily responsible for the consequences of its operation.
- In contemplation of law, the owner/operator *of record* is the employer of the driver, the actual operator and employer being considered merely as his agent
- In order for a transfer of ownership of a motor vehicle to be valid against third persons. it must be recorded in the Land Transportation Office. For, although valid between the parties, the sale cannot affect third persons who rely on the public registration of the motor vehicle as conclusive evidence of ownership. In law, FMLFC was the owner and operator of the Izusu cargo truck, hence, fully liable to third parties injured by its operation due to the fault or negligence of the driver thereof.

205 Manlangit vs. Urgel | Puno
A.M. No. MTJ-95-1028, December 4, 1995 |

FACTS

- Complainant Manlangit is the owner and operator of a passenger jeepney, driven by Castillo. On its usual route to Catanduanes, Manlangit and some passengers were inside the jeep. Castillo then occupied the wrong lane while approaching a blind curve. At the curve, there was suddenly a parked dump truck. Since it was too late to avoid the collision, Castillo swerved the jeep to the right. While he and Manlangit were able to jump off the jeepney before it plunged into the river, the other passengers were not as lucky and suffered injuries as a result of the crash.
- A complaint for serious physical injuries through reckless imprudence was filed against Castillo and Manlangit in the sala of Judge Urgel. Upon service of the warrant of arrest, Manlangit filed a Motion to Drop him from the Criminal Complaint and Quash the Warrant – granted.
- Manlangit then filed an administrative complaint against Judge Urgel, charging him that the erroneous issuance of the warrant caused him and his family grave humiliation, undue embarrassment and anxiety.
- In answer to the complaint, Judge Urgel explained that the preliminary examination showed that Manlangit was in the vehicle at the time of the incident. And so, he based the order of arrest on the doctrine that "An owner who sits in his automobile, or other vehicle, and permits his driver to continue in violation of the law by the performance of negligent acts, after he has had a reasonable opportunity to observe them and to direct that the driver cease therefrom, becomes himself responsible for such acts.
- The Court Administrator recommended that respondent judge be meted a severe reprimand for the erroneous issuance of a warrant of arrest against complainant.

ISSUES & ARGUMENTS

- **W/N Judge Urgel erroneously issued a warrant of arrest against Manlangit.**

HOLDING & RATIO DECIDENDI

YES. JUDGE URGEL FINED FOR THE ERRONEOUS ISSUANCE OF A WARRANT OF ARREST AGAINST MANLANGIT.

- The criminal act of one person cannot be charged to another without a showing that the other participated directly or constructively in the act or that the act was done in furtherance of a common design or purpose for which the parties were united in intention. Thus, an employer is not criminally liable for the criminal acts of his employee or agent unless he, in some way, participates in, counsels or abets his employee's acts or omissions.
- However, under Article 102, in relation to Article 103 of the Revised Penal Code, the employer's liability for the criminal negligence of his employee is subsidiary in nature and is limited only to civil indemnity. Thus, an employer is party to a criminal case for the criminal negligence of his employee only by reason of his subsidiary civil liability under the law.
- In the present case, nowhere does it show that Manlangit participated in, abetted or even approved the negligent and reckless manner in which his driver maneuvered the vehicle on that blind curve. It appears that such move by Castillo was a split second judgment which left neither the Manlangit nor any of the passengers time to react.
- The erroneous issuance of the warrant of arrest against Manlangit necessarily caused him and his family undue anxiety, humiliation and embarrassment. Indeed, complainant had to hire a counsel and incur expenses for his bond to fight for his liberty which he could have lost due to a patently erroneous warrant of arrest issued by respondent judge

Judge Urgel fined P1,000.00.

206 FGU Insurance vs. CA| Bellosillo
G.R. No. 118889, March 23, 1998 | 287 SCRA 718

FACTS

- On 21 April 1987, two Mitsubishi Colt Lancers collided along EDSA at around 3AM. At that time, the car owned by Soriano was being driven by Jacildone. The other car was owned by FILCAR Transport, Inc. and was being driven by Dahl-Jansen, as lessee. Said Dahl-Jensen, being a Danish tourist, did not have Philippine driver's license. Dahl-Jensen had swerved to his right lane, thereby hitting the left side of the car of Soriano.
- Petitioner FGU Insurance paid Soriano P25,382.20 pursuant to the insurance contract it had with the latter. After which, it sued Dahl-Jensen, FILCAR, and FORTUNE Insurance for quasi-delict before the RTC of Makati.
- Summons was not served on Dahl-Jensen; and upon motion of the petitioner, he was later dropped from the complaint. The RTC dismissed the complaint on the ground that petitioner had failed to substantiate its claim for subrogation.
- The CA affirmed the RTC decision, although on a different ground, i.e. that only the fault and negligence of Dahl-Jensen was proved, and not that of FILCAR. Hence this appeal.

ISSUES & ARGUMENTS

- **W/N FILCAR and FORTUNE are liable.**

HOLDING & RATIO DECIDENDI

FILCAR AND FORTUNE ARE NOT LIABLE.

- Art. 2176 of the Civil Code which states: "*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 . . . .* "
- To sustain a claim based thereon, the following requisites must concur: (a) damage suffered by the plaintiff; (b) fault or negligence of the defendant; and, (c) connection of cause and effect between the fault or negligence of the defendant and the damage incurred by the plaintiff. [6]
- The Supreme Court agreed with the holding of the CA in saying that only the fault and negligence of Dahl-Jensen had been proved, since the only cause of the damage was due to his swerving to the right lane, in which FILCAR had no participation.
- Article 2180, Civil Code: *"…Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry…"*
- The liability imposed by Art. 2180 arises by virtue of a presumption *juris tantum* of negligence on the part of the persons made responsible thereunder, derived from their failure to exercise due care and vigilance over the acts of subordinates to prevent them from causing damage. [7] Yet, Art. 2180 is hardly applicable because FILCAR, being engaged in a rent-a-car business was only the owner of the car leased to Dahl-Jensen. As such, there was no *vinculum juris* between them as employer and employee.
- We now correlate par. 5 of Art. 2180 with Art. 2184 of the same Code which provides: "*In motor vehicle mishap, the owner is solidarily liable with his driver, if the former, who was in the vehicle, could have by the use of due diligence, prevented the misfortune . . . . If the owner was not in the motor vehicle, the provisions of article 2180 are applicable.*" Obviously, this provision of Art. 2184 is neither applicable because of the absence of master-driver relationship between respondent FILCAR and Dahl-Jensen. Clearly, petitioner has no cause of action against respondent FILCAR on the basis of *quasi-delict*; logically, its claim against respondent FORTUNE can neither prosper.

Petition denied. CA affirmed.

DIANE LIPANA

207 Aguilar vs. Commercial Savings Bank| Quisumbing
G.R. No. 128705, June 29, 2001 |

FACTS

- Petitioner Conrado Aguilar, Sr. is the father of Conrado Aguilar, Jr., the victim in a vehicular accident involving a Lancer car registered in the name of respondent bank, but driven by co-respondent Ferdinand G. Borja.
- September 8, 1984, 11:15 P.M., Aguilar, Jr. and his companions, among them Nestor Semella, were crossing Zapote-Alabang Road. A Lancer with plate no. NNP 349 and driven by Ferdinand Borja, overtook a passenger jeepney and the Lancer hit Aguilar and Semella. Aguilar was thrown upwards and smashed against the windshield of the Lancer, which did not stop. Aguilar was pronounced dead on arrival at the hospital.
- Petitioner filed a complaint for damages against respondents in the Regional Trial Court of Makati, Branch 59. Borja did not file his answer within the reglementary period, hence, he was declared in default.
- At the trial, respondent bank admitted that the Lancer was registered in its name at the time of the incident. Petitioner's counsel also showed that Borja was negligent in driving the car.
- TC held defendants liable for Aguilar's death and also found that Borja was an assistant vice president of respondent bank at the time of the incident. It held that under Art. 2180 of the Civil Code, the negligence of the employee is presumed to be that of the employer, whose liability is primary and direct; and that respondent bank failed to exercise due diligence in the selection of its employees.
- CA reversed the TC reasoning that before it can apply Art. 2180 on which private respondent anchored its claim of the bank's negligence, petitioner must first establish that Borja acted on the occasion or by reason of the functions entrusted to him by his employer. The appellate court found no evidence that Borja had acted as respondent bank's assistant vice-president at the time of the mishap.

ISSUES & ARGUMENTS

- **W/N respondent bank, as the Lancer's registered owner, is liable for damages?**
    - **Petitioner:** Existence or absence of employer-employee relationship between the bank and Borja is immaterial in this case for the registered owner of a motor vehicle is legally liable for the damages incurred by third persons for injuries sustained in the operation of said vehicle.

HOLDING & RATIO DECIDENDI

YES, Respondent is liable by being merely the registered owner of the car. Existence or absence of EER is immaterial.

- In *BA Finance Corporation vs. Court of Appeals*, the SC already held that the registered owner of <u>any</u> vehicle, even if not for public service, is primarily responsible to third persons for deaths, injuries and damages it caused. This is true even if the vehicle is leased to third persons.
- The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefore can be fixed on a definite individual, the registered owner.
- The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership. If the policy of the law is to be enforced and carried out, the registered owner should not be allowed to prove the contrary to the prejudice of the person injured, that is, to prove that a third person or another has become the owner, so that he may thereby be relieved of the responsibility to the injured person.
- A registered owner who has already sold or transferred a vehicle has the recourse to a third-party complaint, in the same action brought against him to recover for the damage or injury done, against the vendee or transferee of the vehicle. The inconvenience of the suit is no justification for relieving him of liability; said inconvenience is the price he pays for failure to comply with the registration that the law demands and requires.
- The registered owner is primarily responsible for the damage caused to the vehicle of the plaintiff, but he has a right to be indemnified by the real or actual owner of the amount that he may be required to pay as damage for the injury caused to the plaintiff.

208 Caedo vs. Yu Khe Thai | Makalintal
G.R. No. L-20392, December 18, 1968 | 26 SCRA 410

FACTS

- As a result of a vehicular accident in which plaintiff Marcial Caedo and several members of his family were injured they field this suit for recovery of damages from the defendants.
- The mishap occurred at about 5:30 in the morning on EDSA in the vicinity of San Lorenzo Village. Marcial was driving his Mercury car, with his wife and daughters, on his way to the airport, where his son was scheduled to take a plane for Mindoro.
- Coming from the opposite direction was the Cadillac of Yu Khe Thai, with his driver Rafael Bernardo at the wheel, taking the owner to Wack Wack for his regular round of golf.
- The two cars were traveling at fairly moderate speeds, considering the condition of the road and the absence of traffic. Their headlights were mutually noticeable from a distance.
- Ahead of the Cadillac, going in the same direction, was a *carretela* with two lights, one on each side.
- Bernardo, instead of slowing down or stopping altogether behind the *carretela* until that lane was clear, veered to the left in order to pass. As he did so the curved end of his car's right rear bumper caught the forward rim of the rig's left wheel, wrenching it off and carrying it along as the car skidded obliquely to the other lane, where it collided with the oncoming vehicle.

ISSUES & ARGUMENTS

- **W/N Yu Khe Thai, owner of the Cadillac, is solidarily liable with the driver?**

HOLDING & RATIO DECIDENDI

NO. YU KHE THAI IS NOT SOLIDARILY LIABLE.

- If the causative factor was the driver's negligence, the owner of the vehicle who was present is likewise held liable if he could have prevented the mishap by the exercise of due diligence.
- An owner who sits in his automobile, or other vehicle, and permits his driver to continue in a violation of law by the performance of his negligent acts, after he has had a reasonable opportunity to observe them and to direct that the driver cease therefrom, becomes himself responsible for such acts.
- On the other hand, if the driver, by a sudden act of negligence, and without the owner having a reasonable opportunity to prevent the act or its continuance, injures a person or violates the criminal law, the owner of the automobile, although present therein at the time the act was committed, is not responsible, either civilly or criminally therefor.
- The basis of the master's liability in civil law is not *respondeat superior* but rather the relationship of *pater-familias*. The theory is that ultimately the negligence of the servant, if known to the master and susceptible of timely correction by him, reflects his own negligence if he fails to correct it in order to prevent injury or damage.
- No negligence for having employed Bernardo at all may be imputed to Yu Khe Thai. Negligence on the part of the latter, if any, must be sought in the immediate setting and circumstances of the accident, that is, in his failure to detain the driver from pursuing a course which not only gave him clear notice of the danger but also sufficient time to act upon it.
- However, we do not see that such negligence may be imputed. The car, as has been stated, was not running at an unreasonable speed. The road was wide and open, and devoid of traffic that early morning. There was no reason for the car owner to be in any special state of alert.
- He could not have anticipated his driver's sudden decision to pass the *carretela* on its left side in spite of the fact that another car was approaching from the opposite direction. The time element was such that there was no reasonable opportunity for Yu Khe Thai to assess the risks involved and warn the driver accordingly.
- The test of the owner's negligence, within the meaning of Article 2184, is his omission to do that which the evidence of his own senses tells him he should do in order to avoid the accident. And as far as perception is concerned, absent a minimum level imposed by law, a maneuver that appears to be fraught with danger to one passenger may appear to be entirely safe and commonplace to another.

FRANCIS ESPIRITU

209 Malayan Insurance vs CA | PADILLA, J
G.R. No. L-36413, September 26, 1988 | 165 SCRA 536

FACTS

- Petitioner, Malayan Insurance Co., Inc., issued in favor of private respondent Sio Choy Private Car Comprehensive Policy covering a Willys jeep.
- The insurance coverage was for "own damage" not to exceed P600.00 and "third-party liability" in the amount of P20,000.00.
- During the effectivity of said insurance policy
- The insured jeep, while being driven by one Juan P. Campollo an employee of the respondent San Leon Rice Mill, Inc., collided with a passenger bus belonging to the respondent Pangasinan Transportation Co., Inc. (PANTRANCO, for short) causing damage to the insured vehicle and injuries to the driver, Juan P. Campollo, and the respondent Martin C. Vallejos, who was riding in the ill-fated jeep.
- As a result, Martin C. Vallejos filed an action for damages against Sio Choy, Malayan Insurance Co., Inc. and the PANTRANCO
- He prayed therein that the defendants be ordered to pay him, jointly and severally, the amount of P15,000.00, as reimbursement for medical and hospital expenses; P6,000.00, for lost income; P51,000.00 as actual, moral and compensatory damages; and P5,000.00, for attorney's fees.
- PANTRANCO claimed that the jeep of Sio Choy was then operated at an excessive speed and bumped the PANTRANCO bus which had moved to, and stopped at, the shoulder of the highway in order to avoid the jeep; and that it had observed the diligence of a good father of a family to prevent damage, especially in the selection and supervision of its employees
- Defendant Sio Choy and the petitioner insurance company, in their answer, also denied liability to the plaintiff, claiming that the fault in the accident was solely imputable to the PANTRANCO.
- Sio Choy, however, later filed a separate answer with a cross-claim against the herein petitioner wherein he alleged that he had actually paid the plaintiff, Martin C. Vallejos, the amount of P5,000.00 for hospitalization and other expenses, and, in his cross-claim against the herein petitioner, he alleged that the petitioner had issued in his favor a private car comprehensive policy wherein the insurance company obligated itself to indemnify Sio Choy, as insured, for the damage to his motor vehicle, as well as for any liability to third persons arising out of any accident
- Also later, the herein petitioner sought, and was granted, leave to file a third-party complaint against the San Leon Rice Mill, Inc. for the reason that the person driving the jeep of Sio Choy, at the time of the accident, was an employee of the San Leon Rice Mill, Inc. performing his duties within the scope of his assigned task, and not an employee of Sio Choy;
- More so, San Leon Rice Mill, Inc. is the employer of the deceased driver, Juan P. Campollo, it should be liable for the acts of its employee, pursuant to Art. 2180 of the Civil Code. The herein petitioner prayed that judgment be rendered against the San Leon Rice Mill, Inc., making it liable for the amounts claimed by the plaintiff and/or ordering said San Leon Rice Mill, Inc. to reimburse and indemnify the petitioner for any sum that it may be ordered to pay the plaintiff.
- Lower court adjudged Sio Choy and Malayan Insurance Co., Inc., and third-party defendant San Leon Rice Mill, Inc severally liable. It further held that with respect to Malayan Insurance, its liability will be up to P20,000 only
- CA affirmed but it ruled, however, that the San Leon Rice Mill, Inc. has no obligation to indemnify or reimburse the petitioner insurance company for whatever amount it has been ordered to pay on its policy, since the San Leon Rice Mill, Inc. is not a privy to the contract of insurance between Sio Choy and the insurance company.

ISSUES & ARGUMENTS

- **W/N the trial court, as upheld by the Court of Appeals, was correct in holding petitioner and respondents Sio Choy and San Leon Rice Mill, Inc. "solidarily liable" to respondent Vallejos**
- **W/N petitioner is entitled to be reimbursed by respondent San Leon Rice Mill, Inc. for whatever amount petitioner has been adjudged to pay respondent Vallejos on its insurance policy.**

HOLDING & RATIO DECIDENDI

As to the First issue: NO

- As to the first issue, it is noted that the trial court found, as affirmed by the appellate court, that petitioner and respondents Sio Choy and San Leon Rice Mill, Inc. are jointly and severally liable to respondent Vallejos.
- The SC did not agree with the aforesaid ruling. It held instead that it is only respondents Sio Choy and San Leon Rice Mill, Inc, (to the exclusion of the petitioner) that are solidarily liable to respondent Vallejos for the damages awarded to Vallejos.
- Respondent Sio Choy is made liable to said plaintiff as owner of the ill-fated Willys jeep, pursuant to Article 2184 of the Civil Code while the liability of respondent San Leon Rice Mill, Inc. to plaintiff Vallejos, the former being the employer of the driver of the Willys jeep at the time of the motor vehicle mishap, is Article 2180 of the Civil Code.
- It thus appears that respondents Sio Choy and San Leon Rice Mill, Inc. are the principal tortfeasors who are primarily liable to respondent Vallejos. The law states that the responsibility of two or more persons who are liable for a *quasi-delict* is solidarily.
- On the other hand, the basis of petitioner's liability is its insurance contract with respondent Sio Choy. If petitioner is adjudged to pay respondent Vallejos in the amount of not more than P20,000.00, this is on account of its being the insurer of respondent Sio Choy under the third party liability clause included in the private car comprehensive policy.
- While it is true that where the insurance contract provides for indemnity against liability to third persons, such third persons can directly sue the insurer, [6] however,

the direct liability of the insurer under indemnity contracts against third party liability does not mean that the insurer can be held solidarily liable with the insured and/or the other parties found at fault. The liability of the insurer is based on contract; that of the insured is based on tort.

- In the case at bar, petitioner as insurer of Sio Choy, is liable to respondent Vallejos, but it cannot, as incorrectly held by the trial court, be made "solidarily" liable with the two principal tortfeasors namely respondents Sio Choy and San Leon Rice Mill, Inc. For if petitioner-insurer were solidarily liable then this will result in a violation of the principles underlying solidary obligation and insurance contracts.
- In the case at bar, the trial court held petitioner together with respondents Sio Choy and San Leon Rice Mills Inc. solidarily liable to respondent Vallejos for a total amount of P29,103.00, with the qualification that petitioner's liability is only up to P20,000.00. In the context of a solidary obligation, petitioner may be compelled by respondent Vallejos to pay the *entire* obligation of P29,013.00, notwithstanding the qualification made by the trial court. But, how can petitioner be obliged to pay the entire obligation when the amount stated in its insurance policy with respondent Sio Choy for indemnity against third party liability is only P20,000.00?

As to the second issue, the Court of Appeals erred, in affirming the decision of the trial court which ruled that petitioner is not entitled to be reimbursed by respondent San Leon Rice Mill, Inc. on the ground that said respondent is not privy to the contract of insurance existing between petitioner and respondent Sio Choy.

- The appellate court overlooked the principle of subrogation in insurance contracts. Subrogation is a normal incident of indemnity insurance Upon payment of the loss, the insurer is entitled to be subrogated *pro tanto* to any right of action which the insured may have against the third person whose negligence or wrongful act caused the loss. Moreover, that right *is not dependent upon , nor does it grow out of any privity of contract.*
- It follows, therefore, that petitioner, upon paying respondent Vallejos the amount of riot exceeding P20,000.00, shall become the subrogee of the insured, the respondent Sio Choy; as such, it is subrogated to whatever rights the latter has against respondent San Leon Rice Mill, Inc. Article 1217 of the Civil Code gives to a solidary debtor who has paid the entire obligation the right to be reimbursed by his co-debtors for the share which corresponds to each.
- In accordance with Article 1217, petitioner, upon payment to respondent Vallejos and thereby becoming the subrogee of solidary debtor Sio Choy, is entitled to reimbursement from respondent San Leon Rice Mill, Inc..
- In sum, the SC held that only respondents Sio Choy and San Leon Rice Mill, Inc. are solidarily liable to the respondent Martin C. Vallejos for the amount of P29,103.00. Vallejos may enforce the entire obligation on only one of said solidary debtors. If Sio Choy as solidary debtor is made to pay for the entire obligation (P29,103.00) and petitioner, as insurer of Sio Choy, is compelled to pay P20,000.00 of said entire obligation, petitioner would be entitled, as subrogee of Sio Choy as against San Leon Rice Mills, Inc., to be reimbursed by the latter in the amount of P14,551.50 (which is 1/2 of P29,103.00)

TIN DINO

210 University of Manila vs. IAC

FACTS

- Vivencio Sto. Domingo was buried in a lot in the North Cemetery. Apart from the receipt of the rental, there were no other records regarding his burial
- The Mayor of Manila, in good faith believed that the said lot was covered under Admin Order 5, whereas the lots would be only rented for a period of 5 years. Due to this, the body of Vivencio was exhumed.
- During All Saints Day, the family of the deceased was shocked to find that the lot no longer had the stone marker.
- Thus the family filed a complaint for damages

ISSUES & ARGUMENTS

- **W/N the city is liable for damages?**

HOLDING & RATIO DECIDENDI

Yes

- With respect to its propriety functions, a city could be sued ex contractu or ex delicto. It has been held that the maintenance of a cemetery is a propriety function of the government.
- It is also responsible for the negligence of its agent under the doctrine of respondeat superior. Thus they are liable for the act of their agents who failed to check and verify the duration

211 Bernardino Jimenez vs City of Manila | Paras
G.R. No. 71049 May 29, 1987 |

FACTS

- In the morning of August 15, 1974, Jimenez, together with his neighbors, went to Sta. Ana public market to buy "bagoong" at the time when the public market was flooded with ankle deep rainwater.
- After purchasing the "bagoong" he turned around to return home but he stepped on an uncovered opening which could not be seen because of the dirty rainwater, causing a dirty and rusty four- inch nail, stuck inside the uncovered opening, to pierce the left leg of plaintiff-petitioner penetrating to a depth of about one and a half inches.
- After administering first aid treatment at a nearby drugstore, his companions helped him hobble home.
- He felt ill and developed fever and he had to be carried to Dr. Juanita Mascardo.
- Despite the medicine administered to him by the latter, his left leg swelled with great pain. He was then rushed to the Veterans Memorial Hospital where he had to be confined for twenty (20) days due to high fever and severe pain.
- Upon his discharge from the hospital, he had to walk around with crutches for fifteen (15) days. His injury prevented him from attending to the school buses he is operating. As a result, he had to engage the services of one Bienvenido Valdez to supervise his business for an aggregate compensation of nine hundred pesos (P900.00).
- Petitioner sued for damages the City of Manila and the Asiatic Integrated Corporation under whose administration the Sta. Ana Public Market had been placed by virtue of a Management and Operating Contract.
- The lower court decided in favor of respondents, and against the plaintiff dismissing the complaint with costs against the plaintiff. For lack of sufficient evidence, the counterclaims of the defendants are likewise dismissed.
- On appeal, the Intermediate Appellate Court held the Asiatic Integrated Corporation liable for damages but absolved respondent City of Manila.

ISSUES & ARGUMENTS

- **W.N the Intermediate Appellate Court erred in not ruling that respondent City of Manila should be jointly and severally liable with Asiatic Integrated Corporation for the injuries petitioner suffered.**

HOLDING & RATIO DECIDENDI

Yes.

- Respondent City of Manila and Asiatic Integrated Corporation being joint tort-feasors are solidarily liable under Article 2194 of the Civil Code.
- The City of Manila is likewise liable for damages under Article 2189 of the Civil Code, respondent City having retained control and supervision over the Sta. Ana Public Market and as tort-feasor under Article 2176 of the Civil Code on quasi-delicts.
- Article 2189 of the Civil Code of the Philippines which provides that:

> Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by any person by reason of defective conditions of roads, streets, bridges, public buildings and other public works under their control or supervision.

- Petitioner had the right to assume that there were no openings in the middle of the passageways and if any, that they were adequately covered. Had the opening been covered, petitioner could not have fallen into it. Thus the negligence of the City of Manila is the proximate cause of the injury suffered, the City is therefore liable for the injury suffered by the petitioner.

212 Guilatco vs. City of Dagupan | Sarmiento
G.R. No. 61516, March 21, 1989 | 171 SCRA 382

FACTS

- On July 25, 1978, plaintiff Florentina A. Guilatco, a Court Interpreter of Branch III CFI – Dagupan City, while she was about to board a motorized tricycle at a sidewalk located at Perez Blvd. (a National Road under the control and supervision of the City of Dagupan) accidentally fell into a manhole located on the sidewalk, thereby causing her right leg to be fractured. The manhole was partially covered by a concrete flower pot leaving a gaping hole about 2ft. long by 1 ½ feet wide or 42 cm wide by 75 cm long by 150 cm deep.
- As a result thereof, she had to be hospitalized first at Pangasinan Provincial Hospital where she incurred expenses of P8,053.65. The pain has persisted even after her discharge from the Medical City General Hospital to the present. She still wears crutches and she has not yet reported for duty as a court interpreter as she has difficulty of locomotion in going up the stairs of her office.
- Defendant Alfredo Tangco, City Engineer of Dagupan City and admittedly ex-officio Highway Engineer, City Engineer of the Public Works and Building Official for DAgupan City, admitted the existence of the manhole and that said manhole is owned by the National Government. In his answer, he expressly admitted that he exercises supervision and control over National roads including the Perez Blvd.
- The Lower Court found in favor of Guilatco but on appeal, the appellate court reversed the lower court findings on the ground that no evidence was presented by the plaintiff to prove that the City of Dagupan had "control or supervision" over Perez Blvd.

ISSUES & ARGUMENTS

- **W/N control or supervision over a national road by the city of Dagupan exists, in effect binding the city to answer for damages in accordance with Article 2189.**
    - **Respondent City**: Perez Blvd. is a national road that is not under the control or supervision of the City of Dagupan hence no liability should attach

HOLDING & RATIO DECIDENDI

YES, THE CITY OF DAGUPAN IS LIABLE.

- **Art. 2189** provides that "**Provinces, cities and municipalities shall be liable for damages for the death of, or injuries suffered by, any person by reason of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision.**"
- **It is not even necessary for the defective road or street to belong to the province, city, or municipality for liability to attach. The article only requires that either control or supervision is exercised over the defective road or street.**
- **This control or supervision is provided for in the charter of Dagupan exercised through the City Engineer** who according to Section 22 has the following duties, "xxx He shall have the care and custody of the public system of waterworks and sewers xxx"
- The same charter also provides that the laying out, construction and improvement of streets and regulation of the use thereof may be legislated by the Municipal Board. Thus the charter clearly indicates that the city indeed has supervision and control over the sidewalk.
- The city cannot be excused from liability by the argument that the duty of the City Engineer to supervise or control the said road belongs more to his functions as an ex-officio Highway Engineer or the Ministry of Public Highway than as a city officer. This is because while he is entitled to an honorarium from the Ministry, his salary from the city government substantially exceeds the honorarium.

BON ARCILLA

213 Torio vs. Fontanilla| Munoz Palma
G.R. No. L-29993 October 23, 1978 |

FACTS

- The Municipal Council of Malasiqui, Pangasinan passed Resolution No. 159 to manage the town fiesta celebration on January 1959. It also passed creating the 1959 Malasiqui 'Town Fiesta Executive Committee which in turn organized a sub-committee on entertainment and stage, with Jose Macaraeg as Chairman.
- The council appropriated the amount of P100.00 for the construction of 2 stages, one for the "zarzuela" and another for the cancionan Jose Macaraeg supervised the construction of the stage and as constructed the stage for the "zarzuela"
- The "zarzuela" entitled "Midas Extravaganza" was donated by an association of Malasiqui employees of the Manila Railroad Company in Caloocan, Rizal. The troupe arrived in the evening of January 22 for the performance and one of the members of the group was Vicente Fontanilla.
- The program started at about 10:15 o'clock that evening with some speeches, and many persons went up the stage. The "zarzuela" then began but before the dramatic part of the play was reached, the stage collapsed and Vicente Fontanilla who was at the rear of the stage was pinned underneath. Fontanilla was taken to tile San Carlos General Hospital where he died in the afternoon of the following day
- Heirs brought action to enforce liability against the Municipality. Won in CA.

ISSUES & ARGUMENTS

- **W/N the celebration of a town fiesta an undertaking in the exercise of a municipality's governmental or public function or is it or a private or proprietary character?**
  - **Fontanilla Heirs**: Municipality liable for acts because fiesta is in exercise of its proprietary acts
  - **Municipality**: As a legally and duly organized public corporation it performs sovereign functions and the holding of a town fiesta was an exercise of its governmental functions from which no liability can arise to answer for the negligence of any of its agents

HOLDING & RATIO DECIDENDI

MUNICIPALITY IS LIABLE BECAUSE TOWN FIESTA IS AN EXERCISE OF PROPRIETARY FUNCTIONS

- The powers of a municipality are twofold in character public, governmental or political on the one hand, and corporate, private, or proprietary on the other. Governmental powers are those exercised by the corporation in administering the powers of the state and promoting the public welfare and they include the legislative, judicial public, and political Municipal powers on the other hand are exercised for the special benefit and advantage of the community and include those which are ministerial private and corporate.
- This distinction of powers becomes important for purposes of determining the liability of the municipality for the acts of its agents which result in an injury to third persons.
- If the injury is caused in the course of the performance of a governmental function or duty no recovery, as a rule, can be had from the municipality unless there is an existing statute on the matter, nor from its officers, so long as they performed their duties honestly and in good faith or that they did not act wantonly and maliciously.
- With respect to proprietary functions, the settled rule is that a municipal corporation can be held liable to third persons *ex contract* or *ex delicto*.
- The rule of law is a general one, that the superior or employer must answer civilly for the negligence or want of skill of its agent or servant in the course or fine of his employment, by which another, who is free from contributory fault, is injured. Municipal corporations under the conditions herein stated, fall within the operation of this rule of law, and are liable, accordingly, to civil actions for damages when the requisite elements of liability co-exist.
- It follows that under the doctrine of respondent superior, petitioner-municipality is to be held liable for damages for the death of Vicente Fontanilla if that was attributable to the negligence of the municipality's officers, employees, or agents.
- **We can say that the deceased Vicente Fontanilla was similarly situated as Sander The Municipality of Malasiqui resolved to celebrate the town fiesta in January of 1959; it created a committee in charge of the entertainment and stage; an association of Malasiqui residents responded to the call for the festivities and volunteered to present a stage show; Vicente Fontanilla was one of the participants who like Sanders had the right to expect that he would be exposed to danger on that occasion.**

214 Municipality of San Juan vs. CA
G.R. No. 121920, August 9, 2005/ Garcia J.

FACTS

- Under a "*Contract For Water Service Connections",* between the Metropolitan Waterworks and Sewerage System (MWSS) and Kwok Cheung as sole proprietor of K.C. Waterworks System Construction (KC, for short), the former engaged the services of the latter to install water service connections.
    - The agreement provides:
        - The CONTRACTOR agrees to install water service connections, transfer location of tapping to the nearest main, undertake separation of service connection, change rusted connections, within the service area of the MWSS specified in each job order covered by this Contract, from the water main up to the installation of the verticals. Tapping of the service pipe connection and mounting of water meter shall be undertaken exclusively or solely by the MWSS;
- That same day, KC dispatched five (5) of its workers under Project Engineer Ernesto Battad, Jr. to conduct the digging operations in the specified place.
- The workers dug a hole one (1) meter wide and 1.5 meters deep, after which they refilled the excavated portion of the road with the same gravel and stone excavated from the area.
    - At that time, only ¾ of the job was finished in view of the fact that the workers were still required to re-excavate that particular portion for the tapping of pipes for the water connections to the concessionaires.
- Meanwhile, between 10 o'clock and 11 o'clock in the evening of 31 May 1988, Priscilla Chan was driving her Toyota Crown car with Plate No. PDK 991 at a speed of thirty (30) kilometers per hour on the right side of Santolan Road towards the direction of Pinaglabanan, San Juan, Metro Manila. With her on board the car and seated on the right front seat was Assistant City Prosecutor Laura Biglang-awa.
    - The road was flooded as it was then raining hard. Suddenly, the left front wheel of the car fell on a manhole where the workers of KC had earlier made excavations. As a result, the humerus on the right arm of Prosecutor Biglang-awa was fractured.
- Consequent to the foregoing incident, Biglang-awa filed before the Regional Trial Court at Pasig, Metro Manila a complaint for damages against MWSS, the Municipality of San Juan and a number of San Juan municipal officials.

ISSUES & ARGUMENTS

- **W/N the municipality is liable.**

HOLDING & RATIO DECIDENDI

Yes

- Jurisprudence teaches that for liability to arise under Article 2189of the Civil Code, ownership of the roads, streets, bridges, public buildings and other public works, is not a controlling factor, it being sufficient that a province, city or municipality has control or supervision thereof.
- It is argued, however, that under Section 149, [1][z] of the Local Government Code, petitioner has control or supervision only over municipal and not national roads, like Santolan Road.
    - Regulate the drilling and excavation of the ground for the laying of gas, water, sewer, and other pipes; the building and repair of tunnels, sewers, drains and other similar structures; erecting of poles and the use of crosswalks, curbs and gutters therein, and adopt measures to ensure public safety against open canals, manholes, live wires and other similar hazards to life and property, and provide just compensation or relief for persons suffering from them
- Doubtless, the term "regulate" found in the aforequoted provision of Section 149 can only mean that petitioner municipality exercises the power of control, or, at the very least, supervision over all excavations for the laying of gas, water, sewer and other pipes within its territory.
- The [petitioner] cannot validly shirk from its obligation to maintain and insure the safe condition of the road merely because the permit for the excavation may have been issued by a government entity or unit other than the Appellant San Juan or that the excavation may have been done by a contractor under contract with a public entity like the Appellee MWSS.
- It is the duty of the municipal authorities to exercise an active vigilance over the streets; to see that they are kept in a reasonably safe condition for public travel. They cannot fold their arms and shut their eyes and say they have no notice. (Todd versus City of Troy, 61 New York 506). (Words in bracket supplied).

JOFEE CUENCA

215 De Roy vs. CA | **CORTES**, J
G.R. No. 80718, January 29, 1988 | 157 SCRA 757

FACTS

- The firewall of a burned-out building owned by petitioners collapsed and destroyed the tailoring shop occupied by the family of private respondents, resulting in injuries to private respondents and the death of Marissa Bernal, a daughter.
- Private respondents had been warned by petitioners to vacate their shop in view of its proximity to the weakened wall but the former failed to do so.
- The Regional Trial Court, rendered judgment finding petitioners guilty of gross negligence and awarding damages to private respondents.
- On appeal, the decision of the trial court was affirmed in toto by the Court of Appeals in a decision promulgated on August 17, 1987, a copy of which was received by petitioners on August 25, 1987.
- On September 9, 1987, the last day of the fifteen-day period to file an appeal, petitioners filed a motion for extension of time to file a motion for reconsideration, which was eventually denied by the appellate court in the Resolution of September 30, 1987.
- Petitioners filed their motion for reconsideration on September 24, 1987 but this was denied in the Resolution of October 27, 1987.

ISSUES & ARGUMENTS

- **W/N the CA erred in its decision especially when it held petitioner liable under Art 2190 of the Civil Code**

HOLDING & RATIO DECIDENDI

NO..

- The Court finds that the Court of Appeals did not commit a grave abuse of discretion when it denied petitioners' motion for extension of time to file a motion for reconsideration, directed entry of judgment and denied their motion for reconsideration.
- The court correctly applied the rule laid down in *Habaluyas Enterprises, Inc. v. Japzon* that the fifteen-day period for appealing or for filing a motion for reconsideration cannot be extended.
- This Court likewise finds that the Court of Appeals committed no grave abuse of discretion in affirming the trial court's decision holding petitioner liable under Article 2190 of the Civil Code, which provides that "the proprietor of a building or structure is responsible for the damage resulting from its total or partial collapse, if it should be due to the lack of necessary repairs.
- Nor was there error in rejecting petitioners argument that private respondents had the "last clear chance" to avoid the accident if only they heeded the warning to vacate the tailoring shop and , therefore, petitioners prior negligence should be disregarded, since the doctrine of "last clear chance," which has been applied to vehicular accidents, is inapplicable to this case.

TIN DINO

216 Gotesco Investment Corporation vs. Chatto | Davide, Jr.
G.R. No. 87584, June 16, 1992 | 210 SCRA 18

FACTS

- Gloria E. Chatto and her 15-year old daughter Lina went to see the movie "Mother Dear" at Superama I theater, owned by Gotesco Investment Corporation. They bought balcony tickets but even then were unable to find seats considering the number of people patronizing the movie. Hardly 10 minutes after entering the theater, the ceiling of the balcony collapsed and pandemonium ensued.
- The Chattos managed to crawl under the fallen ceiling and walk to the nearby FEU hospital where they were confined and treated for a day. Later, they had to transfer to UST hospital, and because of continuing pain in the neck, headache, and dizziness, had to even go to Illinois, USA for treatment.
- Gotesco tried to avoid liability by alleging that the collapse was due to force majeure. It maintained that its theater did not suffer from any structural or construction defect. The trial court awarded actual/compensatory and moral damages and attorney's fees in favor of the Chattos. The CA also found Gotesco's appeal to be without merit. Hence this petition.

ISSUES & ARGUMENTS

- **W/N the cause of the collapse of the balcony ceiling was force majeure**

HOLDING & RATIO DECIDENDI

COLLAPSE OF THE BALCONY CEILING NOT DUE TO FORCE MAJEURE. GOTESCO LIABLE.

- Gotesco's claim that the collapse of the ceiling of the theater was due to force majeure is not even founded on facts because its own witness, Mr. Ong, admitted that he could not give any reason for the collapse. Having interposed it as a defense, it had the burden to prove that the collapse was indeed caused by force majeure. It could not have collapsed without a cause. That Mr. Ong could not offer any explanation does not imply force majeure.
- Spanish and American authorities on the meaning of *force majeure*:

  Inevitable accident or casualty; an accident produced by any physical cause which is irresistible; such as lightning, tempest, perils of the sea, inundation, or earthquake; the sudden illness or death of a person. [Blackstone]

  The event which we could neither foresee nor resist; as, for example, the lightning stroke, hail, inundation, hurricane, public enemy, attack by robbers; [Esriche]

  Any accident due to natural causes, directly, exclusively, without human intervention, such as could not have been prevented by any kind of oversight, pains, and care reasonably to have been expected. [Bouvier]

- Gotesco could have easily discovered the cause of the collapse if indeed it were due to *force majeure*. The real reason why Mr. Ong could not explain the cause is because either he did not actually conduct an investigation or because he is incompetent (not an engineer, but an architect who had not even passed the government's examination).
- The building was constructed barely 4 years prior to the accident. It was not shown that any of the causes denominated as *force majeure* obtained immediately before or at the time of the collapse of the ceiling. Such defects could have been discovered if only Gotesco exercised due diligence and care in keeping and maintaining the premises. But, as disclosed by Mr. Ong, no adequate inspection of the premises before the date of the accident.
- That the structural designs and plans of the building were duly approved by the City Engineer and the building permits and certificate of occupancy were issued do not at all prove that there were no defects in the construction, especially as regards the ceiling, considering that no testimony was offered to prove that it was ever inspected at all.

- And even assuming arguendo that the cause of the collapse was due to *force majeure*, Gotesco would still be liable because the trial court declared it to be guilty of **gross** negligence. As gleaned from Bouvier's definition, for one to be exempt from any liability because of it, he must have exercised care, i.e., he should not have been guilty of negligence.

217 Juan F. Nakpil & Sons vs. CA| Quisumbing
G.R. No. L-47851, October 3, 1986 | 144 SCRA 596

FACTS

- Plaintiff, Philippine Bar Assoc decided to construct an office building in Intramuros.
- The construction was undertaken by the United Construction, Inc on an administration basis. The plans and specifications were prepared by 3rd-party defendants Juan Nakpil & Sons. The building was completed in June 1966.
- In the early morning of August 2, 1968, an usually strong earthquake hit Manila. The building sustained major damages. The front columns of the building buckled, causing the bldg to tilt forward dangerously.
- The tenants vacated the bldg and United Construction shored up the bldg at its expense as a temporary remedial measure.
- On Nov 29, 1968, plaintiff commenced this action for the recovery of damages arising from the partial collapse of the bldg against United Construction and its President as defendants. Defendants filed a 3rd-party complaint against the architects who prepared the plans and specifications.
- The parties referred the technical issues to a Commissioner who submitted a report finding that while the damage sustained by the PBA bldg was caused directly by the earthquake whose magnitude was 7.3, they were also caused by the defects in the plans & specs prepared by the architects, deviations from the plans by the contractors and failure of the latter to observe the requisite workmanship in the construction of the bldg and of the contractors, architects and even the owners to exercise the requisite degree of supervision in the construction of subject bldg.
- The Trial Court agreed w/ the findings of the Commissioner.
- The amicus curiae gave the opinion that the plans&specs of the Nakpils were not defective.
- United Construction and the Nakpils claimed that it was an act of God that caused the failure of the bldg which should exempt them from responsibility and not the defective construction, poor workmanship, deviations from plans&specs.

ISSUES & ARGUMENTS

W/N an act of God—an unusually strong earthquake—which caused the failure of the bldg, exempts the parties who are otherwise liable because of their negligence from liability?

HOLDING & RATIO DECIDENDI

- The applicable law governing the rights and liabilities of the parties herein is Article 1723 of the New Civil Code, which provides:

Art. 1723. The engineer or architect who drew up the plans and specifications for a building is liable for damages if within fifteen years from the completion of the structure the same should collapse by reason of a defect in those plans and specifications, or due to the defects in the ground. The contractor is likewise responsible for the damage if the edifice fags within the same period on account of defects in the construction or the use of materials of inferior quality furnished by him, or due to any violation of the terms of the contract. If the engineer or architect supervises the construction, he shall be solidarily liable with the contractor.

Acceptance of the building, after completion, does not imply waiver of any of the causes of action by reason of any defect mentioned in the preceding paragraph.
The action must be brought within ten years following the collapse of the building.

- On the other hand, the general rule is that no person shall be responsible for events which could not be foreseen or which though foreseen, were inevitable (Article 1174, New Civil Code).
- An act of God has been defined as an accident, due directly and exclusively to natural causes without human intervention, which by no amount of foresight, pains or care, reasonably to have been expected, could have been prevented.
- There is no dispute that the earthquake of August 2, 1968 is a fortuitous event or an act of God.
- To exempt the obligor from liability under Article 1174 of the Civil Code, for a breach of an obligation due to an "act of God," the following must concur: (a) the cause of the breach of the obligation must be independent of the will of the debtor; (b) the event must be either unforseeable or unavoidable; (c) the event must be such as to render it impossible for the debtor to fulfill his obligation in a normal manner; and (d) the debtor must be free from any participation in, or aggravation of the injury to the creditor.
- The principle embodied in the act of God doctrine strictly requires that the act must be one occasioned exclusively by the violence of nature and all human agencies are to be excluded from creating or entering into the cause of the mischief. When the effect, the cause of which is to be considered, is found to be in part the result of the participation of man, whether it be from active intervention or neglect, or failure to act, the whole occurrence is thereby humanized, as it were, and removed from the rules applicable to the acts of God.
- Thus, if upon the happening of a fortuitous event or an act of God, there concurs a corresponding fraud, negligence, delay or violation or contravention in any manner of the tenor of the obligation as provided for in Article 1170 of the Civil Code, which results in loss or damage, the obligor cannot escape liability.
- The negligence of the defendant and the third-party defendants petitioners was established beyond dispute both in the lower court and in the Intermediate Appellate Court. Defendant United Construction Co., Inc. was found to have made substantial deviations from the plans and specifications. and to have failed to observe the requisite workmanship in the construction as well as to exercise the requisite degree of supervision; while the third-party defendants were found to have inadequacies or defects in the plans and specifications prepared by them. As correctly assessed by both courts, the defects in the construction and in the plans and specifications were the proximate causes that rendered the PBA building unable

to withstand the earthquake of August 2, 1968. For this reason the defendant and third-party defendants cannot claim exemption from liability.

- In any event, the relevant and logical observations of the trial court as affirmed by the Court of Appeals that "while it is not possible to state with certainty that the building would not have collapsed were those defects not present, the fact remains that several buildings in the same area withstood the earthquake to which the building of the plaintiff was similarly subjected," cannot be ignored.

218 Juan F. Nakpil, et al. vs. CA | Paras
G.R. No. L-47851, April 15, 1988 |

FACTS

- Philippine Bar Association (PBA) decided to construct an office building corner of Aduana and Arzobispo Streets, Intramuros, Manila.
- For the plans, specifications and design, PBA contracted the services of third-party defendants-appellants Juan F. Nakpil & Sons and Juan F. Nakpil (NAKPILS for short).
- For the construction of the building, PBA contracted the services of United Construction Company, Inc. (UCCI) on an administration basis. The building was completed in June 1966.
- **August 2, 1968**: an unusually **strong earthquake** hit Manila and its environs and the **building** in question **sustained major damage**. The front columns of the building buckled causing the building to tilt forward dangerously. As a temporary remedial measure, the building was shored up (temporary support) by UCCI at the expense of P13,661.28.
- **November 29, 1968: PBA** commenced this **action for recovery of damages against UCCI** and its President and General Manager Juan J. Carlos, claiming that the collapse of the building was caused by defects in the construction. UCCI, in turn, filed a **third-party complaint against** the **NAKPILS**, alleging in essence that the collapse of the building was due to the defects in the architects" plans, specifications and design.
- At the pre-trial, the parties agreed to refer the technical issues in the case to a commissioner. Andres O. Hizon, a lawyer and structural engineer, was appointed by the Court as commissioner.
- PBA moved twice for the demolition of the building on the ground that it might topple down in case of a strong earthquake. The motions were opposed by the defendants and the matter was referred to the Commissioner.
- **April 30, 1979**: the building was **authorized to be demolished at the expense of PBA**, but not before **another earthquake** of high intensity on April 7, 1970 followed by other strong earthquakes on April 9 and 12, 1970, caused further damage to the property. The actual demolition was undertaken by the buyer of the damaged buiding.
- The Commissioner eventually submitted his report with the findings that **while the damage sustained by the PBA building was caused directly by the August 2, 1968 earthquake, they were also caused by:**
  - the defects in the plans and specifications prepared by the NAKPILS;
  - UNITED"s deviations from said plans and specifications and its failure to observe the requisite workmanship in the construction of the building;
  - and failure of PBA to exercise the requisite degree of supervision in the construction of the building.
- TC agreed with Commissione: UCCI liable (but not its President Ozaeta); CA: modified awarding damages to PBA, split cost to UCCI and NAKPIL. SC affirms and modifies, hence this MR by UCCI as the earlier MR of NAKPIL has already been denied.

ISSUES & ARGUMENTS

- **W/N UCCI is liable for damages for the collapse of the PBA building?**
  - **UCCI**:
    - collapse means disintegrate, and the bldg didn't
    - PBA was in active supervision it was held that such wanton negligence of both the defendant and the third-party defendants in effecting the plans, designs, specifications, and construction of the PBA building is equivalent to bad faith in the performance of their respective tasks
    - No bad faith on their part
    - 5M damages are excessive

HOLDING & RATIO DECIDENDI

There should be no question that the NAKPILS and UNITED are liable for the damages.

- It's true, as found by TC and CA, that the Aug 2 earthquake lead to partial collapse, but the subsequent earthquakes aggravated the damages leading to the need to demolish and the proximate cause was the defect in specs and construction

  Citing the case of Tucker v. Milan (49 O.G. 4379, 4380) as the case in point, the pertinent portion of the decision reads: " One who negligently creates a dangerous condition cannot escape liability for the natural and probable consequences thereof, although the act of a third person, or an act of God for which he is not responsible, intervenes to precipitate the loss."
- On supervision: the fact was, it was on the suggestion of Juan F. Nakpil, that the construction was undertaken on an administration basis.
- On Bad faith: TC and CA factually found that such wanton negligence of both NAKPIL and UCCI in effecting the plans, designs, specifications, and construction of the PBA building is equivalent to bad faith in the performance of their respective tasks.
- On 5M: decision was rendered 20 years later, and under the present cost of construction, such amount is a conservative estimate; atty's fees and indemnity for income loss were also reasonable.
- Note though that the 12 % interest was deleted since the collection suit was not from a loan or a forbearance.

Petition denied.

DIANE LIPANA

219 Gelisan vs. Alday | Padilla
G.R. No. L-30212, September 30, 1987 | 154 SCRA 388

FACTS

- Gelisan is the owner of a freight truck. He and Espiritu entered into a lease contract under which Espiritu hired the freight truck to haul rice, sugar, flour and fertilizer within the City of Manila for P18.00 per trip, provided that the load would not exceed 200 sacks. Moreover, the contract provided that Espiritu shall bear all losses and damages attending the carriage of goods.
- Petitioner Alday, a trucking operator who had known Espiritu as a truck operator had a contract to haul the fertilizers of Atlas Fertilizer Corporation. Espiritu offered the use of the freight truck he rented from Gelisan at 9 centavos per bag of fertilizer, which offer Alday accepted.
- Espiritu, however, failed to deliver the fertilizers to Atlas, as evidenced by the signatures in the way bill receipts which were not of any of the representatives or employees of Atlas. Since he could not be found, Alday reported the loss to the Manila Police Department, and Espiritu was later arrested and booked for theft.
- Subsequently, the freight truck of Gelisan was impounded by the police. When Gelisan tried to retrieve the truck, however, he could not produce the registration papers. Hence, he was made to pay a premium of P300 to the surety company.
- Meanwhile, Alday was compelled to pay for the 400 bags of fertilizer to Atlas Corp. Because of this, he filed a complaint against Espiritu and Gelisan. Espiritu was declared in default. Meanwhile, Gelisan denied responsibility, claiming that he had no contractual relations with Alday with regard to the fertilizers, and that the hauling/delivery and alleged misappropriation by Espiritu was entirely beyond his knowledge and control. Moreover, he invoked the provision in his contract with Espiritu which stated that the latter would be liable for all losses and damages in relation to the carriage of goods.
- CFI ruled the Espiritu alone was liable, since Gelisan was not privy to his contract with Alday. However, the CA held that Gelisan was likewise liable for being the registered owner of the truck. Hence this petition.

ISSUES & ARGUMENTS

- **W/N Gelisan is jointly and severally liable with Espiritu.**

HOLDING & RATIO DECIDENDI

GELISAN JOINTLY AND SEVERALLY LIABLE WITH ESPIRITU.

- The registered owner of a public service vehicle is responsible for damages that may arise from consequences incident to its operation or that may be caused to any of the passengers therein.
- The claim of Gelisan that he cannot be liable in view of the lease contract cannot be sustained because it had not been approved by the Public Service Commission. As such, it cannot be binding upon the public and third persons.
- Gelisan, is not however without recourse. He has the right to be indemnified by Eespiritu for the amount he may be required to pay as damages for the injury caused to Alday, since the lease contract is binding between the contracting parties.
- There is also no merit in Gelisan's contention that his liability is only subsidiary. The Court has consistently held that the registered owner/operator of a public service vehicle to be jointly and severally liable with the driver for damages incurred by passengers or third persons as a consequence of injuries sustained in the operation of said vehicles.

Petition DENIED.

CHRISSIE MORAL

220 Cruz vs. vs. **NLRC** | Paras
G.R. No. 98273 October 28, 1991 |

FACTS

- Clarita V. Cruz **w**ent abroad pursuant to an employment contract that she hoped would improve her future. Although a high school graduate, she agreed to work as a domestic helper in Kuwait
- After her two-year contract, she came back highly aggrieved and filed a complaint against EMS Manpower and Placement Services (Phil.) and its foreign principal, for underpayment of her salary and non-payment of her vacation leave.
- She alleged that her foreign employer treated her as a slave and required her to work 18 hours a day. She was beaten up and suffered facial deformity, head trauma and decreased sensation in the right portion of her body and was paid only $120 per month and her total salaries were given to her only three hours before her flight back to Manila.
- This was after the plane she was supposed to take had left and she had to stay in the airport for 24 hours before her employer finally heard her pleas and delivered her passport and ticket to her.
- In its answer and position paper, the private respondent raised the principal defense of settlement as evidenced by an Affidavit of Desistance, by virtue of which, POEA dismissed her claim, and such was upheld by NLRC
- Petitioner faults the POEA and the NLRC with grave abuse of discretion for having upheld the Affidavit of Desistance.
- Cruz rejects the settlement as having been obtained from her under duress and false pretenses
- Her contention is that she was inveigled into signing the Affidavit of Desistance without the assistance of counsel. The "Attorney" Alvarado who assisted her was not really a lawyer but only a helper in the Overseas Workers Welfare Administration. Atty. Biolena, on the other hand, merely acknowledged the document.
- Moreover, when she signed the affidavit, she was under the impression when she was agreeing to settle only her claim for one month unpaid vacation leave, as the wording of the receipt she issued on the same date showed, to wit: private respondent argues that the petitioner is bound by her Affidavit of Desistance

ISSUES & ARGUMENTS

- **W/N petitioner can still collect from her agency despite of the affidavit of desistance.**

HOLDING & RATIO DECIDENDI

Yes

- Not all waivers and quitclaims are invalid as against public policy. If the agreement was voluntarily entered into and represents a reasonable settlement, it is binding on the parties and may not later be disowned simply because of a change of mind. *It is only where there is clear proof that the waiver was wangled (engineered) from an unsuspecting or gullible person, or the terms of settlement are unconscionable on its face, that the law will step in to annul the questionable transaction.*
- The Court is convinced that the petitioner was not fully aware of the import and consequences of the Affidavit of Desistance when she executed it, allegedly with the assistance of counsel.
- Private respondent agency still had privity of contract with the petitioner, court has held in a long line of cases that the local recruiter is solidarily liable with the foreign principal for all damages sustained by the overseas worker in connection with his contract of employment.
- Such liability is provided for in Section 1, Rule II, Book II, of the POEA Rules and Regulations, which we have consistently sustained.
- This decision demonstrates once again the tenderness of the Court toward the worker subjected to the lawless exploitation and impositions of his employer. The protection of our overseas workers is especially necessary because of the inconveniences and even risks they have to undergo in their quest for a better life in a foreign land away from their loved ones and their own government.
- The domestic helper is particularly susceptible to abuse because she usually works only by herself in a private household unlike other workers employed in an open business concern who are able to share and discuss their problems and bear or solve them together.

221 Singapore Airlines Limited vs. CA | Romero
G.R. No. 107356, March 31, 1995 | 243 SCRA 143

FACTS

- Sancho Rayos was an overseas contract worker who had a renewed contract with the Arabian American Oil Company (Aramco).
- His employment contract allowed claim for reimbursement for amounts paid for excesss baggage of up to 50 Kg, as long as it is properly supported by receipt
- On April 13, 1980, Rayos took a Singapore Airlines flight to report for his new assignment, with a 50 Kg excess baggage for which he paid P4,147.50
- Aramco reimbursed said amount upon presentation of the excess baggage tickeht
- In December 1980, Rayos learned that he was one of several employees being investigated by Aramco for fraudulent claims
- He asked his wife Beatriz to seek a written confirmation from SIA that he indeed paid for an excess baggage of 50 Kg
- SIA notified Beatriz of their inability to issue the certification requested because their records showed that only 3 Kg were entered as excess and accordingly charged
- Beatriz, with the help of a lawyer, threatened SIA with a lawsuit to compel the latter to issue the certification requested
- On April 14, 1981, Aramco gave Rayos his travel documents without a return visa. (His employment contract was not renewed)
- Hence, Rayos sued SIA for damages, claiming it was responsible for the non-renewal of Rayos' employment contract with Aramco
- SIA filed a third-party complaint against PAL for reimbursement
- The court ruled in favor of plaintiff and ordered SIA to pay Rayos, and PAL to reimburse SIA
    - PAL's initial defense was a disclaimer of liability. It alleged that it was SIA who was liable for the tampering
    - On appeal, PAL had a turnaround and used as defense that Rayos has no cause of action against PAL since the non-renewal was brought about by his own inefficiency and not the tampering of the excess baggage ticket

ISSUES & ARGUMENTS

- **W/N PAL should be held liable for contribution or reimbursement to SIA of the damages paid to Rayos**

HOLDING & RATIO DECIDENDI

YES.

- The non-renewal of Rayos' employment contract was the natural and probable consequence of the separate tortrious acts of SIA and PAL
- Under Art. 2176 of the NCC, Rayo is entitled to be compensated for such damages
    - In an action upon a tort, defendant may file a third-party complaint against a joint tort-feasor for contribution
    - The responsibility of two or more persons, or tort-feasors, liable for a quasi-delict is joint and several, and the sharing as between such solidary debtors is pro-rata
    - It is but logica, fair, and equitable to require PAL to contribute to the amount awarded to the Rayos spouses and already paid by SIA, instead of totally indemnifying the latter
- <u>Procedural doctrines:</u>
    - A third-party defendant is allowed to set up in his answer the defenses with the third-party plaintiff (original defendant) has or may have to the plaintiff's claim
        - There are, however, special circumstances present in this case which preclude third-party defendant PAL from benefitting from the said principle
    - A third-party complaint involves an action separate and distinct from, although related to, the main complaint
    - A third-party defendant who feels aggrieved by some allegations in the main complaint should, aside from answering the third-party complaint, also answer the main complaint

CEO OCAMPO

222 De Guzman vs. NLRC |
G.R. No. 90856 Feb 1, 1996 |

FACTS

- De Guzman was the general manager of the Manila Office of Affiliated Machineries Agency, Ltd. (AMAL). He was impleaded for allegedly selling part of AMAL's assets and applying the proceeds of the same, as well as the remaining assets, to satisfy his own claims against the company.
- The NLRC ruled against petitioner granting award of damages and the order to return the assets of AMAL which he appropriated for being unwarranted. He assails the decision arguing that the same were beyond the jurisdiction of this Court to grant in a complaint for illegal dismissal in the absence of an employer-employee relationship between petitioner and respondent employees.

ISSUES & ARGUMENTS

- **W/N DE Guzman is liable for damages.**

HOLDING & RATIO DECIDENDI

Yes.

- In labor disputes, an EER is not essential. It is enough that there be a showing of a reasonable causal connection between the claim asserted and the employer-employee relations.
- On this score, it is evident that petitioner's acts of bad faith were offshoots of the termination of their employment relations with AMAL. The company's decision to close down its business impelled petitioner to act precipitately in appropriating the assets of AMAL, fearing perhaps that the same might not be enough to satisfy all the legitimate claims against it. Even if the petitioner had a legitimate claim with the corporation, his acts were in contravention of the law on preference of credits. The laborers claims may have been paid off had it not been for the acts of petitioner.

223 GSIS v. CA | Quisumbing
G.R. No. 101439 June 21, 1999| 308 SCRA 559

FACTS

- At around 7 PM, in Tabon-Tabon, Butuan City, a Chevrolet Truck, owned by NFA, driven by Guillermo Corbeta collided with a Toyota Tamaraw, a public utility vehicle, owned by Victory Line.
- As a result of the collision, the truck crossed over to the other lane, and fell into the ravine
- It was found out that the Truck was occupying the lane of the Tamaraw at the time of the collision and it was concluded by the RTC that if both vehicles had traveled in their respective lanes. He incident would not have happened
- 5 died from the accident, 10 were injured.
- 3 sets of heirs filed a case with the RTC for damages against NFA as owner of the Truck ,and GSIS as the insurer of NFA's motor vehicles
- RTC held NFA and GSIS solidarily liable for P109K
- GSIS rejects the decision since, according to the insurance contract, their maximum liability in case of death in a motor vehicle accident is only P12K per victim.

ISSUES & ARGUMENTS

- **W/N NFA and GSIS are solidarily liable.**
    - **Petitioner:** GSIS denies solidary liability because their liability ariss from different causes of action. GSIS is liable under an insurance contract, while NFA is liable under the laws of quasi-delict.

HOLDING & RATIO DECIDENDI

NO GSIS IS NOT SOLIDARILY LIABLE.

- The victims may proceed directly against the insurer for the indemnity, the third party liability is only up to the extent of the insurance policy and those required by law
- The direct liability of the insurer under indemnity contracts against third party liability does not mean that the insurer can be held liable in solidum with the insured and/or the other parties found at fault.
- For the liability of the insurer is based on contract; that of the insured carrier or vehicle owner is based on tort.
- The liability of GSIS based on insurance contract is direct, NOT SOLIDARY with that of NFA.
- The insurer could only be held liable up to the extent if what was provided for in the insurance contracts, therefore GSIS is only liable for P12K per victim (3 sets of heirs at P12K each, plus insurance for those who were injured)

224 Basilio vs. Bersamira | Quisumbing
March 17, 2000 |

FACTS

- Pronebo was a driver of a dump truck owned and registered in the name of petitioner Basilio.
- The former was found guilty of reckless imprudence, who then filed for an application for probation, so the judgment of the trial court finding Pronebo guilty of the crime became final and executory.
- Private respondents aggrieved by the incident filed for a motion for execution of the subsidiary civil liability of petitioner, and the trial court directed such issuance of writ of execution.
- Petitioner filed with the CA a petition for certiorari, which was denied, as well as an MR which suffered the same fate.
- Hence this case, alleging that the CA committed grave abuse of discretion (GAD), when he was not afforded due process when he was found subsidiarily liable for the civil liability of the accused Pronebo in the criminal case.

ISSUES & ARGUMENTS

- **W/N CA committed GAD.**

HOLDING & RATIO DECIDENDI

CA not guilty of GAD.

- Petitioner asserted that he was not given opportunity to be held by the RTC to prove the absence of employer-employee relationship (EER) between him and the driver-accused.
- There are two instances when the existence of an EER of an accused driver and the alleged vehicle owner may be determined. One during the criminal proceeding, and the other, during the proceeding for the execution of the judgment. In both instances, the owner should be given the opportunity to be heard, which is the essence of due process.
- In the case at bar, petitioner herein knew that the criminal case was filed against the accused since petitioner's truck was involved in the incident**. Petitioner did not intervene in the criminal proceedings, despite knowledge,** through counsel, that the prosecution adduced evidence to show employer-employee relationship. He had all his chances to intervene in the criminal proceedings, and prove that he was not the employer of the accused, but he chooses not to intervene at the appropriate time.

- Petitioner was also given the opportunity during the proceedings for the enforcement of judgment. He was asked by the trial court to make an opposition thereto, which he did, and where he properly alleged that there was no EER between him and accused.
- Also, counsel for private respondent filed and duly served on December 3, 1991, and December 9, 1991, respectively, a manifestation praying for the grant of the motion for execution. However, counsel for petitioner did not appear.
- Given the foregoing, the Court did not agree with petitioner that the trial court denied him due process of law. Neither can the respondent appellant court be faulted for sustaining the judgment and orders of the trial court.

Petition dismissed.

J.R. RUIZ

225 Velayo, etc. vs Shell Co., of the Philippines, et al. | Felix, J.
G.R. No. L-7817, October 31, 1956 | 100 PHIL 186

FACTS

- Commercial Air Lines (CALI) was supplied by Shell Co. of the Philippines Islands (defendant) ever since it started its operations
- As per the books of the defendant, it had reasons to believe that the financial condition of CALI was far from being satisfactory.
- The management of CALI informally convened its principal creditors on August 6, 1948, and informed them that CALI was in a state of insolvency and had to stop operations.
- The creditors present agreed to the formation of a working committee to continue the discussion of the payment of claims and preferences alleged by certain creditors, and it was further agreed that said working committee would supervise the preservation of the properties of the corporation while the creditors attempted to come to an under standing as a fair distribution of the assets among them.
- To this committee, Mr. Fitzgerald the credit manager of the defendant, Mr. Agcaoili of the National airports corporation and Atty Alexander Sycip were appointed.
- It was agreed upon that the creditors would not file suit to achieve a fair pro-rata distribution, although CALI announced that in the event of non-agreement, it was to file for insolvency proceedings.
- However, on the very day of the meeting of the working committee, which Mr. Fitzgerald attended, the defendant effected a telegraphic transfer of its credit against CALI to the American corporation Shell Oil Company, Inc., assigning its credit, which was subsequently followed by a deed of assignment of credit dated August 10, 1948.
- The American corporation then sued CALI in the superior court of californinia, USA for the amount of the credit thus assigned. And a writ of attachment was issued against a C-54 PLANE in Ontario International Airport. And on January 5, 1949, a judgment by default had been issued by the American court against CALI.
- The stockholders of CALI were unaware of this.
- When the suit in the american court was found out, on the first weeks of September 1948, CALI immediately file for voluntary insolvency and the court issued the order of insolvency accordingly on the same day. The court appointed Mr. Velayo as Assignee.
- On December 17, 1948, Velayo filed for a writ of injuction to stop the foreign court from prosecuting the claim, and in the alternative, he prayed for damages in double the amount of the plane which was attached.
- The plaintiff having failed to restrain the progress of the attachment suit in the US by denial of the application of the writ of injuction and the consequences on execution of the C-54 plane in the state of California, USA, he confines his action to the recovery of damages against the defendant.
- The complaint was dismissed, hence this petition.

ISSUES & ARGUMENTS

- **W/N the defendant acted in bad faith and btrayed the trust and confidence of the other creditors of CALI.**
- **W/N by reason of the betrayal,, defendant may be made to answer for the damages prayed for by the plaintiff.**

HOLDING & RATIO DECIDENDI

- Moreover, we might say that DEFENDANT could not have accomplished the transfer of its credit to its sister corporation if all the shell companies throughout the wworld would not have a sort of union, relation or understanding among themselves to come to the aid of each other. The telegraphic transfer made without the knowledge and at the back of the other creditors of CALI may be a shrewd and surprise move that enabled the DEFENDANT to collect almost allif not the entire amount of its credit, but the Court of Justice cannot countenance cuch attitude at all, and much less a foreign corporation to the detriment of our Government and local business.
  - Chapter 2 of the preliminary title of the civil code on human relations, proveides the following;

    Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
  - It maybe said that this article only contains a mere declaration of principles and while such statement is essentially correct, yet We find that such declaration is implemented by Article 21and the sequence of the same chapter, which prescribe the following:

    Article 21. Any person who wilfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

226 Filinvest Credit Corporation v. Court of Appeals | Davide, Jr.
G.R. No. 115902 September 27, 1995| 248 SCRA 549

FACTS

- Private Respondents Spouses Tadiaman bought a truck from Jordan Enterprises in installments. Respondents issued a PN worth P196,680.00 payable in 24 months in favor of Jordan Enterprises and executed a chattel mortgage over the truck to secure the payment of the PN. Jordan then assigned their rights and interests over the instruments to Filinvest Finance and Leasing Corp., which in turn assigned the same to petitioner corporation.
- When respondents defaulted, petitioner filed an action for replevin and damages against them. Upon the issuance of a writ of replevin, the truck was seized not by the sheriff, but by employees of petitioner misrepresenting themselves as special sheriffs of the court.
- The respondents filed a counterbond for the return of the truck, but this was not immediately implemented because the respondents were met with delaying tactics of the petitioner, and when they finally recovered the truck, they found the same to be "cannibalized". This is the reason why respondents filed a (counter)claim for damages against petitioner.
- As regards the counterclaim, the RTC ruled in favor of respondents. CA affirmed.

ISSUES & ARGUMENTS

- **W/N petitioner is liable for damages to respondents.**

HOLDING & RATIO DECIDENDI

YES, PETITITIONER IS LIABLE.

- Court of Appeals correctly ruled that Filinvest is liable for damages not because it commenced an action for replevin to recover possession of the truck prior to its foreclosure, but because of the *manner* it carried out the seizure of the vehicle. It was not the sheriff or any other proper officer of the trial court who implemented the writ of replevin. Because it was aware that no other person can implement the writ, Filinvest asked the trial court to appoint a special sheriff. Yet, it used its own employees who misrepresented themselves as deputy sheriffs to seize the truck without having been authorized by the court to do so.
- Upon the default by the mortgagor in his obligations, Filinvest, as a mortgagee, had the right to the possession of the property mortgaged preparatory to its sale in a public auction. However, for employing subterfuge in seizing the truck by misrepresenting its employees as deputy sheriffs and then hiding and cannibalizing it, Filinvest committed bad faith in violation of Article 19 of the Civil Code which provides: Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
- In common usage, *good faith* is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation. It consists of the honest intention to abstain from taking an unconscionable and unscrupulous advantage of another.
- The petitioner's acts clearly fall within the contemplation of Articles 19 and 21 of the Civil Code. The acts of fraudulently taking the truck, hiding it from the private respondents, and removing its spare parts show nothing but a willful intention to cause loss to the private respondents that is punctuated with bad faith and is obviously contrary to good customs. Thus, the private respondents are entitled to the moral damages they prayed for, for under Article 2219 of the Civil Code, moral damages may be recovered in cases involving acts referred to in Article 21 of the same Code.

JOHN FADRIGO

227 De Guzman vs. NLRC | Bengzon
G.R. No. 90856, February 1, 1996|253 SCRA 46

FACTS

- Petitioner was the general manager of the Manila Office of Affiliated Machineries Agency, Ltd. (AMAL) and one of the respondents in a complaint for illegal dismissal and non-payment of statutory benefits filed by the respondents who were former employees of AMAL
- The employees initiated the complaint following AMAL's refusal to pay their monetary claims after AMAL decided to cease its operations in 1986
- De Guzman was impleaded for allegedly selling part of AMAL's assets and applying the proceeds of the same, as well as the remaining assets, to satisfy his own claims against the company and formed a new company named Susarco, Inc., which is engaged in the same line of business with the former clients of AMAL
- The Labor Arbiter rendered judgment and held De Guzman jointly and severally liable with AMAL for respondent employees' claims
- Upon appeal to the National Labor Relations Commission, the decision was affirmed in toto
- Not satisfied, De Guzman proceeded to this Court on certiorari assailing the aforementioned decision and claiming grave abuse of discretion
- The SC modified the decision of the NLRC and absolved De Guzman from his solidary liability for respondent employees' claims based on a finding that as mere managerial employee, he had no participation in the decision to cease operations and terminate the services of respondent employees which was the exclusive responsibility of AMAL alone. Nevertheless, for having acted in bad faith by appropriating the assets of AMAL to satisfy his own claims to the prejudice of respondent employees' pending claims, petitioner was held directly liable for moral and exemplary damages based on the provisions of Articles 19, 21, 2219(10) and 2229 of the Civil Code
- Hence, this MR assailing the award of damages and the order to return the assets of AMAL which he appropriated for being unwarranted, arguing that the same were beyond the jurisdiction of this Court to grant in a complaint for illegal dismissal in the absence of an employer-employee relationship between petitioner and respondent employees

ISSUES & ARGUMENTS

- **W/N De Guzman may be held liable for damages.**

HOLDING & RATIO DECIDENDI

DE GUZMAN LIABLE TO PAY DAMAGES.

- While it is conceded that no employer-employee ties existed between the petitioner and respondent employees, this does not preclude this Court from adjudging him liable for damages. In labor disputes like the instant suit, it is not required that the claim for relief should directly result from an employer-employee relationship. It suffices that there be a showing of a reasonable causal connection between the claim asserted and the employer-employee relations
- Respondent employees could have been afforded relief in their suit for illegal dismissal and non-payment of statutory benefits were it not for petitioner's unscrupulous acts of appropriating for himself the assets of AMAL which rendered the satisfaction of respondent employees' claims impossible. By taking undue advantage of his position as general manager of AMAL, petitioner was able to facilitate the consummation of his acts as he had access over the company's assets
- On this score, it is evident that petitioner's acts of bad faith were offshoots of the termination of their employment relations with AMAL. The company's decision to close down its business impelled petitioner to act precipitately in appropriating the assets of AMAL, fearing perhaps that the same might not be enough to satisfy all the legitimate claims against it.
- Petitioner's contention that his application of AMAL's assets to satisfy his own claims against the company is nothing more than a simple legal compensation or set-off deserves scant consideration as it was done without deference to the legitimate claims of respondent employees and other creditors of AMAL, in contravention of the provisions on concurrence and preference of credits under the Civil Code. Although his legitimate claims are not disputed, the same, however, are properly cognizable at the proceedings for AMAL's dissolution.
- Thus, we affirm our previous conclusion that although the question of damages arising from petitioner's bad faith has not directly sprung from the illegal dismissal, it is clearly intertwined therewith. Accordingly, petitioner's bad faith having been sufficiently established, the award of damages against him and the order for him to return the assets of AMAL which he appropriated, or their value, are in order

The motion for reconsideration is hereby DENIED for lack of merit. The denial is final.

KATH MATIBAG

228 UE Vs. Jader

FACTS

- Plaintiff was enrolled in the defendants' College of Law from 1984 up to 1988. In the first semester of his last year (School year 1987-1988), he failed to take the regular final examination in Practice Court I for which he was given an incomplete grade
- He enrolled for the second semester as fourth year law student in UE and on **February 1, 1988** he filed an application for the removal of the incomplete grade given him by Professor Ortega which was approved by Dean Tiongson after payment of the required fee. **He took the examination on March 28, 1988**.
- On **May 30, 1988**, **Professor Ortega submitted his grade**. It was a grade of five (5), a **failing grade.**
- **In the meantime**, the Dean and the Faculty Members of the College of Law met to deliberate on who among the fourth year students should be allowed to graduate. The plaintiff's name appeared in the Tentative List of Candidates for graduation for the Degree of Bachelor of Laws (LL.B) as of Second Semester (1987-1988) with the following annotation:

  JADER ROMEO A.
  Def. Conflict of Laws — x-1-87-88, Practice Court I Inc., 1-87-88 C-1 to submit transcript with S.O.
- The name of the plaintiff appeared as one of the candidates for graduation.
- At the foot of the list of the names of the candidates there appeared however the following annotation:

  This is a tentative list Degrees will be conferred upon these candidates who satisfactorily complete requirements as stated in the University Bulletin and as approved of the Department of Education, Culture and Sports

- The plaintiff attended the grad ceremonies **on 16th of April 1988** and during the program of which he went up the stage when his name was called, escorted by her (*sic*) mother and his eldest brother who assisted in placing the Hood, and his Tassel was turned from left to right, and he was thereafter handed by Dean Celedonio a rolled white sheet of paper symbolical of the Law Diploma. His relatives took pictures of the occasion. He tendered a blow-out that evening which was attended by neighbors, friends and relatives who wished him good luck in the forthcoming bar examination. There were pictures taken too during the blow-out
- He thereafter prepared himself for the bar examination. He took a leave of absence without pay from his job from April 20, 1988 to September 30, 1988 and enrolled at the pre-bar review class in Far Eastern University. Having learned of the deficiency he dropped his review class and was not able to take the bar examination.
- Respondent sued petitioner for damages alleging that he suffered moral shock, mental anguish, serious anxiety, besmirched reputation, wounded feelings and sleepless nights when he was not able to take the 1988 bar examinations arising from the latter's negligence. He prayed for an award of moral and exemplary damages, unrealized income, attorney's fees, and costs of suit.

ISSUES & ARGUMENTS

- **W/N UE liable for damages**
  - **Jader: UE misled me through their negligence.**
  - **UE: We never misled you. We have good faith.**

HOLDING & RATIO DECIDENDI

YES, UE liable for damages.

- When a student is enrolled in any educational or learning institution, a contract of education is entered into between said institution and the student. The professors, teachers or instructors hired by the school are considered merely as agents and administrators tasked to perform the school's commitment under the contract.
- Petitioner, in belatedly informing respondent of the result of the removal examination, particularly at a time when he had already commenced preparing for the bar exams, cannot be said to have acted in good faith.
- Absence of good faith must be sufficiently established for a successful prosecution by the aggrieved party in a suit for abuse of right under Article 19 of the Civil Code.
- Good faith connotes an honest intention to abstain from taking undue advantage of another, even though the forms and technicalities of the law, together with the absence of all information or belief of facts, would render the transaction unconscientious.
- It is the school that has access to those information and it is only the school that can compel its professors to act and comply with its rules, regulations and policies with respect to the computation and the prompt submission of grades. Students do not exercise control, much less influence, over the way an educational institution should run its affairs, particularly in disciplining its professors and teachers and ensuring their compliance with the school's rules and orders. Being the party that hired them, it is the school that exercises general supervision and exclusive control over the professors with respect to the submission of reports involving the students' standing.
- The college dean is the senior officer responsible for the operation of an academic program, enforcement of rules and regulations, and the supervision of faculty and student services. He must see to it that his own professors and teachers, regardless of their status or position outside of the university, must comply with the rules set by the latter. The negligent act of a professor who fails to observe the rules of the school, for instance by not promptly submitting a student's grade, is not only imputable to the professor but is an act of the school, being his employer.

- Considering further, that the institution of learning involved herein is a university which is engaged in legal education, it should have practiced what it inculcates in its students, more specifically the principle of good dealings enshrined in Articles 19 and 20 of the Civil Code which states:

  Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
  Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

- Art. 19 was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide specifically in statutory law.[8] In civilized society, men must be able to assume that others will do them no intended injury — that others will commit no internal aggressions upon them; that their fellowmen, when they act affirmatively will do so with due care which the ordinary understanding and moral sense of the community exacts and that those with whom they deal in the general course of society will act in good faith. The ultimate thing in the theory of liability is justifiable reliance under conditions of civilized society.[9] Schools and professors cannot just take students for granted and be indifferent to them, for without the latter, the former are useless.
- Educational institutions are duty-bound to inform the students of their academic status and not wait for the latter to inquire from the former. The conscious indifference of a person to the rights or welfare of the person/persons who may be affected by his act or omission can support a claim for damages. Want of care to the conscious disregard of civil obligations coupled with a conscious knowledge of the cause naturally calculated to produce them would make the erring party liable.
- Petitioner ought to have known that time was of the essence in the performance of its obligation to inform respondent of his grade. It cannot feign ignorance that respondent will not prepare himself for the bar exams since that is precisely the immediate concern after graduation of an LL.B. graduate. It failed to act seasonably. Petitioner cannot just give out its student's grades at any time because a student has to comply with certain deadlines set by the Supreme Court on the submission of requirements for taking the bar. Petitioner's liability arose from its failure to promptly inform respondent of the result of an examination and in misleading the latter into believing that he had satisfied all requirements for the course.
- **It is apparent from the testimony of Dean Tiongson that defendant-appellee University had been informed during the deliberation that the professor in Practice Court I gave plaintiff-appellant a failing grade. Yet, defendant-appellee still did not inform plaintiff-appellant of his failure to complete the requirements for the degree nor did they remove his name from the tentative list of candidates for graduation. Worse, defendant-appellee university, despite the knowledge that plaintiff-appellant failed in Practice Court I, *again* included plaintiff-appellant's name in the "tentative list of candidates for graduation which was prepared after the deliberation and which became the basis for the commencement rites program. Dean Tiongson reasons out that plaintiff-appellant's name was allowed to remain in the tentative list of candidates for graduation in the hope that the latter would still be able to remedy the situation in the remaining few days before graduation day. Dean Tiongson, however, did not explain how plaintiff appellant Jader could have done something to complete his deficiency if defendant-appellee university did not exert any effort to inform plaintiff-appellant of his failing grade in Practice Court I.**

229 Sea Commercial vs. CA |
G.R. 122823 November 25, 1999 |

FACTS

- SEACOM is a corporation engaged in the business of selling and distributing agricultural machinery, products and equipment. On September 20, 1966, SEACOM and JII entered into a dealership agreement whereby SEACOM appointed JII as its exclusive dealer in the City and Province of Iloilo. Tirso Jamandre executed a suretyship agreement binding himself jointly and severally with JII to pay for all obligations of JII to SEACOM. The agreement was subsequently amended to include Capiz in the territorial coverage and to make the dealership agreement on a non-exclusive basis. In the course of the business relationship arising from the dealership agreement, JII allegedly incurred a balance of ₱18,843.85 for unpaid deliveries, and SEACOM brought action to recover said amount plus interest and attorney's fees.
- JII filed an Answer denying the obligation and interposing a counterclaim for damages representing unrealized profits when JII sold to the Farm System Development Corporation (FSDC) twenty one (21) units of Mitsubishi power tillers. In the counterclaim, JII alleged that as a dealer in Capiz, JII contracted to sell in 1977 twenty-four (24) units of Mitsubishi power tillers to a group of farmers to be financed by said corporation, which fact JII allegedly made known to petitioner, but the latter taking advantage of said information and in bad faith, went directly to FSDC and dealt with it and sold twenty one (21) units of said tractors, thereby depriving JII of unrealized profit of eighty-five thousand four hundred fifteen and 61/100 pesos (₱85,415.61).

ISSUES & ARGUMENTS

- **W/N SEACOM acted in bad faith when it competed with its own dealer as regards the sale of farm machineries to FSDC**

HOLDING & RATIO DECIDENDI

- "Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith."
- Article 19 was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide specifically in statutory law. If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. The absence of good faith is essential to abuse of right. Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs.
- While Article 19 may have been intended as a mere declaration of principle, the "cardinal law on human conduct" expressed in said article has given rise to certain rules, e.g. that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.
- Clearly, the bad faith of SEACOM was established. By appointing as a dealer of its agricultural equipment, SEACOM recognized the role and undertaking of JII to promote and sell said equipment. Under the dealership agreement, JII was to act as a middleman to sell SEACOM's products, in its area of operations, i.e. Iloilo and Capiz provinces, to the exclusion of other places, to send its men to Manila for training on repair, servicing and installation of the items to be handled by it, and to comply with other personnel and vehicle requirements intended for the benefit of the dealership After being informed of the demonstrations JII had conducted to promote the sales of SEACOM equipment, including the operations at JII's expense conducted for five months, and the approval of its facilities (service and parts) by FSDC, SEACOM participated in the bidding for the said equipment at a lower price, placing itself in direct competition with its own dealer. The actuations of SEACOM are tainted by bad faith.
- Even if the dealership agreement was amended to make it on a non-exclusive basis, SEACOM may not exercise its right unjustly or in a manner that is not in keeping with honesty or good faith; otherwise it opens itself to liability under the abuse of right rule embodied in Article 19 of the Civil Code above-quoted. This provision, together with the succeeding article on human relation, was intended to embody certain basic principles "that are to be observed for the rightful relationship between human beings and for the stability of the social order." What is sought to be written into the law is the pervading principle of equity and justice above strict legalism.

J.C. LERIT

230 Andrade v CA □ De Leon
G.R. No. 127932. December 7, 2001

FACTS

- Virgina Andrade was appointed as permanent teacher in the Division of City Schools, Manila. She was initially assigned as English teacher at the Araullo High School, Manila.
- Two days before the opening of classes for the school year 1985-1986, Andrade inquired from the English Department Head, Virginia E. Fermin, about her teaching load, and in response thereto, she was referred to Dominador Wingsing, Principal of the Araullo High School. However, a subsequent visit by Andrade to Wingsing on June 19, 1985 yielded negative results as the latter merely referred back the Andrade to English Department Head Fermin.
- Irked by the manner by which she was being referred back and forth from one person to another, the Andrade wrote to Arturo F. Coronel, Assistant Schools Division Superintendent of the Division of City Schools, Manila, requesting that she be given a teaching assignment. In an indorsement, addressed to Superintendent Coronel, Wingsing cited three (3) reasons why Andrade Andrade was not given any teaching load: (1) drastic drop of enrollment; (2) she was declared an excess teacher; and (3) she ranked lowest in her performance rating. Hence Superintendent Coronel informed the Andrade, through Wingsing, that the Andrade would be designated to a non-teaching position in the meantime that arrangements were being made for her eventual reassignment to other schools where her services may be needed.
- Andrade made a request to Benedicto M. Hormilla, Chief of Personnel Services of the Division of City Schools of Manila, that she be transferred from Araullo High School to Ramon Magsaysay High School in Manila, and said request was favorably acted upon by Superintendent Coronel. Andrade then reported for work at the Ramon Magsaysay High School, but in a letter of the same date of first day at such school, Andrade relayed that she is withdrawing her request for transfer and indicated her intention of remaining at the Araullo High School. Thereafter, Andrade discovered that her name has been deleted from the regular monthly payroll and transferred to a special voucher list.
- Feeling aggrieved, Andrade filed an action for damages with mandatory injunction against Wingsing, English Department Head Fermin and Assistant Schools Division Superintendent Coronel before the RTC. Andrade claimed that Wingsing, Fermin and Coronel conspired in depriving her of her teaching load and humiliated her further by excluding her name from the regular monthly payroll.
- In his answer, Wingsing disclaimed any intention to maliciously deprive the Andrade of her teaching load. He explained that the decrease in the enrollment for the school year 1985-1986 necessitated that a number of teachers be declared in a list as excess teachers, and as Andrade had the lowest performance rating, she was included in the said list. Nonetheless, Wingsing asserted that due consideration was extended to Andrade upon instruction from Superintendent Coronel to provide her with a non-teaching job in the meantime that her next assignment was being determined. However, Andrade declined his offer to handle Developmental Reading lessons and to function as an Assistant Librarian. As for the deletion of Andrade's name from the regular monthly payroll, Wingsing declared that he and his co-defendants were merely exercising and doing their duties in accordance with the existing school policies, rules and regulations.

ISSUES & ARGUMENTS

- **W/N Wingsing, Fermin and Coronel are liable for damages against Andrade**

HOLDING & RATIO DECIDENDI

NO.

- It must be noted that the present petition originated from an action for damages for alleged withholding of petitioner's teaching load and deletion of her name from the regular monthly payroll caused by Wingsing, Fermin and Coronel. From the initial pleading and the testimony of petitioner Andrade, it appeared that her claim for damages was based on Article 19 of the New Civil Code which provides that: "Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."
- While Article 19 of the New Civil Code may have been intended as a declaration of principle, the "cardinal law on human conduct" expressed in said article has given rise to certain rules, e.g., that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to civil liability. The elements of abuse of one's rights under the said Article 19 are the following: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.[19] In this regard, it appeared that the complaint of petitioner Andrade failed to meet the second and third requirements.
- A careful review of the records reveals that the declaration of petitioner as an excess teacher was not motivated by any personal desire on the part of respondent Wingsing to cause her undue misery or injury, but merely the result of the valid exercise of authority. The decrease in the enrollment for the school year 1985-1986 in the Araullo High School resulted in a number of teachers being declared as excess teacher.
- In exercising his judgment, the evidence reveals that respondent Wingsing was not at all dictated by whim or fancy, nor of spite against the petitioner but was rather guided by the following factors: qualification to teach, seniority, teaching performance and attitude towards the school community. For two (2) consecutive years petitioner received an unsatisfactory rating, the lowest, from two (2) English Department Heads. Andrade was therefore correctly declared as an excess teacher, as rightfully recommended by Wingsing, the latter being the school principal. It was a judgment made in good faith.

JON LINA

231 HSBC vs. Catalan |Austria Martinez
G.R. No. 159590 & 159591 October 18, 2004|

FACTS

- Thomson drew 5 checks payable to Catalan in the total amount of HK$3.2 million. Catalan presented these checks to HSBC [Bank]. The checks were dishonored for having insufficient funds. Thomson demanded that the checks be made good because he, in fact, had sufficient funds.
- Catalan knowing that Thomson had communicated witht the Bank, asked HSBC Bank to clear the checks and pay her the said amount. HSBC did not heed her.
- Thomson died but Catalan was not paid yet. The account was transferred to HSBC [Trustee]. Catalan then requested Trustee to pay her. They still refused and even asked her to submit back to them the original checks for verification.
- Catalan and her lawyer went to Hongkong on their own expense to personally submit the checks. They still were not honored.
- So Catalan now is suing HSBC to collect her HK$3.2M.

ISSUES & ARGUMENTS

- **W/N HSBC Bank and Trustee are liable to pay damages to Catalan on the ground of Abuse of right under Article 19 of the Civil Code**
  - **Petitioner**: HSBC claims that they are a foreign corporation not doing business in the Philippines thus the courts do not have jurisdiction over them. Moreover, there is no cause of action because it was not alleged in the that there was abuse of right.
  - **Respondent:** Catalan claims that although HSBC has the right to examine the checks, they did so in bad faith becase they required her to submit all sorts of documents and yet even upon showing that the checks were good, the Bank still refused to relaease the money to her. There was abuse of right on the part of the Bank.

HOLDING & RATIO DECIDENDI

THERE IS CAUSE OF ACTION, IT NEED NOT BE EXPRESSLY STATED, THE FACTS SUFFICIENTLY DESCRIBE THAT THERE WAS AN ABUSE OF RIGHT.

- Article 19 of the Civil Code speaks of the fundamental principle of law and human conduct that a person "must, in the exercise of his rights and in the performance of his duties, act with justice, give every one his due, and observe honesty and good faith." It sets the standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties.
- When a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be held responsible. But a right, though by itself legal because recognized or granted by law as such, may nevertheless become the source of some illegality. A person should be protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith; but not when he acts with negligence or abuse.
- There is an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another.
- Thus, in order to be liable under the abuse of rights principle, three elements must concur, to wit: (a) that there is a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.
- HSBANK is being sued for unwarranted failure to pay the checks notwithstanding the repeated assurance of the drawer Thomson as to the authenticity of the checks and frequent directives to pay the value thereof to Catalan. Her allegations in the complaint that the gross inaction of HSBANK on Thomson's instructions, as well as its evident failure to inform Catalan of the reason for its continued inaction and non-payment of the checks, smack of insouciance on its part, are sufficient statements of clear abuse of right for which it may be held liable to Catalan for any damages she incurred resulting therefrom. HSBANK's actions, or lack thereof, prevented Catalan from seeking further redress with Thomson for the recovery of her claim while the latter was alive.

232 NAPOCOR vs. CA | Carpio
G.R. No. 106804, August 12, 2004|

FACTS

- National Power Corporation (NPC) is a public corporation created to generate geothermal, hydroelectric, nuclear and other power and to transmit electric power nationwide and is authorized by law to acquire property and exercise the right of eminent domain
- Pobre is the owner of a parcel of land to which he developed into a resort-subdivision, named as "Tiwi Hot Springs Resort Subdivision" (the Property) duly approved by the CFI
- The Commission on Volcanology certified that thermal mineral water and steam were present beneath the Property and that it is suitable for domestic use and potentially for commercial or industrial use
- Because of this, NPC became involved with the Property in 3 instances
    - Leased 11 of the lots in the approved subdivision plan for one year
    - Filed its 1st expropriation case against Pobre, where NPC began its drilling and construction operations and pending its case, dumped waste materials that altered the topography of some portions of the Property
    - Filed its 2nd expropriation case against Pobre to acquire additional parts of the Property, this is the subject of the case
- By virtue of the writ of possession issued by the trial court, upon NPC's deposit of the equivalent FMV of the lots covered by the 2nd expropriation case, NPC entered the property
- Pobre filed a motion to dismiss the 2nd expropriation case and claimed damages due to NPC's actions
- Thereafter, NPC also filed a motion to dismiss the 2nd expropriation case on the ground that it found an alternative site and it abandoned the Property
- The trial court granted NPC's motion and allowed Pobre to adduce evidence, to which the trial court admitted because NPC failed to object
- The trial court issued an Order in favor of Pobre; Motion for Reconsideration denied
- On appeal, the Court of Appeals upheld the decision of the trial court; Motion for Reconsideration denied. Hence, this petition

ISSUES & ARGUMENTS

- **W/N Pobre is entitled to the damages claimed for the dumping of waste materials by NPC which altered the topography of the Propety supposedly used for a resort-subdivision**

HOLDING & RATIO DECIDENDI

POBRE IS ENTITLED TO THE DAMAGES CLAIMED.

- Ordinarily, the dismissal of the expropriation case restores possession of the expropriated land to the landowner. However, when possession of the land cannot be turned over to the landowner because it is neither convenient nor feasible anymore to do so, the only remedy available to the aggrieved landowner is to demand payment of just compensation
- In this case, the Court agreed with the trial and appellate courts that it is no longer possible and practical to restore possession of the Property to Pobre. The Property is no longer habitable as a resort-subdivision. The Property is worthless to Pobre and is now useful only to NPC. Pobre has completely lost the Property as if NPC had physically taken over the entire 68,969 square-meter Property
- This case ceased to be an action for expropriation when NPC dismissed its complaint for expropriation. Since this case has been reduced to a simple case of recovery of damages, the provisions of the Rules of Court on the ascertainment of the just compensation to be paid were no longer applicable. A trial before commissioners, for instance, was dispensable
- *From the beginning, NPC should have initiated expropriation proceedings for Pobre's entire 68,969 square-meter Property. NPC did not. Instead, NPC embarked on a piecemeal expropriation of the Property. Even as the second expropriation case was still pending, NPC was well aware of the damage that it had unleashed on the entire Property. NPC, however, remained impervious to Pobre's repeated demands for NPC to abate the damage that it had wrought on his Property*
- *NPC's abuse of its eminent domain authority is appalling.* However, we cannot award moral damages because Pobre did not assert his right to it. The Court also cannot award attorney's fees in Pobre's favor since he did not appeal from the decision of the Court of Appeals denying recovery of attorney's fees
- *The lesson in this case must not be lost on entities with eminent domain authority. Such entities cannot trifle with a citizen's property rights. The power of eminent domain is an extraordinary power they must wield with circumspection and utmost regard for procedural requirements.* Thus, we hold NPC liable for exemplary damages of P100,000. Exemplary damages or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages

Appealed decision AFFIRMED WITH MODIFICATION

KATH MATIBAG

233 Carpio v. Valmonte | Tinga, J.
G.R. No. 151866. September 9, 2004

FACTS

- Respondent Leonora Valmonte is a wedding coordinator. Michelle del Rosario and Jon Sierra engaged her services for their church wedding. On that day, Valmonte went to the Manila Hotel where the bride and her family were billeted. When she arrived at the Suite, several persons were already there including the bride. Among those present was petitioner Soledad Carpio, an aunt of the bride who was preparing to dress up for the occasion.
- After reporting to the bride, Valmonte went out of the suite carrying the items needed for the wedding rites and the gifts from the principal sponsors. She proceeded to the Maynila Restaurant where the reception was to be held.
- She went back to the suite after, and found several people lstaring at her when she entered. . It was at this juncture that petitioner allegedly uttered the following words to Valmonte: *"Ikaw lang ang lumabas ng kwarto, nasaan ang dala mong bag? Saan ka pumunta? Ikaw lang and lumabas ng kwarto, ikaw ang kumuha."* Petitioner then ordered one of the ladies to search Valmonte's bag. It turned out that after Valmonte left the room to attend to her duties, petitioner discovered that the pieces of jewelry which she placed inside the comfort room in a paper bag were lost. Hotel Security was later called.
- A few days after the incident, petitioner received a letter from Valmonte demanding a formal letter of apology which she wanted to be circulated to the newlyweds' relatives and guests to redeem her smeared reputation as a result of petitioner's imputations against her. Petitioner did not respond to the letter. Thus, on 20 February 1997, Valmonte filed a suit for damages against petitioner.

ISSUES & ARGUMENTS

- **W/N respondent Valmonte is entitled to damages**

HOLDING & RATIO DECIDENDI

Valmonte is entitled to damages.

- To warrant recovery of damages, there must be both a right of action, for a wrong inflicted by the defendant, and the damage resulting therefrom to the plaintiff. Wrong without damage, or damage without wrong, does not constitute a cause of action.
- In the our law on human relations, the victim of a wrongful act or omission, whether done willfully or negligently, is not left without any remedy or recourse to obtain relief for the damage or injury he sustained. Incorporated into our civil law are not only principles of equity but also universal moral precepts which are designed to indicate certain norms that spring from the fountain of good conscience and which are meant to serve as guides for human conduct. First of these fundamental precepts is the principle commonly known as "abuse of rights" under Article 19 of the Civil Code. It provides that *"Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith."* To find the existence of an abuse of right, the following elements must be present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent or prejudicing or injuring another. When a right is exercised in a manner which discards these norms resulting in damage to another, a legal wrong is committed for which the actor can be held accountable.
- The following provisions Complement the abuse of right principle:

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals or good customs or public policy shall compensate the latter for the damage.

- The foregoing rules provide the legal bedrock for the award of damages to a party who suffers damage whenever one commits an act in violation of some legal provision, or an act which though not constituting a transgression of positive law, nevertheless violates certain rudimentary rights of the party aggrieved.
- In the case at bar, petitioner's verbal reproach against respondent was certainly uncalled for considering that by her own account nobody knew that she brought such kind and amount of jewelry inside the paper bag. True, petitioner had the right to ascertain the identity of the malefactor, but to malign respondent without an iota of proof that she was the one who actually stole the jewelry is an act which, by any standard or principle of law is impermissible. Petitioner had willfully caused injury to respondent in a manner which is contrary to morals and good customs. She did not act with justice and good faith for apparently, she had no other purpose in mind but to prejudice respondent. Certainly, petitioner transgressed the provisions of Article 19 in relation to Article 21 for which she should be held accountable.

NINA MEIJA

234 D.M. Wenceslao et al.. vs. Readycon Trading Construction Corp. | Quisumbing
G.R. No. 154106 June 29, 2004|

FACTS

- Petitioner Wenceslao had a contract with the PEA to improve Coastal Road. To fulfill its obligation, it also contracted with respondent Readycon for the latter to supply petitioner with asphalt materials valued at 1.1MPhp. Under the contract, petitioner was bound to pay 20% upon delivery of the materials and the balance 15 days after completion of the road. It was further stipulated by the parties that respondent was to furnish, deliver, lay, roll the asphalt, and if necessary, make the needed corrections on a prepared base at the jobsite.
- Respondent fulfilled its part of the contract but petitioner refused to pay the balance despite repeated demands. Respondent was therefore constrained to file suit in the RTC for collection of sum of money with application for a writ of preliminary attachment. After filing the bond, the writ was granted and the sheriff seized the following heavy equipments of petitioner: 1 asphalt paver, 1 bulldozer, 1 dozer and 1 grader. Upon posting of a counter-bond, the petitioner was able to have the aforementioned equipments released.
- During the course of trial in the RTC, petitioner admitted its debt to respondent but interposed the defense that the same was not yet due and demandable because payment was only to made after the government accepted the respondent's work as to the quality and condition of the asphalt. Petitioner by way of counterclaim sought damages because of respondent's suit and the issuance of the writ of preliminary attachment.
- The RTC held petitioner liable for the unpaid sums and dismissed it counterclaim and the CA affirmed the RTC in toto. Hence this petition for review.

ISSUES & ARGUMENTS

- **W/N the petitioners are liable for the unpaid balance.**
- **W/N the respondents are liable for damages for the issuance of the writ of preliminary attachment**

HOLDING & RATIO DECIDENDI

YES Petitioner must pay the balance.

- Petitioner's defense that the contract failed to express the true intent of the parties is primarily a factual issue which is not a proper question to be raised under Rule 45 since only questions of law may be raised. Besides, telling against petitioner WENCESLAO is its failure still to pay the unpaid account, despite the fact of the work's acceptance by the government already.

NO. Respondent is not liable for damages.

- The SC found that petitioner is not entitled to an award of actual or compensatory damages. Unlike Lazatin and MC Engineering, wherein the respective complaints were dismissed for being unmeritorious, **the writs of attachment were found to be wrongfully issued, in the present case, both the trial and the appellate courts held that the complaint had merit.** Stated differently, the two courts found respondent entitled to a writ of preliminary attachment as a provisional remedy by which the property of the defendant is taken into custody of the law as a security for the satisfaction of any judgment which the plaintiff may recover.
- If petitioner suffered damages as a result, it is merely because it did not heed the demand letter of the respondent in the first place. It could have averted such damage if it immediately filed a counter-bond or a deposit in order to lift the writ at once. **It did not, and must bear its own loss,** if any, on that account.

JOHAN UY

235 Llorente v Sandiganbayan | Sarmiento
G.R. No. 85464 October 3, 1991 |

FACTS

- As a result of a massive reorganization in 1981, hundreds of Philippine Coconut Authority (PCA) employees resigned effective October 31, 1981. Among them were Mr. Curio, Mrs. Perez, Mr. Azucena, and Mrs. Javier. By reason of which they were all required to apply for PCA clearances in support of their gratuity benefits, one of the condition of which:

  The clearance shall be signed by the PCA officers concemed only when there is no item appearing under "PENDING ACCOUNTABILITY" or after every item previously entered thereunder is fully settled. Settlement thereof shall be written in RED ink.
- After the clearance was signed by the PCA officers concerned, it was to be approved, first, by Atty. Llorente, in the case of a rank-and-file employee, or by Col. Dueñas, the acting administrator, in the case of an officer, and then by Atty. Rodriguez, the corporate auditor .
- The clearance of Mrs. Javier dated October 30, 1991 was signed by all PCA officers concerned, including Mrs. Sotto even though the former had unsettled obligations noted thereon, viz 'SIS loan — P5,387.00 and UCPB car loan P19,705.00, or a total of P25,092.00, and later on approveed by Col. Dueñas, Mrs Javier being an officer, and Atty. Rodriguez. Similarilv the, voucher of Mrs. Javier for her gratuity benefits likewise recited her accountabilities of P25,092.00 plus P92.000.00, which was handwritten. Both accounts were deducted from her gratuity benefits, and the balance released to her on November 16, 1981. The voucher passed post-audit by Atty. Rodriguez on December 1, 1981.
- The said P92,000.00 was the disallowed portion of the cash advances received by Mr. Curio in connection with his duties as "super cargo" in the distribution of seed nuts throughout the country. He received them through and in the name of Mrs. Javier from the UCPB. When the amount was disallowed, the UCPB withheld from the PCA certain receivables; the latter, in turn, deducted the same amount from the gratuity benefits of Mrs. Javier, she being primarily liable therefor. At the time of the deduction, the additional liquidation papers had already been submitted and were in process. Just in case she would not be successful in having the entire amount wiped out, she requested Mr. Curio, who admittedly received it, to execute, as he did, an affidavit dated November 26, 1981, in which he assumed whatever portion thereof might not be allowed.
- The clearance of Mr. Curio dated November 4,1981, likewise favorably passed all officers concerned, including Mrs. Sotto, the latter signing despite the notation handwritten on December 8, 1981, that Mr. Curio had pending accountabilities, namely: GSIS loan — 2,193.74, 201 accounts receivable — P3,897.75, and UCPB loan — P3,623.49, or a total of P10,714.78. However, when the clearance was submitted to Atty. Llorente for approval, he refused to approve stating as cause the fact that he was already aware of the affidavit dated November 26, 1981, in which Mr. Curio assumed to pay any residual liability for the disallowed cash advances, which at the time, December 8, 1981. Moreover, Mr. Curio had other pending obligations noted on his clearance totalling Pl0,714.98. For this reason, the clearance was held up in his office and did not reach Atty. Rodriguez.
- It appears that Mr. Curio heavily pursued the passing of his clearance to the point that he filed a case in the Tanodbayan against Atty. Llorente and Col. Dueñas.
- Subsequently, Mr. Curio was able to file another clearance which did not require the aforesaid condition.
- Between December 1981 and December 1986, Mr. Curio failed to get gainful employment; as a result, his family literally went hungry. In 1981, he applied for work with the Philippine Cotton Authority, but was refused, because he could not present his PCA clearance. The same thing happened when he sought employment with the Philippine Fish Marketing Administration in January 1982. In both prospective employers, the item applied for was P2,500.00 a month. At that time, he was only about 45 years old and still competitive in the job market. But in 1986, being already past 50 years, he could no longer be hired permanently, there being a regulation to that effect. His present employment with the Philippine Ports Authority, which started on March 16, 1987, was casual for that reason. Had his gratuity benefits been paid in 1981, he would have received a bigger amount, considering that since then interest had accrued and the foreign exchange rate of the peso to the dollar had gone up.
- On December 10, 1986, an Information for violation of Section 3(c) of the Anti-Graft and Corrupt Practices Act was filed against Atty. Llorente for which he was acquitted but held civilly liable for damages (P90,000) under Article 19 of the Civil Code.

ISSUES & ARGUMENTS

- **W/N Sandiganbayan erred in holding Atty. Llorente civilly liable despite his acquittal?**
  - **Petitioner':** The Sandiganbayan's Decision is erroneous even if the Sandiganbayan acquitted him therein, because he was never in bad faith as indeed found by the Sandiganbayan.

HOLDING & RATIO DECIDENDI

NO. It is the essence of Article 19 of the Civil Code, under which the petitioner was made to pay damages, together with Article 27, that the performance of duty be done with justice and good faith.

- The records show that the office practice indeed in the PCA was to clear the employee (retiree) and deduct his accountabilities from his gratuity benefits. There seems to be no debate about the existence of this practice (the petitioner admitted it later on) and in fact, he cleared three employees on the condition that their obligations should be deducted from their benefits. The Court quotes:

  Confronted with these evidence (sic), Atty. Llorente conceded, albeit grudgingly, the existence of the practice by the accounting division of not complying with Condition (a). He, however, claimed that he learned of the practice only during the trial of the case and that he must have

inadvertently approved the clearances of Mrs. Perez, Mr. Azucena, and possibly others who were similarly situated (TSN, March 9/88,pp. 4-5). This the evidence belies. First, he himself testified that when the clearance of Mr. Curio was presented to him in December 1981, it already bore the signature of Mrs. Sotto of the accounting division and the notation set opposite her name about the outstanding accountabilities of Mr. Curio; but he (Atty. Llorente) significantly did not ask her why she signed the clearance (TSN, Nov. 24/87, pp. 24-25). Second, in that month, ***Atty. Llorente approved Mrs. Perez's and Mr. Azucena's vouchers showing that hey has pending obligations to the GSIS and the UCPB, which were being deducted from their gratuity benefits (thus are similarly situated with Mr. Curio)****. Attached to those vouchers were the clearances as supporting documents (Exhs. M-2 and N-1; TSN, Dec. 7/87, pp. 13,23). And third, in the same month, Atty. Llorente was already aware of the case of Mrs. Javier whose clearance and voucher were, according to him, precisely withheld because of her unsettled accountability for the cash advances of P92,000.00, but here later on given due course; and her gratuity benefits released on November 16, 1981, minus that amount (TSN, Nov. 24/87, pp. 31-32; Exhs. L, L-1, L-2 and L-3).*

The cash advances of P92,000.00 were the primary obligation of Mrs. Javier, since they were secured through her and in her name from the UCPB. That was why they were charged to and deducted from, her gratuity benefits. Consequently, as early as that date and in so far as the PCA and the UCPB were concerned, the accountability was already fully paid. The assumption of residual liability by Mr. Curio for the cash advances on November 26, 1981, was a matter between him and Mrs. Javier.

- The general rule is that this Court is bound by the findings of fact of the Sandiganbayan.
- The acts of Atty, Llorente were legal (that is, pursuant to procedures), as he insists in this petition, yet it does not follow, as we said, that his acts were done in good faith. For emphasis, he had no valid reason to "go legal" all of a sudden with respect to Mr. Curio, since he had cleared three employees who, as the Sandiganbayan found, "were all similarly circumstanced in that they all had pending obligations when, their clearances were filed for consideration, warranting similar official action."
- The Court is convinced that the petitioner had unjustly discriminated against Mr. Curio.
- It is no defense that the petitioner was motivated by no ill-will (a grudge, according to the Sandiganbayan), since the facts speak for themselves. It is no defense either that he was, after all, complying merely with legal procedures since, as we indicated, he was not as strict with respect to the three retiring other employees. There can be no other logical conclusion that he was acting unfairly, no more, no less, to Mr. Curio.

236 Heirs of Purisima Nala vs Artemio Cabansag | Austria-Martinez
G.R. No.161188 13 June 2008|

FACTS

- Artemio Cabansag (respondent) filed Civil Case for damages in October 1991. According to respondent, he bought a 50-square meter property from spouses Eugenio Gomez, Jr. and Felisa Duyan Gomez on July 23, 1990.
- Said property is part of a 400-square meter lot registered in the name of the Gomez spouses. In October 1991, he received a demand letter from Atty. Alexander del Prado (Atty. Del Prado), in behalf of Purisima Nala (Nala), asking for the payment of rentals from 1987 to 1991 until he leaves the premises, as said property is owned by Nala, failing which criminal and civil actions will be filed against him.
- Another demand letter was sent on May 14, 1991. Because of such demands, respondent suffered damages and was constrained to file the case against Nala and Atty. Del Prado.
- Atty. Del Prado claimed that he sent the demand letters in good faith and that he was merely acting in behalf of his client, Nala, who disputed respondent's claim of ownership.
- Nala alleged that said property is part of an 800-square meter property owned by her late husband, Eulogio Duyan, which was subsequently divided into two parts. The 400-square meter property was conveyed to spouses Gomez in a fictitious deed of sale, with the agreement that it will be merely held by them in trust for the Duyan's children.
- Said property is covered by Transfer Certificate of Title (TCT) No. 281115 in the name of spouses Gomez. Nala also claimed that respondent is only renting the property which he occupies.
- After trial, the RTC of Quezon City, Branch 93, rendered its Decision on August 10, 1994, in favor of respondent. Nala and Atty. Del Prado appealed to the CA.
- In affirming the RTC Decision, the CA took note of the Decision rendered by the RTC of Quezon City, dismissing Civil Case action for reconveyance of real property and cancellation of TCT with damages, filed by Nala against spouses Gomez.

ISSUES & ARGUMENTS

- **W/N the Court of Appeals erred in awarding damages and attorney's fees without any basis.**

HOLDING & RATIO DECIDENDI

Yes.

- Preliminarily, the Court notes that both the RTC and the CA failed to indicate the particular provision of law under which it held petitioners liable for damages. Nevertheless, based on the allegations in respondent's complaint, it may be gathered that the basis for his claim for damages is Article 19 of the Civil Code, which provides:

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

- It should be stressed that malice or bad faith is at the core of Article 19 of the Civil Code. Good faith is presumed, and he who alleges bad faith has the duty to prove the same. Bad faith, on the other hand, does not simply connote bad judgment to simple negligence, dishonest purpose or some moral obloquy and conscious doing of a wrong, or a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm.
- In the present case, there is nothing on record which will prove that Nala and her counsel, Atty. Del Prado, acted in bad faith or malice in sending the demand letters to respondent. In the first place, there was ground for Nala's actions since she believed that the property was owned by her husband Eulogio Duyan and that respondent was illegally occupying the same. She had no knowledge that spouses Gomez violated the trust imposed on them by Eulogio and surreptitiously sold a portion of the property to respondent. **It was only after respondent filed the case for damages against Nala that she learned of such sale.** The bare fact that respondent claims ownership over the property does not give rise to the conclusion that the sending of the demand letters by Nala was done in bad faith. Absent any evidence presented by respondent, bad faith or malice could not be attributed to petitioner since Nala was only trying to protect their interests over the property.
- In order to be liable for damages under the abuse of rights principle, the following requisites must concur: (a) the existence of a legal right or duty; (b) which is exercised in bad faith; and (c) for the sole intent of prejudicing or injuring another.

- Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. In such cases, the consequences must be borne by the injured person alone; the law affords no remedy for damages resulting from an act which does not amount to a legal injury or wrong. These situations are often called *damnum absque injuria.*
- Nala was acting well within her rights when she instructed Atty. Del Prado to send the demand letters. She had to take all the necessary legal steps to enforce her legal/equitable rights over the property occupied by respondent. One who makes use of his own legal right does no injury. Thus, whatever damages are suffered by respondent should be borne solely by him.

237 Hermosisima vs. CA| Concepcion
G.R. No. L-14628, September 30, 1960 |109 SCRA 629

FACTS

- Complainant Soledad Cagigas was born on July 1917. Since 1950, complainant, then a teacher in the Sibonga Provincial High School in Cebu, dated petitioner Francisco Hermosisima who was almost 10 years younger than her. They were regarded as engaged although he had made no promise of marriage prior thereto.
- In 1951, she gave up teaching and became a life insurance underwriter when one evening, after coming from the movies, they had sexual intercourse in his cabin on board M/V Escano to which he was then attached as apprentice pilot.
- In February 1954, Soledad advised petitioner that she was pregnant whereupon he promised to marry her. Their child Chris Hermosisima was born on July 17, 1954. Subsequently however, petitioner married Romanita Perez.
- Soledad then filed with the CFI of Cebu a complaint for the acknowledgment of her child, as well as for support of said child and moral damages from breach of promise to marry.
- Petitioner admitted the paternity of the child and expressed willingness to support the latter but denied having ever promised to marry complainant.

ISSUES & ARGUMENTS

- **W/N moral damages are recoverable for breach of promise to marry.**
- **W/N petitioner is morally guilty of seduction.**

HOLDING & RATIO DECIDENDI

NO, BREACH OF PROMISE TO MARRY NOT ACTIONABLE.

- It is the clear and manifest intent of Congress not to sanction actions for breach of promise to marry.

NO, PETITIONER NOT GUILTY OF SEDUCTION

- The "seduction" contemplated in Article 2219 of the New Civil Code as one of the cases where moral damages may be recovered, is the crime punished as such in Articles 337 & 338 of the Revised Penal Code.
- Where a woman, who was an insurance agent and former high school teacher, around 36 years of age and approximately 10 years older than the man, "overwhelmed by her love" for the man, **had intimate relations with him, because she "wanted to bind" him "by having a fruit of their engagement even before they had the benefit of clergy," it cannot be said that he is morally guilty of seduction.**

238 Gashem Shookat Baksh vs. CA and Marilou Gonzales| Davide, Jr.
G.R. No. 97336, February 19, 1933|

FACTS

- Private respondent Marilou is a pretty 22 y/o Filipina of good moral character and reputation. On the other hand, petitioner is an Iranian citizen taking up medicine at the Lyceum NW Colleges in Dagupan and residing at the Lozano Apartments. The two met in Mabuhay Luncheonette where the former used to work.
- Marilou filed a complaint for damages for the alleged violation of their agreement to get married. She claimed that she accepted Gashem's love on the condition that they would get married. She said she was a virgin before she began living with him. She narrated that a week before the filing of the complaint, petitioner's attitude towards her started to change (i.e. he maltreated and threatened to kill her). Further, he repudiated their marriage agreement and asked her not to live with him anymore.
- In his answer, petitioner denied proposing marriage or agreeing to be married. He denied maltreating Marilou and asserted that the complaint is baseless.
- Trial court, applying Art 21, ruled in favor of private respondent. It concluded that (a) Gashem and Marilou were lovers, (b) the latter is not a woman of loose morals or questionable virtue who readily submits to sexual advances, (c) Gashem, thru machinations, deceit and false pretenses, promised to marry private respondent, (d) because of his persuasive promise to marry her, she allowed herself to be deflowered by him; (e) by reason of that deceitful promise, Marilou and her parents- in accordance with FIl customs and traditions- made some preparations for the wedding by looking for pigs and chickens, inviting friends and relatives and contracting sponsors, (f) Gashem did not fulfill his promise to marry her and (g) such acts of Gashem, who is a foreigner and who has abused FIl hospitality, have offended our sense of morality, good customs, culture and traditions.
- CA affirmed.

ISSUES & ARGUMENTS

- **W/N damages may be recovered for a breach of promise to marry on the basis of Article 21 of the Civil Code**
    - **Petitioner**: As an Iranian Moslem, he is not familiar with Catholic and Christian ways. Even if he had a promise to marry, the subsequent failure to fulfill the same is excusable or tolerable because of his Moslem upbringing (apat nga pde nya pakasalan). Besides, his acts would not be actionable because according to jurisprudence, mere breach of promise is not actionable.

HOLDING & RATIO DECIDENDI

YES. IN THIS CASE, PETITIONER'S STATEMENTS REVEAL HIS TRUE CHARACTER AND MOTIVE. HE HARBORS A CONDASCENDING, IF NOT SARCASTIC REGARD FOR MARILOU ON ACCT OF HER BIRTH, INFERIOR EDUCL BACKGROUND, POVERTY AND 'DISHONORABLE EMPLOYMENT.' OBVIOUSLY THEN, HE WAS NOT AT ALL MOVED BY GOOD FAITH AND AN HONEST MOTIVE. HIS PROFESSION OF LOVE AND PROMISE TO MARRY WERE EMPTY WORDS INTENDED TO DECEIVE MARILOU.

- The existing rule is that a breach of promise to marry per se is not an actionable wrong. Congress deliberately eliminated from the draft of the NCC the provisions that would have made it so.
- However, the same Code contains a provision, Art. 21, which is designed to expand the concept of torts or quasi-delict in this jurisdiction by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to specifically enumerate and punish in the statute books.
- In the light of the above laudable purpose of Art. 21, where a man's promise to marry is in fact the PROXIMATE CAUSE of the acceptance of his love by a woman and his representation to fulfill that promise thereafter becomes the proximate cause of the giving of herself unto him in a sexual congress, proof that he had, in reality, no intention of marrying her and that the promise was only a subtle scheme to entice or inveigle her to accept him and to obtain her consent to the sexual act, could justify the award of damages pursuant to Art 21. It is essential, however, that such injury should have been committed in a manner contrary to morals, good customs or public policy. (Cause: Promise to Marry, Effect: Carnal Knowledge= Cause of Action: Criminal (RPC, Art 338) or Moral (NCC, Art 21) Seduction, Damages Due: Moral and Actual (should there be any, such as expenses for the wedding preparations).

239 Ponce vs. Legaspi | Gutierrez, Jr.
G.R. No. 79184, May 1992 | 208 SCRA 337

FACTS

- The case stemmed from the filing before the SC of a complaint for disbarment against respondent Atty. Valentino Legaspi by petitioner Erlinda Ponce.
- At the time of the filing of the disbarment proceedings, Ponce owned forty three percent of the stockholdings of L'NOR Marine Services (L'NOR). She was then Treasurer and director of the Board of Directors of L'NOR while her husband was a director. Forty eight percent of L'NOR's stocks was owned by the spouses Edward and Norma Porter who were then serving as President/General Manager and Secretary respectively.
- During the time respondent is the legal counsel of the corporation, there occurred certain fraudulent manipulations by certain officers of said corporation, Porter et al.
- Edward J. Porter and Norma Y. Porter, together with Zenaida T. Manaloto, facilitated, assisted and aided by herein respondent Legaspi incorporated the Yrasport Drydocks, Inc., hereinafter designated YRASPORT, which they control that directly competes with the business of L'NOR.
- That respondent Legaspi has committed gross misconduct in office as a practicing lawyer and member of the Philippine Bar, because, as legal counsel, he violated his duty to and the trust of his client, L'NOR when he assisted the Porter spouses in incorporating said corporation.
- This is now an action to recover against Ponce commenced by Legaspi, alleging the disbarment proceedings are malicious and unfounded.

ISSUES & ARGUMENTS

- **W/N the action by Ponce is malicious and would entitle Atty. Legaspi damages**

HOLDING & RATIO DECIDENDI

PONCE IS NOT LIABLE FOR DAMAGES FOR THERE IS NO PROBOBLE CAUSE TO CHARGE HER WITH MALICIOUS PROSECUTION.

- In order, however, for the malicious prosecution suit to prosper, the plaintiff must prove: (1) the fact of the prosecution and the further fact that the defendant was himself the prosecutor, and that the action finally terminated with an acquittal; (2) that in bringing the action, the prosecutor acted without probable cause; and (3) that the prosecutor was actuated or impelled by legal malice, that is by improper or sinister motive.
- The foregoing requisites are necessary safeguards to preserve a person's right to litigate which may otherwise be emasculated by the undue filing of malicious prosecution cases.
- Malice is essential to the maintenance of an action for malicious prosecution and not merely to the recovery of exemplary damages. But malice alone does not make one liable for malicious prosecution, where probable cause is shown, even where it appears that the suit was brought for the mere purpose of vexing, harassing and injuring his adversary.
- The petitioner, at the time of her filing of the administrative complaint against the respondent, held substantial stockholdings in L'NOR. She believed that L'NOR was defrauded by its President/General Manager, Edward Porter, and filed a complaint for estafa against the latter. Porter was convicted by the trial court but, upon appeal, was acquitted by the appellate court
- Apparently, at that time, petitioner Ponce saw a conflict of interest situation.
- True, at that time, the Corporation Law did not prohibit a director or any other person occupying a fiduciary position in the corporate hierarchy from engaging in a venture which competed with that of the corporation. **But as a lawyer, Atty. Legaspi should have known that while some acts may appear to be permitted through sheer lack of statutory prohibition, these acts are nevertheless circumscribed upon ethical and moral considerations.**
- Since we adjudge that petitioner Ponce was moved by probable cause, we need not anymore ascertain whether or not the petitioner acted with malice in filing the complaint. The existence of probable cause alone, regardless of considerations of malice, is sufficient to defeat the charge of malicious prosecution.
- **Atty. Legaspi may have suffered injury as a consequence of the disbarment proceedings. But the adverse result of an action does not per se make the action wrongful and subject the actor to make payment of damages for the law could not have meant to impose a penalty on the right to litigate.**
- If damage results from a person's exercising his legal rights, it is *damnum absque injuria.*

240 Medel vs. Court of Appeals | Pardo
G.R. No. 131622, November 27, 1998 |

FACTS

- Franco and Medel obtained a loan from Gonzales, who was engaged in the money lending business under the name "Gonzales Credit Enterprises", in the amount of P50,000.00, payable in two months. Veronica gave only the amount of P47,000.00, to the borrowers, as she retained P3,000.00, as advance interest for one month at 6% per month. Franco and Medel executed a promissory note for P50,000.00.
- Thereafter, Franco and Medel obtained from Gonzales another loan in the amount of P90,000.00, payable in two months, at 6% interest per month. They executed a promissory note to evidence the loan. On maturity of the two promissory notes, the borrowers failed to pay the indebtedness.
- For a third time Franco and Medel secured from Gonzales still another loan in the amount of P300,000.00, maturing in one month, secured by a real estate mortgage over a property belonging to Yaptinchay, who issued a special power of attorney in favor of Medel, authorizing her to execute the mortgage.
- Like the previous loans, Franco and Medel failed to pay the third loan on maturity.
- Franco and Medel with the latter's husband, Dr. Rafael Medel, consolidated all their previous unpaid loans totaling P440,000.00, and sought from Gonzales another loan in the amount of P60,000.00, bringing their indebtedness to a total of P500,000.00.
- On maturity of the loan, the borrowers failed to pay the indebtedness of P500,000.00, plus interests and penalties, evidenced by the above-quoted promissory note.
- Gonzales, joined by her husband, filed a complaint for collection of the full amount of the loan including interests and other charges.
- Defendants Medel alleged that the loan was the transaction of Yaptinchay, who executed a mortgage in favor of the plaintiffs over a parcel of real estate situated in San Juan, Batangas; that the interest rate is excessive at 5.5% per month with additional service charge of 2% per annum, and penalty charge of 1% per month; that the stipulation for attorney's fees of 25% of the amount due is unconscionable, illegal and excessive, and that substantial payments made were applied to interest, penalties and other charges.

ISSUES & ARGUMENTS

- **W/N the interest rate stipulated upon in the loan agreements is valid?**

HOLDING & RATIO DECIDENDI

THE STIPULATED RATE OF INTEREST OF 5.5% PER MONTH ON THE LOAN IN THE SUM OF P500,000 IS USURIOUS.

- We agree with petitioners that the stipulated rate of interest at 5.5% per month on the P500,000.00 loan is excessive, iniquitous, unconscionable and exorbitant. However, we can not consider the rate "usurious" because this Court has consistently held that Circular No. 905 of the Central Bank has expressly removed the interest ceilings prescribed by the Usury Law and that the Usury Law is now "legally inexistent".
- Usury has been legally non-existent in our jurisdiction. Interest can now be charged as lender and borrower may agree upon." Nevertheless, we find the interest at 5.5% per month, or 66% per annum, stipulated upon by the parties in the promissory note iniquitous or unconscionable, and, hence, contrary to morals ("contra bonos mores"), if not against the law. The stipulation is void. The courts shall reduce equitably liquidated damages, whether intended as an indemnity or a penalty if they are iniquitous or unconscionable.
- Consequently, the Court of Appeals erred in upholding the stipulation of the parties. Rather, we agree with the trial court that, under the circumstances, interest at 12% per annum, and an additional 1% a month penalty charge as liquidated damages may be more reasonable.

Petition granted. Decision of Regional Trial Court Revived and affirmed.

241 Perez vs. CA| Gonzaga-Reyes
G.R. No. 107737 October 1, 1999 |SCRA

FACTS

- Along with Maria Perez, Fructuosa Perez, Victoria Perez, Apolonio Lorenzo and Vicente Asuncion, **petitioner Juan Perez** is a usufructuary of a parcel of land popularly called the "Papaya Fishpond."
- On June 5, 1975, the usufructuaries entered into a contract leasing the fishpond to Luis Keh for a period of five (5) years and renewable for another five (5) years by agreement of the parties, under the condition that for the first five-year period the annual rental would be P150,000.00 and for the next five years, P175,000.00. *Paragraph 5 of the lease contract states that the lessee "cannot sublease" the fishpond "nor assign his rights to anyone."*
- **Private respondent Luis Crisostomo,** who reached only the 5th grade, is a businessman engaged in the operation of fishponds.
- On September 20, 1977, while he was at his fishpond in Almazar, Hermosa, Bataan, his bosom friend named Ming Cosim arrived with **petitioner Charlie Lee.** The two persuaded private respondent to take over the operation of "Papaya Fishpond" as petitioner Lee and his partner, **petitioner Luis Keh,** were allegedly losing money in its operation.
- **Crisostomo** having agreed to the proposal, sometime in December of that year, he and **petitioners Lee and Keh** executed a written agreement denominated as "pakiao buwis" whereby private respondent would take possession of the "Papaya Fishpond" from January 6, 1978 to June 6, 1978 in consideration of the amount of P128,000.00.
- **Crisostomo** paid the P75,000.00 to **petitioner Keh** at the house of **petitioner Lee.** He paid the balance to **petitioner Lee** sometime in February or March 1978 because he was uncertain as to the right of **petitioners Keh and Lee** to transfer possession over the fishpond to him. **Crisostomo** made that payment only after he had received a copy of a written agreement dated January 9, 1978 [4] whereby *petitioner Keh ceded, conveyed and transferred all his "rights and interests" over the fishpond to petitioner Lee, "up to June 1985."*

  From **Crisostomo's** point of view, that document assured him of continuous possession of the property for as long as he paid the agreed rentals of P150,000.00 until 1980 and P.175,000.00 until 1985.
- For the operation of the fishpond from June 1978 to May 1979, **Crisostomo** paid the amount of P150,000.00 at the Malabon, Metro Manila office of **petitioner Keh**. The following receipt was issued to him:
  - R E C E I P T

    June 6, 1978
    P150.000,00

    Received from Mr. LUIS KEH the sum of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00), Philippine Currency, as full payment of the yearly leased rental of the Papaya Fishpond for the year beginning June 1978 and ending on May 1979. The next payment shall be made on June 6, 1979.

    Said sum was paid in Producers Bank of the Philippines Check No. (illegible) 164595 dated June 6, 1978.

    Mr. Luis Keh has not transferred his rights over the fishpond to any person.

    Caloocan City, June 6, 1978.

    JUAN L. PEREZ ET AL.
    By:
    (Sgd.)
    Rosendo G. Tansinsin, Jr.
    CONFORME TO THE ABOVE:
    (Sgd.)
    LUIS KEH

    Handwritten below that receipt but above the signature of petitioner Charlie Lee, are the following: "Rec'd from Luis Crisostomo sum of one hundred fifty-four thousand P154,000.00 for above payment.
- **Crisostomo** incurred expenses for repairs in and improvement of the fishpond in the total amount of P486,562.65.
- However, sometime in June 1979, **petitioners Tansinsin and Juan Perez**, in the company of men bearing armalites, went to the fishpond and presented **Crisostomo** with a letter dated June 7, 1979 showing that **petitioner Luis Keh** had surrendered possession of the fishpond to the usufructuaries.
- Because of the threat to deprive him of earnings of around P700,000.00 that the 700,000 milkfish in the fishpond would yield, and the refusal of **petitioners Keh, Juan Perez and Lee** to accept the rental for June 5, 1979 to June 6, 1980, **Crisostomo** filed on June 14, 1979 with the then Court of First Instance of Bulacan an action for injunction and damages.
- Thereafter, the usufructuaries entered into a contract of lease with Vicente Raymundo and Felipe Martinez for the six-year period of June 1, 1981 to May 30, 1987 in consideration of the annual rentals of P550,000.00 for the first two years and P400,000.00 for the next four years. Upon expiration of that lease, the same property was leased to Pat Laderas for P1 million a year.
- **Petitioners: Crisostomo** could not have been an assignee or sub-lessee of the fishpond because no contract authorized him to be so.
- **Private respondent Crisostomo:** petitioner Perez had no right to demand possession of the fishpond from him because Perez had no contract with him.
- **TC and CA:** Defendants [Juan Perez et.al.] conspired with one another to exploit the plaintiff's [Crisostomo] naivete and educational inadequacies and, in the process, to defraud him by inducing him into taking possession of the "Papaya Fishpond" in their fond hope that, as soon as the plaintiff [Crisostomo] — applying his known expertise as a successful fishpond operator — shall have considerably improved the fishpond, they will regain possession of the premises and offer the lease thereof to other interested parties at much higher rental rates as laid bare by supervening realities." Agreeing with the court *a quo* that "defendants-appellants [Juan Perez et.al.] employed fraud to the damage and prejudice of plaintiff-appellee [Crisostomo]," the Court of Appeals held that appellants should be held liable for damages.

ISSUES & ARGUMENTS

- **W/N private petitioner Keh is liable for damages.**
- **W/N private petitioner Keh should be restored to the possession of the fishpond.**

HOLDING & RATIO DECIDENDI

Yes. Private petitioner Keh is liable for damages.

- Admittedly, the contract between the usufructuaries and petitioner Keh has a provision barring the sublease of the fishpond. However, it was petitioner Keh himself who violated that provision in offering the operation of the fishpond to Crisostomo.
- Apparently on account of Crisostomo's apprehensions as regards the right of petitioners Keh and Lee to transfer operation of the fishpond to him, on January 9, 1978, petitioner Keh executed a document ceding and transferring his rights and interests over the fishpond to petitioner Lee. **Petitioner Keh** transferred his rights as a lessee to petitioner Lee in writing and that, by virtue of that document, private respondent acceded to take over petitioner Keh's rights as a lessee of the fishpond.
- Although no written contract to transfer operation of the fishpond to private respondent was offered in evidence, [33] the established facts further show that **petitioner Juan Perez and his counsel, petitioner Tansinsin**, knew of and acquiesced to that arrangement by their act of receiving from the Crisostomo the rental for 1978-79. By their act of receiving rental from private respondent Crisostomo through the peculiarly written receipt dated June 6, 1978, petitioners Perez and Tansinsin were put in estoppel to question Crisostomo's right to possess the fishpond as a lessee.

No.

- To restore possession of the fishpond to him would entail violation of contractual obligations that the usufructuaries have entered into over quite a long period of time now.
- The Court may not supplant the right of the usufructuaries to enter into contracts over the fishpond through a Decision. Nonetheless, under the circumstances of the case, it is but proper that private respondent Crisostomo should be properly compensated for the improvements he introduced in the fishpond.

Damages:

- Art. 1168 of the Civil Code provides that when an obligation "consists in not doing and the obligor does what has been forbidden him, it shall also be undone at his expense."
    - Petitioner Keh led private respondent to unwittingly incur expenses to improve the operation of the fishpond. By operation of law, therefore, petitioner Keh shall be liable to private respondent for the value of the improvements he had made in the fishpond or for P486,562.65 with interest of six percent (6%) *per annum* from the rendition of the decision of the trial court on September 6, 1989.
- They violated Article 21 of the Civil Code and therefore private respondent should be entitled to an award of **moral damages**. Article 21 states that "(a)ny person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."
- Exemplary damages shall likewise be awarded pursuant to Article 2229 of the Civil Code. Because private respondent was compelled to litigate to protect his interest, attorney's fees shall also be awarded.

242 Investors Finance Corporation vs. Autoworld Sales Corporation and Pio Barreto Realty Development Coporation|
Bellosillo J.
G.R. No. 128990, September 21, 2000 |

FACTS

- Petitioner Finance (FNCB) is a private finance company and has been doing business with Autoworld sales.
    - Anthony Que, the president of autoworld and holds the same position as well in Pio Realty, an affiliate of autoworld applied for a direct loan with petitioner
- Since the Usury law that time was still in place, petitioner said that it was not in the business of direct selling, therefore the request was denied.
- But sometime thereafter, FNCB's Assistant Vice President, Mr. Leoncio Araullo, informed Anthony Que that although it could not grant direct loans it could extend funds to AUTOWORLD by purchasing any of its outstanding receivables at a discount.
    - After a series of negotiations the parties agreed to execute an Installment Paper Purchase ("IPP") transaction to enable AUTOWORLD to acquire the additional capital it needed. The mechanics of the proposed "IPP" transaction was
        - First, Pio Barretto (BARRETTO) would execute a Contract to Sell a parcel of land in favor of AUTOWORLD for P12,999,999.60 payable in sixty (60) equal monthly installments of P216,666.66. Consequently, BARRETTO would acquire P12,999,999.60 worth of receivables from AUTOWORLD
        - FNCB would then purchase the receivables worth P12,999,999.60 from BARRETTO at a discounted value of P6,980,000.00 subject to the condition that such amount would be "flowed back" to AUTOWORLD
        - BARRETTO, would in turn, execute a Deed of Assignment (in favor of FNCB) obliging AUTOWORLD to pay the installments of the P12,999,999.60 purchase price directly to FNCB
        - Lastly, to secure the payment of the receivables under the Deed of Assignment, BARRETTO would mortgage the property subject of the sale to FNCB.
- Subsequently, the respondents again obtained a loan from petitioner for P3m, with 28% interest per anum
- After paying 19 installments, the respondents asked the petitioner for the status of their debt
- Petitioner wrote back stating that they still owed petitioner around P10m
- Respondents did not agree with the computation, thus they reluctantly paid for the said amount. Which in time, they asked the petitioner to refund them of their overpayments.

ISSUES & ARGUMENTS

- **W/N the contracts executed in lieu of the IPP a legitimate contract? Or was it merely to conceal a usurious loan?**

HOLDING & RATIO DECIDENDI

It was a Usurious loan.

- Petitioner admitted that its lawyers were the ones who drafted all the three (3) contracts involved[21] which were executed on the same day.[22] Also, petitioner was the one who procured the services of the Asian Appraisal Company to determine the fair market value of the land to be sold way back in September of 1980 or six (6) months prior to the sale.
- Petitioner wrote a letter to Barreto stating on what to do with the money they got from the sales by property of Barreto. If it was a sale, then BARRETTO, as seller, would have received the whole purchase price, and free to dispose of such proceeds in any manner it wanted.
- in its 17 November 1980 letter to BARRETTO, petitioner itself designated the proceeds of the "IPP" transaction as a "loan."[27] In that letter, petitioner stated that the "loan proceeds" amounting to P6,980,000.00 would be released to BARRETTO only upon submission of the documents it required.
- after the interest rate ceilings were lifted on 21 July 1981 petitioner extended on 18 June 1982 a direct loan of P3,000,000.00 to AUTOWORLD. This time however, with no more ceiling rates to hinder it, petitioner imposed a 28% effective interest rate on the loan.
- In the case at bar, the attending factors surrounding the execution of the three (3) contracts on 9 February 1981 clearly establish that the parties intended to transact a usurious loan. These contracts should therefore be declared void.
- the stipulation on the interest is considered void thus allowing the debtor to claim the whole interest paid.
- In the instant case, AUTOWORLD obtained a loan of P6,980,000.00. Thereafter, it paid nineteen (19) consecutive installments of P216,666.66 amounting to a total of P4,116,666.54, and further paid a balance of P6,784,551.24 to settle it. All in all, it paid the aggregate amount of P10,901,217.78 for a debt of P6,980,000.00. For the 23-month period of the existence of the loan covering the period February 1981 to January 1982, AUTOWORLD paid a **total of P3,921,217.78 in interests.** Applying the 12% interest ceiling rate mandated by the Usury Law, **AUTOWORLD should have only paid a total of P1,605,400.00 in interests**.[38] Hence, **AUTOWORLD is entitled to recover the whole usurious interest amounting to P3,921,217.78.**

243 Silvestre vs. Ramos | Davide
G.R. No. 144712. July 4, 2002

FACTS

- The case at bar stemmed from the petition for consolidation of title or ownership filed on 5 July 1993 with the trial court by herein respondent Ramos against herein petitioners, Spouses Silvestre and Celia Pascual In his petition, RAMOS alleged that on 3 June 1987, for and in consideration of ₱150,000, the PASCUALs executed in his favor a Deed of Absolute Sale with Right to Repurchase over two parcels of land and the improvements thereon located in Bambang, Bulacan, Bulacan,. This document was annotated at the back of the title. The PASCUALs did not exercise their right to repurchase the property within the stipulated one-year period; hence, RAMOS prayed that the title or ownership over the subject parcels of land and improvements thereon be consolidated in his favor.
- The PASCUALs admitted having signed the Deed of Absolute Sale with Right to Repurchase for a consideration of ₱150,000 but averred that what the parties had actually agreed upon and entered into was a real estate mortgage. They further alleged that there was no agreement limiting the period within which to exercise the right to repurchase and that they had even overpaid RAMOS.
- TC ruled in favor of Ramos. On the MR, the TC ruled that it erred in using an interest rate of 7% per annum in the computation of the total amount of obligation because what was expressly stipulated in the *Sinumpaang Salaysay* was 7% per month. It lowered the interest rate to 5% pursuant to NCC Art 24
- The CA affirmed the TC's ruling in toto. Hence this petition

ISSUES & ARGUMENTS

- **W/N** they are liable for 5% interest per month from 3 June 1987 to 3 April 1995.

HOLDING & RATIO DECIDENDI

CA decision AFFIRMED

It is a basic principle in civil law that parties are bound by the stipulations in the contracts voluntarily entered into by them. Parties are free to stipulate terms and conditions which they deem convenient provided they are not contrary to law, morals, good customs, public order, or public policy.

With the suspension of the Usury Law and the removal of interest ceiling, the parties are free to stipulate the interest to be imposed on loans. Absent any evidence of fraud, undue influence, or any vice of consent exercised by RAMOS on the PASCUALs, the interest agreed upon is binding upon them. This Court is not in a position to impose upon parties contractual stipulations different from what they have agreed upon. We cannot supplant the interest rate, which was reduced to 5% per month without opposition on the part of RAMOS.

RAMOS's claim that the interest due should earn legal interest cannot be acted upon favorably because he did not appeal from the Order of the trial court of 5 June 1995, which simply ordered the payment by the PASCUALs of the amount of P511,000 without interest thereon. No relief can be granted a party who does not appeal. Therefore, the order of the trial court should stand.

244 Wassmer vs. Velez | Bengzon
G.R. No. L-20089, December 26, 1964 |

Petition DENIED. Lower court's decision AFFIRMED.

FACTS

- Velez and Wassmer decided to get married and set the wedding day for September 4, 1954. On September 2, 1954, Velez left a note for Wassmer stating that the wedding would have to be postponed because his mother opposes it, and that he was leaving for his hometown.
- The next day, however, he sent her a telegram stating that nothing changed and that he would be returning very soon. But then, Velez did not appear nor was he heard from again.
- Wassmer sued him, and he was declared in default. Judgment was rendered ordering Velez to pay actual damages, moral and exemplary damages, and attorney's fees.
- Velez filed a petition for relief from judgment and motion for new trial and reconsideration. Since he still failed to appear during the hearings set by the lower court, and because his counsel had declared that there was no possibility for an amicable settlement between the parties, the court issued an order denying his petition. Hence this appeal. Dante Capuno was a member of the Boy Scouts organization and a student of the Balintawak Elementary School. He attended a parade in honor of Jose Rizal upon instruction of the city school's supervisor. He boarded a jeep, took hold of the wheel and drove it.

ISSUES & ARGUMENTS

- **W/N Velez is liable to pay damages to Wassmer.**

HOLDING & RATIO DECIDENDI

VELEZ LIABLE TO PAY DAMAGES.

- In support of his motion for new trial and reconsideration, Velez asserts that the judgment is contrary to law because there is no provision in the Civil Code authorizing an action for breach of a promise to marry. Moreover, the same thing was declared by this court in the cases of Hermosisima and Estopa.
- It must not be overlooked, however, that the extent to which acts not contrary to law may be perpetrated with impunity, is not limitless for Article 21 of the NCC provides that "any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."
- Here, the invitations had already been printed out and distributed, and numerous things had been purchased for the bride and for wedding. Bridal showers were given and gifts had been received.
- Surely this is not a case of mere breach of promise to marry. To formally set a wedding and go through all the preparation and publicity, only to walk out of it at the last minute, is quite different. This is palpably and unjustifiably contrary to good customs for which defendant must be held answerable for damages.

245 Gashem Shookat Baksh vs. CA and Marilou Gonzales| Davide, Jr.
G.R. No. 97336, February 19, 1933|

FACTS

- Private respondent Marilou is a pretty 22 y/o Filipina of good moral character and reputation. On the other hand, petitioner is an Iranian citizen taking up medicine at the Lyceum NW Colleges in Dagupan and residing at the Lozano Apartments. The two met in Mabuhay Luncheonette where the former used to work.
- Marilou filed a complaint for damages for the alleged violation of their agreement to get married. She claimed that she accepted Gashem's love on the condition that they would get married. She said she was a virgin before she began living with him. She narrated that a week before the filing of the complaint, petitioner's attitude towards her started to change (i.e. he maltreated and threatened to kill her). Further, he repudiated their marriage agreement and asked her not to live with him anymore.
- In his answer, petitioner denied proposing marriage or agreeing to be married. He denied maltreating Marilou and asserted that the complaint is baseless.
- Trial court, applying Art 21, ruled in favor of private respondent. It concluded that (a) Gashem and Marilou were lovers, (b) the latter is not a woman of loose morals or questionable virtue who readily submits to sexual advances, (c) Gashem, thru machinations, deceit and false pretenses, promised to marry private respondent, (d) because of his persuasive promise to marry her, she allowed herself to be deflowered by him; (e) by reason of that deceitful promise, Marilou and her parents- in accordance with FIl customs and traditions- made some preparations for the wedding by looking for pigs and chickens, inviting friends and relatives and contracting sponsors, (f) Gashem did not fulfill his promise to marry her and (g) such acts of Gashem, who is a foreigner and who has abused FIl hospitality, have offended our sense of morality, good customs, culture and traditions.
- CA affirmed.

ISSUES & ARGUMENTS

- **W/N damages may be recovered for a breach of promise to marry on the basis of Article 21 of the Civil Code**
    - **Petitioner**: As an Iranian Moslem, he is not familiar with Catholic and Christian ways. Even if he had a promise to marry, the subsequent failure to fulfill the same is excusable or tolerable because of his Moslem upbringing (apat nga pde nya pakasalan). Besides, his acts would not be actionable because according to jurisprudence, mere breach of promise is not actionable.

HOLDING & RATIO DECIDENDI

YES. IN THIS CASE, PETITIONER'S STATEMENTS REVEAL HIS TRUE CHARACTER AND MOTIVE. HE HARBORS A CONDASCENDING, IF NOT SARCASTIC REGARD FOR MARILOU ON ACCT OF HER BIRTH, INFERIOR EDUCL BACKGROUND, POVERTY AND 'DISHONORABLE EMPLOYMENT.' OBVIOUSLY THEN, HE WAS NOT AT ALL MOVED BY GOOD FAITH AND AN HONEST MOTIVE. HIS PROFESSION OF LOVE AND PROMISE TO MARRY WERE EMPTY WORDS INTENDED TO DECEIVE MARILOU.

- The existing rule is that a breach of promise to marry per se is not an actionable wrong. Congress deliberately eliminated from the draft of the NCC the provisions that would have made it so.
- However, the same Code contains a provision, Art. 21, which is designed to expand the concept of torts or quasi-delict in this jurisdiction by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to specifically enumerate and punish in the statute books.
- In the light of the above laudable purpose of Art. 21, where a man's promise to marry is in fact the PROXIMATE CAUSE of the acceptance of his love by a woman and his representation to fulfill that promise thereafter becomes the proximate cause of the giving of herself unto him in a sexual congress, proof that he had, in reality, no intention of marrying her and that the promise was only a subtle scheme to entice or inveigle her to accept him and to obtain her consent to the sexual act, could justify the award of damages pursuant to Art 21. It is essential, however, that such injury should have been committed in a manner contrary to morals, good customs or public policy. (Cause: Promise to Marry, Effect: Carnal Knowledge= Cause of Action: Criminal (RPC, Art 338) or Moral (NCC, Art 21) Seduction, Damages Due: Moral and Actual (should there be any, such as expenses for the wedding preparations).

DANI BOLONG

246 Pecson vs. Court of Appeals| Davide
G.R. No. 115814, May 26, 1998 | 244 SCRA 407

FACTS

- Pecson was an owner of a commercial lot with a four-door two-storey apartment building. For his failure to pay realty taxes, the lot was sold at a public action.
- It was bought by a certain Nepomuceno who in turn sold it to private respondents Spouses Nuguid.
- Pecson challenged the sale but the trial court upheld such, excluding the apartment building. The CA affirmed such decision, saying that there was no proof that the building was included in the sale.
- Spouses Nuguid then filed for delivery of possession of the lot and building. Both trial court and CA found Pecson to be a builder in good faith, and that Nuguid should compensate him P53,000 for the cost of the building when he constructed it in 1965.

ISSUES & ARGUMENTS

- **W/N the basis for indemnity was correct**

HOLDING & RATIO DECIDENDI

No, the computation of indemnity should be based on the current market value of the apartment building

- Technically, Pecson could not be a builder in good faith as contemplated in the relevant provisions of the civil code for he built the building when he was still the valid owner of the lot. However, such provisions may be applied in analogy.
- The respondent court and the private respondents espouse the belief that the cost of construction of the apartment building in 1965, and not its current market value, is sufficient reimbursement for necessary and useful improvements made by the petitioner. This position is, however, not in consonance with previous rulings of this Court in similar cases.
- The objective of Article 546 of the Civil Code is to administer justice between the parties involved. The said provision was formulated in trying to adjust the rights of the owner and possessor in good faith of a piece of land, to administer complete justice to both of them in such a way as neither one nor the other may enrich himself of that which does not belong to him. Guided by this precept, it is therefore the current market value of the improvements which should be made the basis of reimbursement.

Case is remanded to trial court for proper determination of the current market value of the building.

247 Security Bank and Trust Company vs. CA |
G.R. No. 117009. October 11, 1995|

FACTS

- Private respondent Ysmael C. Ferrer was contracted by herein petitioners Security Bank and Trust Company (SBTC) and Rosito C. Manhit to construct the building of SBTC in Davao City for the price of P1,760,000.00. The contract provided that Ferrer would finish the construction in two hundred (200) working days. Respondent Ferrer was able to complete the construction of the building within the contracted period but he was compelled by a drastic increase in the cost of construction materials to incur expenses of about P300,000.00 on top of the original cost. The additional expenses were made known to petitioner SBTC thru its Vice-President Fely Sebastian and Supervising Architect Rudy de la Rama as early as March 1980. Respondent Ferrer made timely demands for payment of the increased cost. Said demands were supported by receipts, invoices, payrolls and other documents proving the additional expenses.
- SBTC thru Assistant Vice-President Susan Guanio and a representative of an architectural firm consulted by SBTC, verified Ferrer's claims for additional cost. A recommendation was then made to settle Ferrer's claim but only for P200,000.00. SBTC, instead of paying the recommended additional amount, denied ever authorizing payment of any amount beyond the original contract price. SBTC likewise denied any liability for the additional cost based on Article IX of the building contract which states: If at any time prior to the completion of the work to be performed hereunder, increase in prices of construction materials and/or labor shall supervene through no fault on the part of the contractor whatsoever or any act of the government and its instrumentalities which directly or indirectly affects the increase of the cost of the project, OWNER shall equitably make the appropriate adjustment on mutual agreement of both parties.
- Ysmael C. Ferrer then filed a complaint for breach of contract with damages.

ISSUES & ARGUMENTS

- **W/N Ysmael Ferrer should be reimbursed for its additional expenses incurred during the construction of the building.**

HOLDING & RATIO DECIDENDI

Ysmael should be reimbursed for its additional expenses.

Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.
The above-quoted article is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as "basic principles to be observed for the rightful relationship between human beings and for the stability of the social order, . . . designed to indicate certain norms that spring from the fountain of good conscience, . . . guides for human conduct [that] should run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice."

In the present case, petitioners' arguments to support absence of liability for the cost of construction beyond the original contract price are not persuasive.

Hence, to allow petitioner bank to acquire the constructed building at a price far below its actual construction cost would undoubtedly constitute unjust enrichment for the bank to the prejudice of private respondent. Such unjust enrichment, as previously discussed, is not allowed by law.

248 Spouses Theis v CA | Hermosisima, Jr.
G.R. No. 126013. February 12, 1997 |

FACTS

- Calson's Development owned three lots in Tagaytay – Parcels Nos. 1, 2, and 3. Adjacent to parcel no. 3 was parcel no. 4, which was not owned by Calsons.
- Calson's built a house on Parcel No. 3. In a subsequent survey, parcel no. 3, where the house was built, was erroneously indicated to be covered by the title to parcel no. 1. Parcel nos. 2 and 3 were mistakenly surveyed to be located where parcel no. 4 was located.
- Unaware of this mistake by which Calson's appeared to be the owner of parcel no. 4, Calson's sold what it thought was parcel nos. 2 and 3 (but what was actually parcel no. 4) to the Theis spouses. Upon execution of the deed of sale, Calson's delivered the certificates of title to parcel nos. 2 and 3 to the spouses. The spouses then went to Germany.
- About three years later, they returned to Tagaytay to plan the construction of their house. It was then that they discovered that parcel no. 4, which was sold to them, was owned by someone else, and **that what was actually sold to them were parcel nos. 2 and 3.** The real parcel no. 3, however, could not have been sold to them since a house had already been built thereon by Calson's even before the execution of the contract, and its construction cost far exceeded the price paid by the spouses for the two parcels of land.
- **The spouses insisted that they wanted parcel no. 4, but this was impossible, since Calson's did not own it.** Calson's offered them the real parcel nos. 1 and 2 instead since these were really what it intended to sell to the spouses. The spouses refused and insisted that they wanted parcel nos. 2 and 3 since the TCTs to these lots were the ones that had been issued in their name. Calson's then offered to return double the amount already paid by the spouses. The spouses still refused. Calson's filed an action to annul the contract of sale.

ISSUES & ARGUMENTS

- **W/N Calson's may rescind the contract on the ground of mistake**

HOLDING & RATIO DECIDENDI

YES.

- Art. 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract."
- Tolentino explains that the concept of error in this article must include both ignorance, which is the absence of knowledge with respect to a thing, and mistake properly speaking, which is a wrong conception about said thing, or a belief in the existence of some circumstance, fact, or event, which in reality does not exist. In both cases, there is a lack of full and correct knowledge about the thing. The mistake committed by the private respondent in selling parcel no. 4 to the petitioners falls within the second type. Verily, such mistake invalidated its consent and as such, annulment of the deed of sale is proper
- Article 1390 of the Civil Code provides that contracts where the consent is vitiated by mistake are annullable. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract. The concept of error includes: (1) ignorance, which is the absence of knowledge with respect to a thing; and (2) mistake, which is a wrong conception about said thing, or a belief in the existence of some fact, circumstance, or event, which in reality does not exist. In both cases, there is a lack of full and correct knowledge about the thing.
- In this case, Calson's committed an error of the second type. This mistake invalidated its consent, and as such, annulment of the deed of sale is proper. The error was an honest mistake, and the good faith of Calson's is evident in the fact that when the mistake was discovered, it immediately offered two other vacant lots to the spouses or to reimburse them with twice the amount paid.
- Petitioners' insistence in claiming parcel no. 3 on which stands a house whose value exceeds the price paid by them is unreasonable. This would constitute unjust enrichment. Moreover, when the witness for the spouses testified, he stated that what was pointed out to the spouses was a vacant lot. Therefore, they could not have intended to purchase the lot on which a house was already built.

JON LINA

249 Valarao v CA | Panganiban.
G.R. No. 130347, March 3, 1999 |

FACTS

- Petitioners Valarao through their son as attorney-in-fact sold to respondent Arrelano a parcel of land in Diliman, QC for Php 3.225 M under a deed of conditional sale. Vendee Arrellano was obligated to encumber a separate piece of her property under mortgage for P2.225M in favor of petitioners and upon payment the said mortgage will be void. The conditions also included that should respondent fail to pay 3 successive installments or any one year end lump sum payment sale shall be considered automatically rescinded and all payments made shall be forfeited in favor of petitioners.
- Private respondent alleges she had already paid P2.028 M by September but admitted failure to pay October and November installments of the same year (1990) respondent attempted to settle October and November installments along with her December installment on December 30 and 31 but was turned down by petitioners' maid who had previously accepted the payments for them. Respondent attempted to reach the petitioners through the barangay but petitioners never appeared, Arrellano managed to contact the petitioners via phone but was told that they no longer would be accepting payment and respondent should talk to their lawyer instead.
- Respondent consigned the amount to the court and petitioners filed a case against respondent alleging that there was no attempt at payment and that they were enforcing automatic rescission and forfeiture clause.

ISSUES & ARGUMENTS

- **W/N Answer indicating willingness to accept amount due, failure to pay will result in rescission, ordering respondent to vacate and turn-over possession and asking for attorney's fees is equivalent to demand letter**
- **W/N Automatic forfeiture clause is binding on parties**
- **W/N Action for consignation will produce any effects without actual deposit in court of amount**

HOLDING & RATIO DECIDENDI

Notice either judicially or notarial act not needed in contracts to sell or installments concerning real property
Automatic forfeiture clause is valid and binding however, petitioners cannot be rewarded for failing to accept payment
Petitioners cannot enforce automatic forfeiture clause even without actual deposit
Rescission cannot be effected because of the Maceda Law

- Spouses unmistakably reserved ownership of the land until full payment of the contract price. Therefore demand by judicial or notarial act is not needed.

- The facts unmistakably state that petitioners refused to accept payment attempts made on December, their maid refused to accept the payment and even refused to appear during the barangay hearings. Likewise, their past actuations of allowing the maid to receive payments precludes them from claiming that the maid had no authority as under Art. 1241 of the Civil Code states payment through a third person is valid if by the creditor's conduct, debtor has been led to believe that the third person had authority to receive payment

- Intent of respondent to pay installments is clear. She is not only willing to pay the installments she has failed to pay but the entire residual amount. She even filed a motion to deposit albeit without actually depositing the amount in the courts. To allow petitioners to take the payments previously made would be inequitable.

- Under the Maceda Law respondent is entitled to one month grace period for every year of payment. She therefore has a total grace period of three months from December 31, 1990. It would be unjust enrichment to allow petitioners to enforce the automatic forfeiture clause.

CHRIS PALARCA

250 Grepalife vs. CA

FACTS:

A contract of group life insurance was executed between petitioner Great Pacific Life Assurance Corporation (hereinafter Grepalife) and Development Bank of the Philippines (hereinafter DBP). Grepalife agreed to insure the lives of eligible housing loan mortgagors of DBP.

Dr. Wilfredo Leuterio, a physician and a housing debtor of DBP applied for membership in the group life insurance plan. In an application form, Dr. Leuterio answered questions concerning his health condition as follows:

> *7. Have you ever had, or consulted, a physician for a heart condition, high blood pressure, cancer, diabetes, lung; kidney or stomach disorder or any other physical impairment? NO*
>
> *8. Are you now, to the best of your knowledge, in good health? NO*

On November 15, 1983, Grepalife issued Certificate No. B-18558, as insurance coverage of Dr. Leuterio, to the extent of his DBP mortgage indebtedness amounting to eighty-six thousand, two hundred (P86,200.00) pesos.

On August 6, 1984, Dr. Leuterio died due to "massive cerebral hemorrhage." Consequently, DBP submitted a death claim to Grepalife. Grepalife denied the claim alleging that Dr. Leuterio was not physically healthy when he applied for an insurance coverage on November 15, 1983. Grepalife insisted that Dr. Leuterio did not disclose he had been suffering from hypertension, which caused his death. Allegedly, such non-disclosure constituted concealment that justified the denial of the claim.

The widow of the late Dr. Leuterio, respondent Medarda V. Leuterio, filed a complaint with the Regional Trial Court of Misamis Oriental, Branch 18, against Grepalife for "Specific Performance with Damages.

NOTE that the insured policy contains the following provision:

> "In the event of the debtor's death before his indebtedness with the Creditor [DBP] shall have been fully paid, an amount to pay the outstanding indebtedness shall first be paid to the creditor and the balance of sum assured, if there is any, shall then be paid to the beneficiary/ies designated by the debtor."

When DBP submitted the insurance claim against petitioner, the latter denied payment thereof, interposing the defense of concealment committed by the insured. Thereafter, DBP collected the debt from the mortgagor and took the necessary action of foreclosure on the residential lot of private respondent.

In the year 1995, DBP foreclosed on the residential lot, in satisfaction of Leuterio's outstanding loan.

ISSUE:

Whether DBP may still collect on the insurance proceeds?

RULING:

NO

The insurance proceeds shall inure to the benefit of the heirs of the deceased person or his beneficiaries. Equity dictates that DBP should not unjustly enrich itself at the expense of another (*Nemo cum alterius detrimenio protest*). Hence, it cannot collect the insurance proceeds, after it already foreclosed on the mortgage. The proceeds now rightly belong to Dr. Leuterio's heirs represented by his widow, herein private respondent Medarda Leuterio.

251 EPG Construction et al v. Vigilar | Buena
GR 131544 | March 16, 2001

FACTS

- In 1983, the Ministry of Human Settlement, through the BLISS Development Corporation, initiated a housing project on a government property in Pasig City. Ministry of Human Settlement entered into a Memorandum of Agreement (MOA) with the Ministry of Public Works and Highways,where the latter undertook to develop the housing site and construct thereon 145 housing units.
- By virtue of the MOA, the Ministry of Public Works and Highways forged individual contracts with herein petitioners for the construction of the housing units. Under the contracts, the scope of construction and funding therefor covered only around "2/3 of each housing unit." After complying with the terms of said contracts, and by reason of the verbal request and assurance of then DPWH Undersecretary Aber Canlas that additional funds would be available and forthcoming, petitioners agreed to undertake and perform "additional constructions"[4] for the completion of the housing units, despite the absence of appropriations and written contracts to cover subsequent expenses for the "additional constructions."
- Petitioners then received payment for the construction work duly covered by the individual written contracts, leaving the sum for the "additional constructions" unpaid.
- Petitioners sent a demand letter to the DPWH Secretary and submitted that their claim for payment was favorably recommended by DPWH Assistant Secretary for Legal Services, who recognized the existence of *implied contracts* covering the additional constructions. DPWH Assistant Secretary Madamba opined that payment of petitioners' money claims should be based on *quantum meruit* and should be forwarded to the Commission on Audit (COA) for its due consideration and approval. COA returned the claim to DPWH for auditorial action. On the basis of the Inspection Report of the Auditor's Technical Staff, the DPWH Auditor interposed no objection to the payment of the money claims subject to whatever action the COA may adopt.
- The documents were returned by COA to DPWH stating that funds should first be made available before COA could pass upon and act on the money claims. The Sec. of Budget and Management released the funds. However, respondent Vigilar as DPWH Secretary denied the money claims.

ISSUE:

- **W/N the "existence of appropriations and availability of funds as certified to and verified by the proper accounting officials are conditions *sine qua non* for the execution of government contracts.**

HOLDING & RATIO DECIDENDI

- No. While "implied contracts", are void, in view of violation of applicable laws, auditing rules and lack of legal requirements,[11] we nonetheless find the instant petition laden with merit and uphold, *in the interest of substantial justice*, petitioners-contractors' right to be compensated for the "additional constructions" on the public works housing project, applying the *principle of quantum meruit*
- The illegality of the subject contracts proceeds from an express declaration or prohibition by law,[16] and not from any intrinsic illegality. Stated differently, the subject contracts are not illegal *per se*.
- The construction of the housing units had already been completed by petitioners-contractors and the subject housing units had been, since their completion, under the control and disposition of the government pursuant to its public works housing project.
- Where payment is based on *quantum meruit*, the amount of recovery would only be the reasonable value of the thing or services rendered regardless of any agreement as to value

AYEN QUA

252 PADCOM vs. Ortigas Center| Davide
G.R. No. 146807, May 9, 2002 |

FACTS

- Petitioner Padcom Condominium Corp (PADCOM) owns and manages the Padilla Office Condominium Building (PADCOM Building) located at Emerald Avenue, Ortigas Center, Pasig City. The land on which the building stands was originally acquired from the Ortigas & Co, Ltd Partnership (OCLP), by Tierra Development Corporation (TDC) under a Deed of Sale.
- Among the terms and conditions in the deed of sale was the requirement that the transferee and its successor-in-interest must become members of an association for realty owners and long-term lessees in the area later known as the Ortigas Center. Subsequently, the said lot, together with improvements thereon, was conveyed by TDC in favor of PADCOM in a Deed of Transfer.
- In 1982, respondent Ortigas Center Association, Inc. (Association) was organized to advance the interests and promote the general welfare of the real estate owners and long-term lessees of lots in the Ortigas Center. It sought the collection of membership dues in the amount of ₱2,724.40/month from PADCOM.
- Corporate books showed that PADCOM owed the Association ₱639,961.47 representing membership dues, interests and penalty charges from April 1983 to June 1993.
- Due to PADCOM's failure and refusal to pay, the Association filed a complaint for collection of sum of money.
- The Association averred that purchasers of lands within the Ortigas Center complex from OCLP are obligated under their contracts of sale to become members of the Association. This obligation was allegedly passed on to PADCOM when it bought the lot from TDC.
- PADCOM contended that it is a non-stock, non-profit association, and for it to become a special member of the Association, it should first apply for and be accepted for membership by the latter's Board of Directors. No Automatic membership was contemplated in its By-Laws.And it was not a member, it's not liable for dues.
- The Trial Court dismissed the complaint. CA reversed and ruled that PADCOM automatically became a member when TDC sold the lot to them. The intent to pass the obligation to prospective transferees was evident from the annotation of the same clause at the back of the TCT.

ISSUES & ARGUMENTS

- **W/N PADCOM is an automatic member?**

Petitioner: it cannot be compelled to be a member of the Association solely by virtue of the "automatic membership" clause that appears on the title of the property and the Deed of Transfer. In 1975, when it bought the land, the Association was still inexistent and the provision on automatic membership is anticipatory in nature.

HOLDING & RATIO DECIDENDI

YES.

- Under the Torrens system of registration, claims and liens of whatever character, except those mentioned by law, existing against the land binds the holder of the title and the whole world
- It is undisputed that when the land in question was bought by PADCOM's predecessor-in-interest, TDC, from OCLP, the sale bound TDC to comply with paragraph (G) of the covenants, conditions and restrictions of the Deed of Sale, which provides for the automatic membership with the Association.
- Moreover, Article 1311 of the Civil Code provides that contracts take effect between the parties, their assigns and heirs. Since PADCOM is the successor-in-interest of TDC, it follows that the stipulation on automatic membership with the Association is also binding on the former.
- Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.
- Assuming *in gratis argumenti* that PADCOM is not a member of the Association, it cannot evade payment without violating the equitable principles underlying quasi-contracts. Article 2142 of the Civil Code provides:
  Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.
- Generally, it may be said that a quasi-contract is based on the presumed will or intent of the obligor dictated by equity and by the principles of absolute justice. Examples of these principles are: (1) it is presumed that a person agrees to that which will benefit him; (2) nobody wants to enrich himself unjustly at the expense of another; or (3) one must do unto others what he would want others to do unto him under the same circumstances.
- As resident and lot owner in the Ortigas area, PADCOM was definitely benefited by the Association's acts and activities to promote the interests and welfare of those who acquire property therein or benefit from the acts or activities of the Association.

253 David REYES v Jose LIM | Carpio
G.R. No. 134241 August 11, 2003

FACTS

- REYES, the owner of a parcel land along FB Harrison Street along Pasay, was then currently leasing the land to KENG, owner of Harrison Lumber.
- REYES later CONTRACTED TO SELL the same parcel of land to LIM for 28M
  - DP: 10M
  - Balance: 18M by Mar 8, 1995, 930 am, deposited at the bank of choice of the buyer provided:
    - if tenants leave before Mar 8, buyer will have 10 days from notice to pay the balance
    - if tenants leave beyond Mar 8, seller will pay penalty of 4% of 10M (4K)/ mo until the tenants leave
- Keng was informed of the sale, but they refused to vacate by Mar 8. Reyes informed Keng that, despite delay in vacating the land, he will not pass the charge of 4K penalty to Keng. Later, Reyes filed a complaint claiming that KENG and LIM connived: that KENG will not leave the premises until penalty equals the remaining balance of 18M due from LIM.
- Keng and Lim denied that they intended to defraud Reyes. Keng, in his answer, said that Reyes approved the extension of the lease since they found it difficult to move, although by March, they already started moving some of their stocks in the new Malabon location.
- Lim said that Reyes offered to return the 10M DP and cancel the contract to sell since Reyes found it difficult to evict the lessee, but LIM rejected the offer. LIM, instead went the RD to check the TCT of the lot. LIM learned that Reyes already sold the lot on MARCH 1 to LINE ONE for 16.78M despite their subsisting contract to sell.
- Lim amended his answer and prayed for rescission and writ of preliminary attachment. Attachment was denied. Lim asked for the 10M to be deposited to protect its dissipation while the case is pending. RTC granted. Reyes opposed and filed and MR. MR denied. CA affirms RTC, hence this petition.

ISSUES & ARGUMENTS

W/N depositing the 10M is proper given that it is not provided for in the ROC as a remedy in cases of preliminary attachment?

- REYES: stresses the **enumeration in the Rules is exclusive**. Reyes argues that a **court cannot apply equity and require deposit if the law already prescribes the specific provisional remedies which do not include deposit.** Reyes invokes the principle that **equity is "applied only in the absence of, and never against, statutory law or x x x judicial rules of procedure."** Reyes adds the fact that the provisional remedies do not include deposit is a **matter of dura lex sed lex.**

HOLDING & RATIO DECIDENDI

YES. ORDER TO DEPOSIT 10M IS PROPER.

- The instant case, however, is precisely one where there is a **hiatus in the law** and in the **Rules of Court**. If left alone, the **hiatus will result in unjust enrichment to Reyes at the expense of Lim.** The hiatus may also **imperil restitution, which is a precondition to the rescission of the Contract to Sell that Reyes himself seeks.**
- This is not a case of equity overruling a positive provision of law or judicial rule for there is none that governs this particular case. **This is a case of silence or insufficiency of the law and the Rules of Court.** In this case, Article 9 of the Civil Code expressly mandates the courts to make a ruling despite the "silence, obscurity or insufficiency of the laws." This calls for the **application of equity**, which "**fills the open spaces in the law.**"
- The **purpose of the exercise of equity jurisdiction** in this case is **to prevent unjust enrichment and to ensure restitution.** Equity is the principle by which substantial justice may be attained in cases where the prescribed or customary forms of ordinary law are inadequate.
- Reyes contends that he has the right to the 10M until the annulment of the contract.
  - Court said: **To subscribe to Reyes' contention will unjustly enrich Reyes at the expense of Lim.** Reyes sold to Line One the Property even before the balance of P18M under the Contract to Sell with Lim became due on 8 March 1995. On 1 March 1995, Reyes signed a Deed of Absolute Sale in favor of Line One. On 3 March 1995, the Register of Deeds issued TCT No. 13476730 in the name of Line One. Reyes cannot claim ownership of the P10M DP because Reyes had already sold to another buyer the Property for which Lim made the down payment.
- A court may not permit a seller to retain, pendente lite, money paid by a buyer if the seller himself seeks rescission of the sale because he has subsequently sold the same property to another buyer.
- By seeking rescission, a seller necessarily offers to return what he has received from the buyer. Thus to prevent unjust enrichment and ensure restitution, it was proper for the court to place the money in judicial deposit.
- **There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience**. In this case, it was just, equitable and proper for the trial court to order the deposit of the P10M DPto prevent unjust enrichment by Reyes at the expense of Lim.

Petition denied. CA affirmed.

DIANE LIPANA

254 UP vs. Philab Industries, Inc. | Callejo, Sr.
G.R. No. 152411, September 29, 2004 | 439 SCRA 467

FACTS

- UP decided to construct a Research Complex. As part of the project, laboratory equipment and furniture were purchased for the BIOTECH at UP Los Banos. The Ferdinand E. Marcos Foundation (FEMF) agreed to fund and donate money for the project.
- BIOTECH arranged for PHILAB to fabricate the laboratory furniture and equipment and deliver the same to BIOTECH, but for the account of FEMF.
- BIOTECH requested the issuance of a purchase order and downpayment from FEMF, assuring it that the contract would be prepared ASAP before their issuance.
- However, PHILAB failed to submit the contract. Instead, they submitted an accomplishment report on the project. Nevertheless, it made partial deliveries to BIOTECH, and FEMF made 2 remittances to PHILAB, for which the latter issued official receipts.
- Later, when PHILAB submitted the final bill to BIOTECH, FEMF failed to pay for the same. Despite having reiterated its request for payment, PHILAB did not receive anything from FEMF. Thus, it wrote BIOTECH appealing for payment.
- At this time, Marcos was ousted because of the EDSA revolution. PHILAB then also requested President Cory Aquino to help secure the payment due from FEMF. Eventually, the request was forwarded to PCGG, which in turn requested UP to furnish it with a copy of the relevant contract and the MOA. However, PCGG was told that there was no contract executed between PHILAB and FEMF.
- PHILAB filed a complaint for sum of money against UP. The latter denied liability, alleging that PHILAB had no cause of action against it because it was merely the donee/beneficiary of the laboratory furniture, and that the FEMF was the one liable for the purchase price.
- The TC dismissed the complaint without prejudice to any recourse that PHILAB might have against FEMF. However, the CA reversed and held UP liable to PHILAB to prevent unjust enrichment. Hence this petition.

ISSUE AND ARGUMENTS

W/N UP is liable to pay PHILAB for the laboratory equipment and furniture.

HOLDING & RATIO DECIDENDI

UP IS NOT LIABLE.

- PHILAB has not shown that UP ever obliged itself to pay for the laboratory furniture. Moreover, UP is right in saying that there was an implied-in-fact contract entered into between PHILAB and FEMF.
- PHILAB was aware that it was FEMF who was to pay for the same, and that UP was merely the donee-beneficiary. From the inception, FEMF paid all the bills, for which PHILAB unconditionally issued official receipts.
- The CA erred in ruling that UP is liable to PHILAB based on the doctrine of unjust enrichment. Unjust enrichment claims do not lie simply because a party benefits from the efforts or obligations of others. Instead, it must be shown that a party was unjustly enriched meaning that enriched refers to being acquired illegally or unlawfully.
- Moreover, to substantiate a claim for unjust enrichment, the claimant must unequivocally prove that another party knowingly received something of value to which he was not entitled and that the state of affairs are such that it would be unjust for the person to keep the benefit. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request.
- Article 22, NCC: Every person who, through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to hin.
- Essential elements of unjust enrichment: (1) the defendant has been enriched, (2) the plaintiff has suffered a loss, (3) the enrichment of the defendant is without just or legal ground, and (4) the plaintiff has no other action based on contract, quasi-contract, crime or quasi-delict. An action in rem reverso is considered merely an auxiliary action.
- Unjust enrichment is not present in this case. PHILAB had a remedy against FEMF via an action based on an implied-in-fact contract. UP (BIOTECH) legally acquired the laboratory furniture under the MOA with FEMF. Hence, it is entitled to keep such furniture.

Petition GRANTED. CA reversed and set aside.

CHRISSIE MORAL

255 H.L. Carlos Construction v. MPC
G.R. No. 137147. January 29, 2002

FACTS

- MARINA PROPERTIES CORPORATION (MPC for brevity) is engaged in the business of real estate development. It entered into a contract with H.I. CARLOS CONSTRUCTION, INC. (HLC) to construct Phase III of a condominium complex called MARINA BAYHOMES CONDOMINIUM PROJECT, consisting of townhouses and villas, totaling 31 housing units, for a total consideration of ₱38,580,609.00, within a period of 365 days from receipt of 'Notice to Proceed'. The original completion date of the project was May 16, 1989, but it was extended to October 31, 1989 with a grace period until November 30, 1989.
- "The contract was signed by Jovencio F. Cinco, president of MPC, and Honorio L. Carlos, president of HLC.
- "On December 15, 1989, HLC instituted this case for sum of money against not only MPC but also against the latter's alleged president, [Respondent] Jesus K. Typoco, Sr. (Typoco) and [Respondent] Tan Yu (Tan), seeking the payment of various sums with an aggregate amount of ₱14 million pesos, broken down as follows:
  a. ₱7,065,885.03 for costs of labor escalation, change orders and material price escalation;

ISSUES & ARGUMENTS

W/N H.L. is liable for actual and liquidated damages for failing to finish the construction it undertook to complete (Which party was in delay)

HOLDING & RATIO DECIDENDI

Yes. petitioner did not fulfill its contractual obligations. It could not totally pass the blame to MPC for hiring a second contractor, because the latter was allowed to terminate the services of the contractor.

Either party shall have the right to terminate this Contract for reason of violation or non-compliance by the other party of the terms and conditions herein agreed upon."

As of November 1989, petitioner accomplished only approximately 80 percent of the project. In other words, it was already in delay at the time. In addition, Engineer Miranda testified that it would lose money even if it finished the project; thus, respondents already suspected that it had no intention of finishing the project at all.

Petitioner was in delay and in breach of contract. Clearly, the obligor is liable for damages that are the natural and probable consequences of its breach of obligation. In order to finish the project, the latter had to contract the services of a second construction firm for ₱11,750,000. Hence, MPC suffered actual damages in the amount of ₱4,604,579 for the completion of the project.

Petitioner is also liable for liquidated damages as provided in the Contract.

Liquidated damages are those that the parties agree to be paid in case of a breach. As worded, the amount agreed upon answers for damages suffered by the owner due to delays in the completion of the project. Under Philippine laws, these damages take the nature of penalties. A penal clause is an accessory undertaking to assume greater liability in case of a breach. It is attached to an obligation in order to ensure performance.

MAGIC MOVIDO

256 People vs. Baylon | Fernando, J.:
G.R. No. L-35785, May 29, 1974 | 57 SCRA 1974

FACTS

- Susana Aspili is only 13 years of age at the time of the alleged crime.
- She testified that as a 1st year high school student, she used to commute from the barrio where she lived to the poblacion, about 4 km away from where she lived, where the Batac Institute is located
- On March 15, 1965, at about 5am, she was on her way to school for her 7:30 class
- As she was nearing the barrio school of Colo, appellant Domiciano Baylon suddenly emerged from the thicket on the left side of the road, embraced her, and at the same time pulled her towards him
- She shouted for help but her mouth was covered by appellant's palm
- There was a struggle but at the end, appellant successfully accomplished his carnal desires against the victim
- Susana then hurried back home to tell her mother what happened. Her mother then told her father about the incident
- Both her mother and father later went to the house of Juan Asuncion (barangay captain)
    - Asuncion went to their house to interview Susana and he accompanied them to the house of Fidel Ramos (barrio councilor), who then called for Baylon for an inquiry
- Baylon exercised his right to remain silent until advised by his counsel
- Upon the testimonies of the following, Baylon was found guilty by the court:
    - **Dr. Ofelia Agabin Flor** – resident physician of the Provincial Hospital of Ilocos Norte, who conducted on the very same day the medical examination
    - **Aquilino Gamiao** – a member of the police force of Batac, Ilocos Norte, with 16 years of experience behind him, who investigated the matter
    - **Monica Lagmay Aspili** – mother of the offended party
- The appellant now comes to this court praying for a reversal of the finding of guilt against him

ISSUES & ARGUMENTS

- **W/N Baylon may be acquitted on the basis of his defense of alibi**

HOLDING & RATIO DECIDENDI

NO.

- The determination by the trial judge who could with and appraise the testimony as to the facts duly proven is entitled to the highest respect, absent a showing that he ignored or disregarded circumstances of weight or influence to call for a different conclusion
- To establish an alibi, the accused must show that he was at another place for such period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission
- Time and time again, this Court had correctly observed that no woman, especially one of tender age, would willingly expose herself to the embarrassment of a public trial wherein she would have not only to admit but also to narrate the violation of her person, if such indeed were not the case.
    - Far better it is in not a few cases to spare herself the humiliation if there be some other way of bringing the offender to justice
    - Here, there was such a testimony coming from the offended party, firm, categorical, straight-forward
    - Her clothing, including the most intimate garments, soiled and smudged, ripped and torn, were mute witnesses of the futile resistance she put up.
    - It is quite a strain on one's credulity to believe that under such circumstances, the young girl's honor remained unsullied, the nefarious design unfulfilled
- The state, as *parens patriae*, is under the obligation to minimize the risk of harm to those, who, because of their minority, are as yet unable to take care of themselves fully
    - Those of tender years deserve its utmost protection
    - Moreover, the injury in cases of rape is not inflicted on the unfortunate victim alone
    - The consternation it causes her family must also be taken into account
    - It may reflect a failure to abide by the announced concern in the fundamental law for such institution

CHRISTINE OCAMPO

257 Clarita Cruz vs. NLRC | Paras
G.R. No. 98273, October 28, 1991

FACTS

- Clarita V. Cruz went abroad pursuant to an employment contract that she hoped would improve her future. Although a high school graduate, she agreed to work as a domestic helper in Kuwait
- After her two-year contract, she came back highly aggrieved and filed a complaint against EMS Manpower and Placement Services (Phil.) and its foreign principal, for underpayment of her salary and non-payment of her vacation leave.
- She alleged that her foreign employer treated her as a slave and required her to work 18 hours a day. She was beaten up and suffered facial deformity, head trauma and decreased sensation in the right portion of her body and was paid only $120 per month and her total salaries were given to her only three hours before her flight back to Manila.
- This was after the plane she was supposed to take had left and she had to stay in the airport for 24 hours before her employer finally heard her pleas and delivered her passport and ticket to her.
- In its answer and position paper, the private respondent raised the principal defense of settlement as evidenced by an Affidavit of Desistance, by virtue of which, POEA dismissed her claim, and such was upheld by NLRC
- Petitioner faults the POEA and the NLRC with grave abuse of discretion for having upheld the Affidavit of Desistance.
- Cruz rejects the settlement as having been obtained from her under duress and false pretenses.
- Her contention is that she was inveigled into signing the Affidavit of Desistance without the assistance of counsel. The "Attorney" Alvarado who assisted her was not really a lawyer but only a helper in the Overseas Workers Welfare Administration. Atty. Biolena, on the other hand, merely acknowledged the document.
- Moreover, when she signed the affidavit, she was under the impression when she was agreeing to settle only her claim for one month unpaid vacation leave, as the wording of the receipt she issued on the same date showed.
- Private respondent argues that the petitioner is bound by her Affidavit of Desistance.

ISSUES & ARGUMENTS

- **W/N petitioner can still collect from her agency despite of the affidavit of desistance.**

HOLDING & RATIO DECIDENDI

Yes

- This decision demonstrates once again the tenderness of the Court toward the worker subjected to the lawless exploitation and impositions of his employer. The protection of our overseas workers is especially necessary because of the inconveniences and even risks they have to undergo in their quest for a better life in a foreign land away from their loved ones and their own government.

- The domestic helper is particularly susceptible to abuse because she usually works only by herself in a private household unlike other workers employed in an open business concern who are able to share and discuss their problems and bear or solve them together. The domestic helper is denied that comfort. She has no companions in her misery. She usually broods alone. There is no one to turn to for help. That is why we must carefully listen to her when she is finally able to complain against those who would rob her of her just rewards and even of her dignity as a human being.

NLRC resolutions set aside. Affidavit of Desistance declared null and void. Case remanded to POEA.

258 St Louis Realty vs CA and Aramil

FACTS

- This case is about the recovery of damages for a wrongful advertisement in the *Sunday Times* where Saint Louis Realty Corporation misrepresented that the house of Doctor Conrado J. Aramil belonged to Arcadio S. Arcadio.
- The same advertisement appeared in the *Sunday Times* dated January 5, 1969. Doctor Aramil a neuropsychiatrist and a member of the faculty of the U. E. Ramon Magsaysay Memorial Hospital, noticed the mistake. On that same date, he wrote St. Louis Realty the following **letter of protest**:

  This is anent to your advertisements appearing in the December 15, 1968 and January 5, 1969 issues of the *Sunday Times* which boldly depicted my house at the above-mentioned address and implying that it belonged to another person. I am not aware of any *permission or authority on my part* for the use of my house for such publicity.

  This unauthorized use of my house for your promotional gain and much more the apparent distortions therein are I believe not only transgression to my private property but also damaging to my prestige in the medical profession I have had invited in several occasions numerous medical colleagues, medical students and friends to my house and after reading your December 15 advertisement some of them have uttered some remarks purporting doubts as to my professional and personal integrity. Such sly remarks although in light vein as "it looks like your house," "how much are you renting from the Arcadios?", " like your wife portrayed in the papers as belonging to another husband," etc., have resulted in no little mental anguish on my part.

I have referred this matter to the Legal Panel of the Philippine Medical Association and their final advice is pending upon my submission of supporting ownership papers.
I will therefore be constrained to pursue court action against your corporation unless you could satisfactorily explain this matter within a week upon receipt of this letter.

- The letter was received by Ernesto Magtoto, an officer of St. Louis Realty in charge of advertising. He **stopped publication of the advertisement**. He contacted Doctor Aramil and offered his apologies. However, **no rectification or apology was published.**
- On February 20, 1969, Aramil's counsel demanded from St. Louis Realty actual, moral and exemplary damages of P110,000 (Exh. D). In its answer dated March 10, **St. Louis Realty claimed that there was an honest mistake** and that if Aramil so desired, rectification would be published in the *Manila Times*
- It published in the issue of the *Manila Times* of March 18, 1969 a new advertisement with the Arcadio family and their real house. But it did not publish any apology to Doctor Aramil and an explanation of the error.
- On March 29, Aramil filed his complaint for damages. St. Louis Realty published in the issue of the *Manila Times* of April 15, 1969 the following "NOTICE OF RECTIFICATION" in a space 4 by 3 inches:

  This will serve as a notice that our print ad 'Where the Heart is' which appeared in the *Manila Times* issue of March 18, 1969 is a rectification of the same ad that appeared in the *Manila Times* issues rectification of the same ad that appeal of December 15, 1968 and January 5, 1969 wherein a photo of the house of another Brookside Homeowner (Dr. Aramil-private respondent) was mistakenly used as a background for the featured homeowner's the Arcadio family.

  The ad of March 18, 1969 shows the Arcadio family with their real house in the background, as was intended all along.
- Judge Jose M. Leuterio observed that St. Louis Realty should have *immediately published a rectification and apology*. He found that as a result of St. Louis Realty's mistake, magnified by its utter lack of sincerity, Doctor Aramil suffered mental anguish and his income was reduced by about P1,000 to P1,500 a month. Moreover, there was violation of Aramil's right to privacy (Art. 26, Civil Code).

ISSUES & ARGUMENTS

- **W/N St Louis Realty liable for damages**

HOLDING & RATIO DECIDENDI

YES, St Louis Realty liable for damages

- St. Louis Realty committed an actionable quasi-delict under articles 21 and 26 of the Civil Code because the questioned advertisements pictured a beautiful house which did not belong to Arcadio but to Doctor Aramil who, naturally, was annoyed by that contretemps.
- St. Louis Realty contends that the decision is contrary to law and that the case was decided in a way not in conformity with the rulings of this Court. It argues that the case is not covered by article 26 which provides that "every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons". "Prying into the privacy of another's residence" and "meddling with or disturbing the private life or family relations of another" and "*similar acts*", "though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief".
- The damages fixed by Judge Leuterio are sanctioned by Articles 2200, 2208 and 2219 of the Civil Code. Article 2219 allows moral damages for acts and actions mentioned in Article 26. As lengthily explained by Justice Gatmaitan, the acts and omissions of the firm fan under Article 26.
- St. Louis Realty's employee was grossly negligent in mixing up the Aramil and Arcadio residences in a widely circulated publication like the *Sunday Times*. To suit its purpose, it never made any written apology and explanation of the mix-up. It just contented itself with a cavalier "rectification ".
- Persons, who know the residence of Doctor Aramil, were confused by the distorted, lingering impression that he was renting his residence from Arcadio or that Arcadio had leased it from him. Either way, his private life was mistakenly and unnecessarily exposed. He suffered diminution of income and mental anguish.

FRANK TAMARGO

259 Castro Vs. People of the Philippines| Corona
G.R. No. 180832, July 23, 2008|

FACTS

- Justin Albert was the son of Mr. Tan.
- Justin was a Grade 12 student of Reedley International School (RIS). He was dismissed for violating the rules of his probation
- Tan requested for a reconsideration and RIS imposed non-appealable conditions such as not allowing Albert to participate in the graduation ceremonies.
- Tan filed a complaint in the DepEd, claiming malice and bad faith
- DepEd nullified RIS sanctions as unreasonable and a denial of due process. DepEd orders readmission of Albert without any conditions.
- Albert finally participated in the graduation ceremonies.
- After the graduation ceremonies, Tan talked to a fellow parent Ching, intimating his contemplating suit against officers of RIS in their personal capacities, including Asst. Headmaster Castro.
- Ching relayed the information to Castro. At the end of the conversation, Castro said "be careful talking to Tan, that's dangerous"
- Ching then relayed the information to Tan, and Tan filed a grave oral defamation suit against Castro.
- MetC ruling: December 2005, Castro was guilty
- RTC ruling: Action had prescribed, as action was filed 5 months after discovery (should have been within 4 months). But held guilty of only slight oral defamation.
- SolGen: RTC misinterpreted the facts and should not have lowered the offense to slight oral defamation only.
- CA: Reinstate MeTC ruling.

ISSUES & ARGUMENTS

- **W/N petitioner can still be held liable, or has double jeopardy set in?**

HOLDING & RATIO DECIDENDI

NO. PETITIONER CANNOT BE HELD LIABLE AS DOUBLE JEOPARDY HAS SET IN.

- double jeopardy occurs upon (1) a valid indictment (2) before a competent court (3) after arraignment (4) when a valid plea has been entered and (5) when the accused was acquitted or convicted or the case was dismissed or otherwise terminated without the express consent of the accused. Thus, an acquittal, whether ordered by the trial or appellate court, is final and unappealable on the ground of double jeopardy.
- The only exception is when the trial court acted with grave abuse of discretion or, as we held in *Galman v. Sandiganbayan,* when there was mistrial. In such instances, the OSG can assail the said judgment in a petition for certiorari establishing that the State was deprived of a fair opportunity to prosecute and prove its case.
- The rationale behind this exception is that a judgment rendered by the trial court with grave abuse of discretion was issued without jurisdiction. It is, for this reason, void. Consequently, there is no double jeopardy.
- In this case, the OSG merely assailed the RTC's finding on the nature of petitioner's statement, that is, whether it constituted grave or slight oral defamation. The OSG premised its allegation of grave abuse of discretion on the RTC's "erroneous" evaluation and assessment of the evidence presented by the parties.
- What the OSG therefore questioned were errors of judgment (or those involving misappreciation of evidence or errors of law). However, a court, in a petition for certiorari, cannot review the public respondent's evaluation of the evidence and factual findings. Errors of judgment cannot be raised in a Rule 65 petition as a writ of certiorari can only correct errors of jurisdiction (or those involving the commission of grave abuse of discretion).
- Because the OSG did not raise errors of jurisdiction, the CA erred in taking cognizance of its petition and, worse, in reviewing the factual findings of the RTC. We therefore reinstate the RTC decision so as not to offend the constitutional prohibition against double jeopardy.
- At most, petitioner could have been liable for damages under Article 26 of the Civil Codel:
- Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons**.** The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

  x x x x x x x x x

  (3) Intriguing to cause another to be alienated from his friends;

  x x x x x x x x x

- Petitioner is reminded that, as an educator, he is supposed to be a role model for the youth. As such, he should always act with justice, give everyone his due and observe honesty and good faith.

FRANK TAMARGO

260 Tenchavez vs. Ecano | JBL Reyes
G.R. No. L-19671 **November 29, 1965 | 15 SCRA 355**

FACTS

- Direct appeal, on factual and legal questions, from the judgment of the Court of First Instance of Cebu, denying the claim of the plaintiff-appellant, Pastor B. Tenchavez, for legal separation and one million pesos in damages against his wife and parents-in-law, the defendants-appellees, Vicente, Mamerto and Mena, all surnamed "Escaño," respectively
- Missing her late afternoon classes on 24 February 1948 in the University of San Carlos, Cebu City, where she was then enrolled as a second year student of commerce, Vicenta Escaño, 27 years of age (scion of a well-to-do and socially prominent Filipino family of Spanish ancestry and a "sheltered colegiala"), exchanged marriage vows with Pastor Tenchavez, 32 years of age, an engineer, ex-army officer and of undistinguished stock, without the knowledge of her parents, before a Catholic chaplain, Lt. Moises Lavares, in the house of one Juan Alburo in the said city. The marriage was the culmination of a previous love affair and was duly registered with the local civil register.
- Her parents were disgusted when they found out about the marriage and considered a Re-celebration of the marriage as they believed it to be invalid. The re-celebration never took place.
- On 24 June 1950, without informing her husband, Vicenta applied for a passport, indicating in her application that she was single, that her purpose was to study, and she was domiciled in Cebu City, and that she intended to return after two years. The application was approved, and she left for the United States.
- On 22 August 1950, she filed a verified complaint for divorce against the herein plaintiff in the Second Judicial District Court of the State of Nevada in and for the County of Washoe, on the ground of "extreme cruelty, entirely mental in character." On 21 October 1950, a decree of divorce, "final and absolute", was issued in open court by the said tribunal.
- In 1951 Mamerto and Mena Escaño filed a petition with the Archbishop of Cebu to annul their daughter's marriage to Pastor (Exh. "D"). On 10 September 1954, Vicenta sought papal dispensation of her marriage (Exh. "D"-2).
- On 13 September 1954, Vicenta married an American, Russell Leo Moran, in Nevada. She now lives with him in California, and, by him, has begotten children. She acquired American citizenship on 8 August 1958.
- But on 30 July 1955, Tenchavez had initiated the proceedings at bar by a complaint in the Court of First Instance of Cebu, and amended on 31 May 1956, against Vicenta F. Escaño, her parents, Mamerto and Mena Escaño, whom he charged with having dissuaded and discouraged Vicenta from joining her husband, and alienating her affections, and against the Roman Catholic Church, for having, through its Diocesan Tribunal, decreed the annulment of the marriage, and asked for legal separation and one million pesos in damages. Vicenta claimed a valid divorce from plaintiff and an equally valid marriage to her present husband, Russell Leo Moran; while her parents denied that they had in any way influenced their daughter's acts, and counterclaimed for moral damages.The appealed judgment did not decree a legal separation, but freed the plaintiff from supporting his wife and to acquire property to the exclusion of his wife. It allowed the counterclaim of Mamerto Escaño and Mena Escaño for moral and exemplary damages and attorney's fees against the plaintiff-appellant, to the extent of P45,000.00, and plaintiff resorted directly to this Court.

ISSUES & ARGUMENTS

- **W/N Vicenta's parents are liable for damages**

HOLDING & RATIO DECIDENDI

- No. There is no evidence that the parents of Vicenta, out of improper motives, aided and abetted her original suit for annulment, or her subsequent divorce; she appears to have acted independently, and being of age, she was entitled to judge what was best for her and ask that her decisions be respected. Her parents, in so doing, certainly cannot be charged with alienation of affections in the absence of malice or unworthy motives, which have not been shown, good faith being always presumed until the contrary is proved.
- Plaintiff Tenchavez, in falsely charging Vicenta's aged parents with racial or social discrimination and with having exerted efforts and pressured her to seek annulment and divorce, unquestionably caused them unrest and anxiety, entitling them to recover damages. While this suit may not have been impelled by actual malice, the charges were certainly reckless in the face of the proven facts and circumstances. Court actions are not established for parties to give vent to their prejudices or spleen.

261 Concepcion vs. Court of Appeals and Sps. Nicolas | Bellosillo
GR. No.- 120706, January 31, 2000 | 324 SCRA 84

FACTS

- Florence Concepcion was the lessor of the Nicolas spouses (Nestor and Allem). She was also a contributor of capital to the latter's business. One day, Rodrigo Concepcion, brother of the deceased husband of Florence, angrily accosted Nestor and accused him of conducting an adulterous relationship with Florence. In front of Nestor's children and friends, Rodrigo shouted "Hoy Nestor, kabit ka ni Bing! x x x Binigyan ka pala ni Bing Concepcion ng P100,000.00 para umakyat ng Baguio. Pakaakyat mo at ng asawa mo doon ay bababa ka uli para magkasarilinan kayo ni Bing." Worse, Rodrigo hurled the same accusation when he and Nestor confronted Florence.
- Because of said incidents, Nestor felt extreme embarrassment and shame to the extent that he could no longer face his neighbors. Florence also ceased to do business with him by not contributing capital. Consequently, the business venture of the Nicolas spouses declined as they could no longer cope with their commitments to their clients and customers. To make matters worse, Allem started to doubt Nestor's fidelity resulting in frequent bickerings and quarrels during which Allem even expressed her desire to separate.
- Nestor was then forced to write Rodrigo, demanding public apology and payment of damages. Due to the latter's inaction, the spouses filed a civil suit for damages.
- Trial Court ruled in favor of the spouses and ordered payment of moral and exemplary damages. CA affirmed.

ISSUES & ARGUMENTS

- **W/N there is legal basis for the award of damages.**

Petitioner: The alleged act imputed to him does not fall under Art. 26[13] and 2219[14] of the Civil Code since it does not constitute libel, slander or any other form of defamation. He only desired to protect the name and reputation of the Concepcion family, which was why he sought an appointment with Nestor through Florence's son Roncali to ventilate his feelings about the matter.

HOLDING & RATIO DECIDENDI

YES. THE VIOLATIONS MENTIONED IN ARTS. 26 AND 2219 ARE NOT EXCLUSIVE BUT ARE MERELY EXAMPLES AND DO NOT PRECLUDE *OTHER SIMILAR OR ANALOGOUS* ACTS.

- Damages are allowable for actions against a person's dignity, such as profane, insulting, humiliating, scandalous or abusive language. Under Art. 2217 of the Civil Code, moral damages which include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury, although incapable of pecuniary computation, may be recovered if they are proximate result of the defendant's wrongful act or omission.
- There is no question that Nestor suffered mental anguish, besmirched reputation, wounded feelings and social humiliation as a proximate result of petitioner's abusive, scandalous and insulting language.

Petition DENIED. Court of Appeals' decision AFFIRMED.
DANI BOLONG

13 Art. 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:
(1) Prying into the privacy of another's residence: (2) Meddling with or disturbing the private life or family relations of another; (3) Intriguing to cause another to be alienated from his friends; (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

14 Art. 2219. Moral damages may be recovered in the following and analogous cases:
(1) A criminal offense resulting in physical injuries; (2) Quasi-delicts causing physical injuries; (3) Seduction, abduction, rape, or other lascivious acts; (4) Adultery or concubinage; (5) Illegal or arbitrary detention or arrest; (6) Illegal search; (7) Libel, slander or any other form of defamation; (8) Malicious prosecution; (9) Acts mentioned in Article 309; (10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35 X X X X

262 Navarrete vs. CA

FACTS

Petitioner is a lawyer and one of defendants in a Case for annulment of a "Deed of Sale with right to Repurchase and Damages" alleging that his signature was forged in the aid transaction. He now, challenges the lower court's denial of his claims and further avers that the private respondent imputed malicious comments upon him (i.e. "bastard","swindler","plunderer", etc.) during the trial that warrants additional compensatory pay (damages) including attorney's fees. CA affirmed the dismissal of the lower court.

ISSUE

Whether private respondent is liable for damages?

HOLDING & RATIO DECIDENDI

No. It is a well settled principle that statements made during the course of judicial proceedings are absolutely privileged. This remains despite the defamatory tenor if the same is relevant, material and pertinent to the inquiry. Such were relevant to the allegations made and shows disaffection to the adversary. Moreover, the imputations were not directly made to him. They were generic for the parties.

263 Marquez vs. Desierto | Pardo, J.
G.R. No. 135882, June 27, 2001 | 359 SCRA 772

FACTS

- Sometime in May 1998, petitioner Marquez received an Order from the Ombudsman Aniano A. Desierto dated April 29, 1998, to produce several bank documents for purposes of inspection *in camera* relative to various accounts maintained at Union Bank of the Philippines, Julia Vargas Branch, where petitioner is the branch manager. The accounts to be inspected are Account Nos. 011-37270, 240-020718, 245-30317-3 and 245-30318-1, involved in a case pending with the Ombudsman entitled, Fact-Finding and Intelligence Bureau (FFIB) v. Amado Lagdameo, et al. The order further states:
  "It is worth mentioning that the power of the Ombudsman to investigate and to require the production and inspection of records and documents is sanctioned by the 1987 Philippine Constitution, Republic Act No. 6770, otherwise known as Ombudsman Act of 1989 and under existing jurisprudence on the matter. It must be noted that R.A. 6770 especially Section 15 thereof provides, among others, the following powers, functions and duties of the Ombudsman
- The basis of the Ombudsman in ordering an ***in camera*** inspection of the accounts is a trail managers checks purchased by one George Trivinio, a respondent in OMB-097-0411, pending with the office of the Ombudsman.
- It would appear that Mr. George Trivinio, purchased fifty one (51) Managers Checks (MCs) for a total amount of P272.1 Million at Traders Royal Bank, United Nations Avenue branch, on May 2 and 3, 1995. Out of the 51 MCs, eleven (11) MCs in the amount of P70.6 million, were deposited and credited to an account maintained at the Union Bank, Julia Vargas Branch.[3]
- On May 26, 1998, the FFIB panel met in conference with petitioner Lourdes T. Marquez and Atty. Fe B. Macalino at the bank's main office, Ayala Avenue, Makati City. The meeting was for the purpose of allowing petitioner and Atty. Macalino to view the checks furnished by Traders Royal Bank. After convincing themselves of the veracity of the checks, Atty. Macalino advised Ms. Marquez to comply with the order of the Ombudsman. Petitioner agreed to an ***in camera*** inspection set on June 3, 1998.[4]
- However, on June 4,1998, petitioner wrote the Ombudsman explaining to him that the accounts in question cannot readily be identified and asked for time to respond to the order. The reason forwarded by the petitioner was that "despite diligent efforts and from the accounts numbers presented, we can not identify these accounts since the checks are issued in cash or bearer. We surmised that these accounts have long been dormant, hence are not covered by the new account number generated by the Union Bank system. We therefore have to verify from the Interbank records archives for the whereabouts of these accounts.[5]
- The Ombudsman, responding to the request of the petitioner for time to comply with the order, stated: "firstly, it must be emphasized that Union Bank, Julia Vargas Branch was depositary bank of the subject Traders Royal Bank Manager's Check (MCs), as shown at its dorsal portion and as cleared by the Philippines Clearing House, not the International Corporate Bank.
- Notwithstanding the facts that the checks were payable to cash or bearer, nonetheless, the name of the depositor(s) could easily be identified since the account numbers x x x where said checks were deposited are identified in the order.
- Even assuming that the accounts xxx were already classified as "dormant accounts," the bank is still required to preserve the records pertaining to the accounts within a certain period of time as required by existing banking rules and regulations.
- And finally, the ***in camera*** inspection was already extended twice from May 13, 1998 to June 3,1998 thereby giving the bank enough time within which to sufficiently comply with the order."[6]
- Thus, on June 16, 1998, the Ombudsman issued an order directing petitioner to produce the bank documents relative to accounts in issue. The order states:
- Viewed from the foregoing, your persistent refusal to comply with Ombudsman's order in unjustified, and is merely intended to delay the investigation of the case. Your act constitutes disobedience of or resistance to a lawful order issued by this office and is punishable as Indirect Contempt under Section 3(b) of R.A. 6770. The same may also constitute obstruction in the lawful exercise of the functions of the Ombudsman which is punishable under Section 36 of R.A. 6770.[7]
- On July 10,1998, petitioner together with Union Bank of the Philippines, filed a petition for declaratory relief, prohibition and injunctions[8] with the Regional Trial Court, Makati City, against the Ombudsman.
- The petition was intended to clear the rights and duties of petitioner. Thus, petitioner sought a declaration of her rights from the court due to the clear conflict between RA No.6770, Section 15 and R.A. No. 1405, Sections 2 and 3.
- Petitioner prayed for a temporary restraining order (TRO) because the Ombudsman and the other persons acting under his authority were continuously harassing her to produce the bank documents relatives to the accounts in question. Moreover, on June 16, 1998, the Ombudsman issued another order stating that unless petitioner appeared before the FFIB with the documents requested, petitioner manager would be charged with indirect contempt and obstruction of justice.
- In the meantime,[9] on July 14, 1998, the lower court denied petitioner's prayer for a temporary restraining order and stated us:
- On July 20,1998, petitioner filed a motion for reconsideration
- On July 23, 1998, the Ombudsman filed a motion to dismiss the petition for declaratory relief[12] on the ground that the Regional Trial Court has no jurisdiction to hear a petition for relief from the findings and orders of the Ombudsman, citing R.A. No. 6770, Sections 14 and 27. On August 7, 1998, the Ombudsman filed an opposition to petitioner's motion for reconsideration dated July 20, 1998.[13]
- On August 19,1998, the lower court denied petitioner's motion for reconsideration,[14] and also the Ombudsman's motion to dismiss. [15]
- On August 21, 1998, petitioner received a copy of the motion to cite her for contempt, filed with the Office of the Ombudsman by Agapito B. Rosales, Director, Fact Finding and Intelligence Bureau (FFIB).[16]

- On August 31, 1998, petitioner filed with the Ombudsman an opposition to the motion to cite her in contempt on the ground that the filing thereof was premature due to the petition pending in the lower court.[17] Petitioner likewise reiterated that she had no intention to disobey the orders of the Ombudsman. However, she wanted to be clarified as to how she would comply with the orders without her breaking any law, particularly RA. No. 1405.[18]
- Respondent Ombudsman panel set the incident for hearing on September 7, 1998.[19] After hearing, the panel issued an order dated September 7, 1998, ordering petitioner and counsel to appear for a continuation of the hearing of the contempt charges against her.[20]
- On September 10, 1998, petitioner filed with the Ombudsman a motion for reconsideration of the above order.[21] Her motion was premised on the fact that there was a pending case with the Regional Trial Court, Makati City,[22] which would determine whether obeying the orders of the Ombudsman to produce bank documents would not violate any law.
- The FFIB opposed the motion,[23] and on October 14, 1998, the Ombudsman denied the motion by order the dispositive portion
- Hence, the present petition

ISSUES & ARGUMENTS

- **W/N** the petitioner may be cited for indirect contempt for her failure to produce the documents requested by the Ombudsman. And whether the order of the Ombudsman to have an ***in camera*** inspection of the questioned account is allowed as an exception to the law on secrecy of bank deposits (R.A. No.1405).

HOLDING & RATIO DECIDENDI

We rule that before an ***in camera*** inspection may be allowed, there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction. The bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account identified in the pending case.

- In the case at bar, there is yet no pending litigation before any court of competent authority. What is existing is an investigation by the Office of the Ombudsman. In short, what the office of the ombudsman would wish to do is to fish for additional evidence to formally charge Amado Lagdameo, et. al., with the Sandiganbayan. Clearly, there was no pending case in court which would warrant the opening of the bank account for inspection.
- Zone of privacy are recognized and protected in our laws. The Civil Code provides that" [e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons" and punishes as actionable torts several acts for meddling and prying into the privacy of another. It also holds public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime of the violation of secrets by an officer, revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law, **the Secrecy of Bank Deposits Act**, and the Intellectual Property Code.[28]

JAY DUHAYLONGSOD

264 Zulueta v. Nicolas | Reyes
G.R. No. L-8252 January 31, 1958| 102 Phil. 944

FACTS

- Plaintiff filed libel charges against the provincial governor of Rizal and the staff of Philippine Free Press. Defendant investigated on the complaint and rendered an opinion that there was no *prima facie* case; that the alleged libelous statements were made in good faith and for the sole purpose of serving the best interest of the public; and that in consequence the fiscal absolved the said governor and the Free Press staff from the crime of libel.
- Because of such finding, plaintiff sues defendant for dereliction of duty.

ISSUES & ARGUMENTS

- **W/N Zulueta has a cause of action against Nicolas.**

HOLDING & RATIO DECIDENDI

NO CAUSE OF ACTION.

- The present action is based on article 27 of the new Civil Code, which provides that "any person suffering material or moral loss because a public servant or employee refuses or neglects without just cause, to perform his official duty may file an action for damages and other relief against the latter." But as we said in Bangalayvs. Ursal,* 50 Off. Gaz. 4231, this article "contemplates a refusal or neglect without just cause by a public servant or employee to perform his official duty." Refusal of the fiscal to prosecute when after the investigation he finds no sufficient evidence to establish a prima facie case is not a refusal, *without just cause*, to perform an official duty. The fiscal has for sure the legal duty to prosecute crimes where there is no evidence to justify such action. But it is equally his duty not to prosecute when after the investigation he has become convinved that the evidence available is not enough to establish a *prima facie* case. The fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a *prima facie* case exists. Vested with authority and discretion to determine whether there is sufficient evidence to justify the filing of corresponding the information and having control of the prosecution of a criminal case, the fiscal cannot be subjected to dictation from the offended party (People vs. Liggayu , et al., 97 Phil., 865, 51 Off Gaz., 5654; People vs. Natoza, 100 Phil., 533, 53 Off Gaz., 8099). Having legal cause to refrain from filing an information against the person whom the herein plaintiff wants him to charge with libel, the defendant fiscal cannot be said to have refused or neglected without just cause to perform his official duty. On the contrary, it would appear that he performed it.

265 Javellana V. Tayo
G.R. L-18919 December 29, 1962

FACTS:

- The petitioners are duly elected and qualified a members of the Municipal Council of the Municipality of Buenavista, Province of Iloilo, Philippines; and that the respondent at the time the acts hereinbelow complained of took place, was and still is the duly-elected and qualified Mayor of the Municipality of Buenavista, Province of Iloilo Philippines where he resides and may be served with summons.
- On February 8, 1960 the Municipal Council of the Municipality of Buenavista, Iloilo, unanimously approved Resolution No. 5, Series of 1960. On June 1, 1960, at the time and place set for the regular session of the Municipal Council, the Mayor, Vice-Mayor, No. 1 and No. 2 Councilors, and the Secretary were absent
- The six councilors, who are the petitioners in this case, were present and they proceeded to elect among themselves a temporary presiding officer and Acting Secretary to take notes of the proceedings. Having thus elected a temporary presiding officer and a secretary of the Council, they proceeded to do business.
- On June 15, 1960 at the time and place designated in Resolution No. 5, series of 1960, dated February 8, 1960 above referred to, the petitioners acting as duly elected and qualified councilors were present and again, in view of the absence of the Mayor, Vice-Mayor said to councilor and the Secretary proceeded to elect a temporary presiding officer and temporary secretary from among them, and did business as a Municipal Council of Buenavista.
- When the minutes of the proceedings of June 1, June 15. July 6, July 20, August 17, September 7, and September 21, 1960 of the Municipal Council were presented to the respondent for action, the respondent Mayor refused to act upon said minutes, or particularly to approve or disapprove the resolution as approved by the municipal Council, the Mayor declaring the sessions above referred to as null and void and not in accordance with.
- Petitioners made repeated demands for payment of their per diems for the of June 1, June 15, July 6, July 20, August 3, August 17, September 7, 1960, by representing the payrolls; Provincial Forms No. 38(A) to the respondent Mayor for the latter signature, but that the respondent refused to affix his signature to the payrolls thus presented, covering the per diems of the petitioner alleging that the proceedings were illegal due to his absence.
- The Honorable Provincial Fiscal of the Province of Iloilo in his indorsement, rendered an opinion upholding the validity of the controverted sessions of the Municipal Council, despite the opinion of the Provincial Fiscal, the respondent Mayor refused and still refuses to act upon the resolution petitions presented to him and to sign the payrolls covering the per diems of the herein petitioners.

ISSUE:

Whether petitioners entitled damages?

HOLDING & RATIONALE

Yes. Article 27 provides as follows:

'Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that my be taken.'

Only petitioner Exequiel Golez was presented as a witness who proved moral damages he suffered as a consequence of the refusal the respondent Susano Tayo to perform his official duty. such, of all the petitioners, only Exequiel Golez is entitled receive moral damages in the sum of P100.00.

Respondent-appellant claims, in this appeal, that the trial court erred in holding that the sessions held by petitioners-appellees during his absence and during the absence of his Vice-Mayor and the No. 1 and No. 2 Councilors the Municipal Council of Buenavista, Iloilo were valid an legal.The claim is untenable. In the first place, there is no question that the sessions at issue were held on the days set for regular sessions of the council, as authorized an approved in a previous resolution. Secondly, it is not disputed that a majority of the members of the council (six out of ten) were present in these sessions.

Appellant asserts that while under Section 2221 of the Revised Administrative Code, the majority of the members of the council constitutes a quorum to do business, the council "shall be presided by the Mayor and no one else", inasmuch as it is one of the duties imposed upon him under Section 2194(d) of the Revised Administrative Code. The argument would be correct if the mayor (herein appellant) were present at the sessions in question and was prevented from presiding therein, but not where, as in the instant case, he absented himself therefrom.

We find said award proper under Article 27 of the new Civil Code, considering that according to the trial court, he (Golez) was able to prove that he suffered the same, as a consequence of appellant's refusal to perform his official duty, not withstanding the action taken by the Provincial Fiscal an the Provincial Board upholding the validity of the session in question.

WHEREFORE, the decision appealed from is hereby affirmed with costs against respondent-appellant. So ordered.

266 Phimco vs. City of Cebu | Aquino
G.R. No. L-30745 January 18, 1978

FACTS

- Ordinance No. 279 of Cebu City is "an ordinance imposing a quarterly tax on gross sales or receipts of merchants, dealers, importers and manufacturers of any commodity doing business" in Cebu City. It imposes a sales tax of one percent (1%) on the gross sales, receipts or value of commodities sold, bartered, exchanged or manufactured in the city in excess of P2,000 a quarter.
- Section 9 of the ordinance provides that, for purposes of the tax, "all deliveries of goods or commodities stored in the City of Cebu, or if not stored are sold" in that city, "shall be considered as sales" in the city and shall be taxable.
- Thus, it would seem that under the tax ordinance sales of matches consummated outside of the city are taxable as long as the matches sold are taken from the company's stock stored in Cebu City.
- The Philippine Match Co., Ltd., whose principal office is in Manila, is engaged in the manufacture of matches. Its factory is located at Punta, Sta. Ana, Manila. It ships cases or cartons of matches from Manila to its branch office in Cebu City for storage, sale and distribution within the territories and districts under its Cebu branch or the whole Visayas-Mindanao region. Cebu City itself is just one of the eleven districts under the company's Cebu City branch office.
- The company does not question the tax on the matches of matches consummated in Cebu City, meaning matches sold and delivered within the city.
- It assails the legality of the tax which the city treasurer collected on out-of- town deliveries of matches, to wit: (1) sales of matches booked and paid for in Cebu City but shipped directly to customers outside of the city; (2) transfers of matches to newsmen assigned to different agencies outside of the city and (3) shipments of matches to provincial customers pursuant to salesmen's instructions.
- The company paid under protest to the city t the sum of P12,844.61 as one percent sales tax on those three classes of out-of-town deliveries of matches for the second quarter of 1961 to the second quarter of 1963.
- The company in its letter of April 15, 1961 to the city treasurer sought the refund of the sales tax paid for out-of-town deliveries of matches. It invoked Shell Company of the Philippines, Ltd. vs. Municipality of Sipocot, Camarines Sur, 105 Phil. 1263. In that case sales of oil and petroleum products effected outside the territorial limits of Sipocot, were held not to be subject to the tax imposed by an ordinance of that municipality.
- The city treasurer denied the request. His stand is that under section 9 of the ordinance all out-of-town deliveries of latches stored in the city are subject to the sales tax imposed by the ordinance.
- The company filed the complaint herein, praying that the ordinance be declared void insofar as it taxed the deliveries of matches outside of Cebu City, that the city be ordered to refund to the company said sum of P12,844.61 as excess sales tax paid, and that the city treasurer be ordered to pay damages.

ISSUES & ARGUMENTS

- **W/N the city treasurer is liable for exemplary damages and attorney's fees**
  - Company: The claim for damages is predicated on articles 19, 20, 21, 27 and 2229 of the Civil Code. It is argued that the city treasurer refused and neglected without just cause to perform his duty and to act with justice and good faith. The company faults the city treasurer for not following the opinion of the city fiscals, as legal adviser of the city, that all out-of-town deliveries of matches are not subject to sales tax because such transactions were effected outside of the city's territorial limits.
  - City treasurer: that in enforcing the tax ordinance in question he was simply complying with his duty as collector of taxes (Sec. 50, Revised Charter of Cebu City). Moreover, he had no choice but to enforce the ordinance because according to section 357 of the Revised Manual of Instruction to Treasurer's "a tax ordinance win be enforced in accordance with its provisions" until d illegal or void by a competent court, or otherwise revoked by the council or board from which it originated.

HOLDING & RATIO DECIDENDI

NO.

Article 27 of the Civil Code provides that "any person suffering material or moral lose because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken."

Article 27 presupposes that the refuse or omission of a public official is attributable to malice or inexcusable negligence. In this case, it cannot be said that the city treasurer acted wilfully or was grossly t in not refunding to the plaintiff the taxes which it paid under protest on out-of-town sales of matches.

The record clearly reveals that the city treasurer honestly believed that he was justified under section 9 of the tax ordinance in collecting the sales tax on out-of-town deliveries, considering that the company's branch office was located in Cebu City and that all out-of-town purchase order for matches were filled up by the branch office and the sales were duly reported to it.

The city treasurer acted within the scope of his authority and in consonance with his bona fide interpretation of the tax ordinance. The fact that his action was not completely sustained by the courts would not him liable for We have upheld his act of taxing sales of matches booked and paid for in the city.

It has been held that an erroneous interpretation of an ordinance does not constitute nor does it amount to bad faith that would entitle an aggrieved party to an award for damages. That salutary in addition to moral temperate, liquidated or compensatory damages (Art. 2229, Civil Code). Attorney's fees are being claimed herein as actual damages. We find that it would not be just and equitable to award attorney's fees in this case against the City of Cebu and its (See Art. 2208, Civil Code).

JON LINA

267 Torio vs. Fontanilla| Munoz Palma
G.R. No. L-29993 October 23, 1978 |

FACTS

- The Municipal Council of Malasiqui, Pangasinan passed Resolution No. 159 to manage the town fiesta celebration on January 1959. It also passed creating the 1959 Malasiqui 'Town Fiesta Executive Committee which in turn organized a sub-committee on entertainment and stage, with Jose Macaraeg as Chairman.
- The council appropriated the amount of P100.00 for the construction of 2 stages, one for the "zarzuela" and another for the cancionan Jose Macaraeg supervised the construction of the stage and as constructed the stage for the "zarzuela"
- The "zarzuela" entitled "Midas Extravaganza" was donated by an association of Malasiqui employees of the Manila Railroad Company in Caloocan, Rizal. The troupe arrived in the evening of January 22 for the performance and one of the members of the group was Vicente Fontanilla.
- The program started at about 10:15 o'clock that evening with some speeches, and many persons went up the stage. The "zarzuela" then began but before the dramatic part of the play was reached, the stage collapsed and Vicente Fontanilla who was at the rear of the stage was pinned underneath. Fontanilla was taken to tile San Carlos General Hospital where he died in the afternoon of the following day
- Heirs brought action to enforce liability against the Municipality. Won in CA.

ISSUES & ARGUMENTS

- **W/N the celebration of a town fiesta an undertaking in the exercise of a municipality's governmental or public function or is it or a private or proprietary character?**
  - **Fontanilla Heirs**: Municipality liable for acts because fiesta is in exercise of its proprietary acts
  - **Municipality**: As a legally and duly organized public corporation it performs sovereign functions and the holding of a town fiesta was an exercise of its governmental functions from which no liability can arise to answer for the negligence of any of its agents

HOLDING & RATIO DECIDENDI

MUNICIPALITY IS LIABLE BECAUSE TOWN FIESTA IS AN EXERCISE OF PROPRIETARY FUNCTIONS

- The powers of a municipality are twofold in character public, governmental or political on the one hand, and corporate, private, or proprietary on the other. Governmental powers are those exercised by the corporation in administering the powers of the state and promoting the public welfare and they include the legislative, judicial public, and political Municipal powers on the other hand are exercised for the special benefit and advantage of the community and include those which are ministerial private and corporate.
- This distinction of powers becomes important for purposes of determining the liability of the municipality for the acts of its agents which result in an injury to third persons.
- If the injury is caused in the course of the performance of a governmental function or duty no recovery, as a rule, can be had from the municipality unless there is an existing statute on the matter, nor from its officers, so long as they performed their duties honestly and in good faith or that they did not act wantonly and maliciously.
- With respect to proprietary functions, the settled rule is that a municipal corporation can be held liable to third persons *ex contract* or *ex delicto*.
- The rule of law is a general one, that the superior or employer must answer civilly for the negligence or want of skill of its agent or servant in the course or fine of his employment, by which another, who is free from contributory fault, is injured. Municipal corporations under the conditions herein stated, fall within the operation of this rule of law, and are liable, accordingly, to civil actions for damages when the requisite elements of liability co-exist.
- It follows that under the doctrine of respondent superior, petitioner-municipality is to be held liable for damages for the death of Vicente Fontanilla if that was attributable to the negligence of the municipality's officers, employees, or agents.
- **We can say that the deceased Vicente Fontanilla was similarly situated as Sander The Municipality of Malasiqui resolved to celebrate the town fiesta in January of 1959; it created a committee in charge of the entertainment and stage; an association of Malasiqui residents responded to the call for the festivities and volunteered to present a stage show; Vicente Fontanilla was one of the participants who like Sanders had the right to expect that he would be exposed to danger on that occasion.**

Liability of the municipal councilors who enacted the ordinance and created the fiesta committee.

- Article 27 of the Civil Code covers a case of nonfeasance or non-performance by a public officer of his official duty; it does not apply to a case of negligence or misfeasance in carrying out an official duty.
- The municipal councilors(who passed the resolution) are absolved from any liability for the death of Vicente Fontanilla. The records do not show that said petitioners directly participated in the defective construction of the "zarzuela" stage or that they personally permitted spectators to go up the platform

JAN PORTER

268 Spinner v. Hesslein Corporation | Street
G.R. No. L-31380, January 13, 1930| 54 PHIL 224

FACTS

- Spinner is a corporation involved in textiles, including khaki. They are based in England and India and are represented in the Philippines by Wise and Co. They sell different brands and grades of khaki. One of the grades they are known for is called "Wigan"
- Hesslein is a local corporation also in the business of textiles. In the process of selling their khaki fabrics, they also make use of the term "Wigan."
- Spinner, however, holds the trademark for the brand both in Englang and here in the Philippines, "Wigan" and is not asking the court to restrain Hesslein from using such term. Spinner also wants to claim damages on the basis of unfair competition.

ISSUES & ARGUMENTS

- **W/N Spinner is entitled to damages based on unfair competition.**
    - **Petitioner:** Spinner has the trademark to the brand called "Wigan" and Husslein infringed upon their right when in pasted the same brand and picture on its khaki fabric so as to entice consumers to buy hi product.
    - **Respondent:** There is no assessable damage shown by Spinner to hold this Corporation liable.

HOLDING & RATIO DECIDENDI

DAMAGES CANNOT BE CLAIMED BY SPINNER. THERE WAS NO FRAUD INVOLVED.

- On the one hand, the law concerning infringement of trade-marks and that concerning unfair competition have a common conception at their root, which is that one person shall not be permitted to misrepresent that his goods or his business are the goods or the business of another, the law concerning unfair competition is broader and more inclusive. On the other hand, the law concerning the infringement of trade-mark is of more limited range, but within its narrower range recognizes a more exclusive right derived from the adoption and registration of the trade-mark by the person whose goods or business are first associated therewith. Unfair competition cannot be placed on the plane of invasion of property right. The tort is strictly one of fraud.
- With respect to the question of infringement of trade-mark right, it is clear that the appropriation by the defendant of the word "Wigan" for use in the sale of its khaki did not constitute a violation of trade-mark prior to April, 1925, when the word "Wigan" was first incorporated in the plaintiff's registered trade-mark; but after that date it was certainly illegal for the defendant to use the word "Wigan" stamped upon the khaki sold by it; and this act was an infringement of trade-mark right.
- A plaintiff who elects to sue for the damages resulting to his business from infringement of a trade-mark or from unfair competition of another and who fails to prove any assessable damage is not entitled to an accounting for the profits obtained by the defendant upon goods sold by him in violation of the plaintiff's right. The right to recover damages and the right to accounting are different remedies; and the election to sue for the first is a waiver of the second.

269 Manila Oriental Sawmill Co. vs. National Labor Union and CIR| Bautista Angelo
G.R. No. L-4330, March 24, 1952|91 Phil 28

FACTS

- The United Employees Welfare Association (the Union), is the duly registered union in the Department of Labor whose members are the employees of Manila Oriental Sawmill Co. (the Company)
- They entered into an agreement of working conditions pursuant to a settlement concluded in a case No. 173-V of the Court of Industrial Relations, which is to last for one year
- Subsequently, 36 out of its 37 members tendered in their resignations from the Union and joined the local chapter of the National Labor Union (National Labor). There is no evidence that these resignations were made with the approval of the Company
- Thereafter the president of National Labor sent a letter to the Company containing 7 demands allegedly on behalf of the members of its local chapter who are employed by the Company, to which the latter, through its counsel, answered with another letter stating among other things that the laborers on whose behalf the letter has been written were affiliated with the Union
- National Labor reiterated its demands and in reply, counsel of the Company sent a letter that it could not recognize the alleged local chapter of National Labor until and after the previous agreement entered into by the same employees concerned and the Company is declared null and void by the Court of Industrial Relations
- Because of this, the members of National Labor struck
- The Company then filed a petition in the CIR to declare the strike illegal
- The CIR issued an order denying the Company's prayer that said strike be declared illegal and setting the case for hearing on the demands prayed for by National Labor. Motion for reconsideration denied by the CIR en banc
- Hence, this petition for review

ISSUES & ARGUMENTS

- **W/N the transfer of the employees from the Union to the National Labor Union is illegal**

HOLDING & RATIO DECIDENDI

THE TRANSFER OF THE EMPLOYEES IS ILLEGAL FOR IT MERELY CIRCUMVENTED AND DISREGARDED THE CONTRACT ENTERED INTO BETWEEN THE UNION AND THE COMPANY

- It is evident that the purpose of their transfer is merely to disregard and circumvent the contract entered into between the same employees and the petitioner on May 4, 1950, knowing full well that contract was effective for one year, and was entered into with the sanction of the Court of industrial Relations. If this move were allowed the result would be a subversion of a contract freely entered into without any valid and justifiable reason. Such act cannot be sanctioned in law or in equity as is it in derogation of the principle underlying the freedom of contract and the good faith that should exist in contractual relations
- The record shows that the local chapter of National Labor is composed entirely, except one, of members who made up the total membership of the United Employees Welfare Association, a registered union in the Company. To be exact, thirty-six of the thirty-seven members of said association tendered their resignations and joined the local chapter of National Labor without first securing the approval of their resignations. The new Union then sought to present a seven-point demand of the very same employees to petitioner, which in may respects differs from their previous demand
- *A labor organization is wholesome if it serves its legitimate purpose of settling labor disputes. That is why it is given personality and recognition in concluding collective bargaining agreements. But if it is made use of as a subterfuge, or as a means to subvert valid commitments, it outlives its purpose for far from being an aid, it tends to undermine the harmonious relations between management and labor.* Such is the move undertaken by National Labor. Such a move cannot be considered lawful and cannot receive the sanction of the Court. Hence, the strike it has staged is illegal

Order appealed from is REVERSED.

KATH MATIBAG

270 Habana v. Robles
G.R. No. 131522 July 19, 1999
(Unfair Competition)

FACTS

- Habana was the author and copyright owner of a college textbook entitled "College English Today" . He discovered that another textbook, which was written by Robles, was similarly written with regard to the conten, illustrations and examples. Several pages of Robles' book was directly plagiarized from his book. Habana sued Robles for unfair competition, copyright infringement and damages.

ISSUES & ARGUMENTS

- **W/N Habana is entitled to damages**

HOLDING & RATIO DECIDENDI

HABANA IS ENTITLED TO DAMAGES.

Robles is guilty of copyright infringement. Infringment of copyright consists of copying of anything without the consent of the owner with whom is vested the sole right to do anything. It may be likened to trespassing wherein a person trespasses on the private dominion of another. With regard to literary works, such as a book, copyrighting is a protection given to the intellectual product of an author. In such the copying must be coupled with an injurious effect.
In the case at bar, even if Robles did not copy all of Habana's book, if so much is taken that it substantially reduces the value of the book, then Robles is guilty of infringement. Robles should have acknowledged Habana as the source, because the copying without permission is injurious enough.

271 Lim vs. Ponce De Leon | Martin
G.R. No. L-22554, August 29, 1975|

FACTS

- Plaintiff-appellant Jikil Taha sold to a certain Timbangcaya of Palawan a motor launch named M/L "SAN RAFAEL". A year later Timbangcaya filed a complaint with the Office of the Provincial Fiscal of Palawan alleging that after the sale Jikil Taha forcibly took away the motor launch from him.
- After conducting a preliminary investigation, Fiscal Ponce de Leon in his capacity as Acting Provincial Fiscal of Palawan, filed with the CFI of Palawan the corresponding information for Robbery with Force and Intimidation upon Persons against Jikil Taha. Fiscal Ponce de Leon, upon being informed that the motor launch was in Balabac, Palawan, wrote the Provincial Commander of Palawan requesting him to direct the detachment commander-in Balabac to impound and take custody of the motor launch.
- Fiscal Ponce de Leon reiterated his request to the Provincial Commander to impound the motor launch, explaining that its subsequent sale to a third party, plaintiff-appellant Lim, cannot prevent the court from taking custody of the same. So, upon order of the Provincial Commander, defendant-appellee Maddela, seized the motor launch "SAN RAFAEL" from plaintiff-appellant Delfin Lim and impounded it.
- Plaintiff-appellant Lim pleaded with Maddela to return the motor launch but the latter refused. Likewise, Jikil Taha through his counsel made representations with Fiscal Ponce de Leon to return the seized property to plaintiff-appellant Lim but Fiscal Ponce de Leon refused, on the ground that the same was the subject of a criminal offense.
- All efforts to recover the motor launch going to naught, plaintiffs-appellants Lim and Jikil Tahafiled with the CFI of Palawan a complaint for damages against defendants-appellees Fiscal Francisco Ponce de Leon and Maddela, alleging that on Maddela entered the premises of Lim without a search warrant and then and there took away the hull of the motor launch without his consent; that he effected the seizure upon order of Fiscal Ponce de Leon who knew fully well that his office was not vested with authority to order the seizure of a private property

ISSUES & ARGUMENTS

W/N defendants are civilly liable to plaintiffs for damages allegedly suffered by them granting that the seizure of the motor launch was unlawful.
HOLDING & RATIO DECIDENDI

PONCE DE LEON LIABLE UNDER ART. 32. DEFENDANT MADELLA CANNOT BE LIABLE SINCE

- As to whether or not they are entitled to damages, plaintiffs-appellants anchor their claim for damages on Articles 32 and 2219 of the New Civil Code which provide in part as follows: ART. 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, (9) The rights to be secure in one's person, house, papers, and effects against unreasonable searches and seizures
- Pursuant to the foregoing provision, a person whose constitutional rights have been violated or impaired is entitled to actual and moral damages from the public officer or employee responsible therefor. In addition, exemplary damages may also be awarded. In the instant case, plaintiff-appellant Lim claimed that he purchased the motor launch from Jikil Taha in consideration of P3,000.00, having given P2,000.00 as advanced payment; that since its seizure, the motor launch had been moored at Balabac Bay and because of exposure to the elements it has become worthless at the time of the filing of the present action; that because of the illegality of the seizure of the motor launch, he suffered moral damages and that because of the violation of their constitutional rights they were constrained to engage the services of a lawyer whom they have paid for attorney's fees.
- Defendant-appellee Fiscal Ponce de Leon wanted to wash his hands of the incident by claiming that "he was in good faith, without malice and without the slightest intention of inflicting injury to plaintiff-appellant, Jikil Taha" when he ordered the seizure of the motor launch. We are not prepared to sustain his defense of good faith. To be liable under Article 32 of the New Civil Code it is enough that there was a violation of the constitutional rights of the plaintiffs and it is not required that defendants should have acted with malice or bad faith.
- The very nature of Article 32 is that the wrong may be civil or criminal. It is not necessary therefore that there should be malice or bad faith. To make such a requisite would defeat the main purpose of Article 32 which is the effective protection of individual rights. Public officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties.
- But defendant-appellee Orlando Maddela cannot be held accountable because he impounded the motor launch upon the order of his superior officer. While a subordinate officer may be held liable for executing unlawful orders of his superior officer, there are certain circumstances which would warrant Maddela's exculpation from liability. The records show that after Fiscal Ponce de Leon made his first request to the Provincial Commander on June 15, 1962 Maddela was reluctant to impound the motor launch despite repeated orders from his superior officer.

Petition granted. Decision of Regional Trial Court Revived and affirmed.

272 Rama vs. Court of Appeals | Alampay
No. L-44842 March 16, 1987 |

FACTS

- During the incumbency of Rene Espina as provincial governor of Cebu, Osmundo G. Rama as vice-governor and Pablo P. Garcia, Reynaldo M. Mendiola and Valerians S. Carillo as members of the Sangguniang Panlalawigan, said officials adopted Resolution No. 990 which appropriated funds "for the maintenance and repair of provincial roads and bridges and for the operation and maintenance of the office of the provincial engineer and for other purposes."
- The provincial board resolved to abolish around thirty positions * the salaries of which were paid from the "JJ" Road and Bridge Fund thus doing away with the *caminero* (pick-shovel-wheelbarrow) system Consequently around 200 employees of the province were eased out of their respective jobs and, to implement the mechanization program in the maintenance of roads and bridges, the provincial government purchased heavy equipment worth P4,000,000.00. However, contrary to its declared policy to economize the provincial administration later on hired around one thousand new employees, renovated the office of the provincial engineer and provided the latter with a Mercedes-Benz car
- the employees whose positions were abolished filed separate petitions for mandamus, damages and attorneys fees aimed at the annulment of Resolution No. 990, their reinstatement and the recovery of damages
- The Court of First Instance of Cebu declared Resolution No. 990 null and void and ordered. CA affirmed in toto.
- Hence, this petition

ISSUES & ARGUMENTS

- W/N Espina, Rama, Garcia, Mendiola and Carillo are personally liable for damages for adopting a resolution which abolished positions to the detriment of the occupants

HOLDING & RATIO DECIDENDI

They are all liable.

A public officer who commits a tort or other wrongful act, done in excess or beyond the scope of his duty, is not protected by Ms office and is personally liable therefor like any private individual (Palma vs. Graciano, 99 Phil. 72, 74; Carreon vs. Province of Pampanga, 99 Phil. 808). This principle of personal liability has been applied to cases where a public officer removes another officer or discharges an employee wrongfully, the reported cases saying that by reason of non-compliance with the requirements of law in respect to removal from office, the officials were acting outside of their official authority (Stiles vs. Lowell 233 Mass. 174, 123 NE 615, 4 ALR 1365, cited in 63 Am. Jur. 2d. 770). Indeed, municipal officers are liable for damages if they act maliciously or wantonly and if the work which they perform is done rather to injure an individual than to discharge a public duty (56 Am. Jur. 2d 334, citing Yearly V. Fink 43 Pa 212). As we have held in *Vda de Laig vs. Court of Appeals,* L-26882, April 5, 1978, 82 SCRA 294, 307-308, a public officer is civilly liable for failure to observe honesty and good faith in the performance of their duties as public officers or for wilfully or negligently causing damage to another (Article 20, Civil Code) or for wilfully causing loss or injury to another in a manner that is contrary to morals, good customs and/or public policy (Article 21, New Civil Code). Neither can petitioners shield themselves from liability by invoking the ruling in the cases of *Carino vs. Agricultural Credit and Cooperative Financing Administration* L-23966, May 22, 1969, 28 SCRA 268. In those cases, the erring public officials were sued in their official capacities whereas in the instant cases, petitioners were specifically sued in their personal capacities.

273 Aberca vs. Ver| En Banc
G.R. No. L-69866, April 15, 1988 | 160 SCRA 590

FACTS

- Then President Marcos had already lifted Martial Law but the privilege of the writ of habeas corpus was still suspended.
- General Ver ordered Task Force Makabansa (TFM) to conduct pre-emptive strikes against known communist-terrorist (CT) underground houses in view of increasing reports about CT plans to sow disturbances in Metro Manila.
- Plaintiffs filed a complaint which contained allegations of searches made without search warrants or based on irregularly issued or substantially defective warrants; seizures and confiscation, without proper receipts, of cash and personal effects belonging to plaintiffs and other items of property which were not subversive and illegal nor covered by the search warrants; arrest and detention of plaintiffs without warrant or under irregular, improper and illegal circumstances; detention of plaintiffs at several undisclosed places of 'safehouses" where they were kept incommunicado and subjected to physical and psychological torture and other inhuman, degrading and brutal treatment for the purpose of extracting incriminatory statements. The complaint contains a detailed recital of abuses perpetrated upon the plaintiffs violative of their constitutional rights.

ISSUES & ARGUMENTS

- **W/N the TFM may be held liable for their acts under an official duty**

Respondents: They have immunity from suit of a state for they only followed the orders of the President when he called them out. It was their constitutional duty to exercise their functions.

HOLDING & RATIO DECIDENDI

YES, THEIR DUTY TO SUPPRESS LAWLESSNESS IS NOT A BLANKET LICENSE WHICH IGNORED THE CONSTITUTIONAL RIGHTS OF THE PEOPLE.

- Article 32 of the Civil Code provides:

1. Freedom from arbitrary arrest or illegal detention;
2. The right against deprivation of property without due process of law;
3. The right to be secure in one's person, house, papers and effects against unreasonable searches and seizures;
4. The privacy of communication and correspondence;
5. 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 a confession, except when the person confessing becomes a state witness.

- The complaint alleges facts showing with abundant clarity and details, how plaintiffs' constitutional rights and liberties mentioned in Article 32 of the Civil Code were violated and impaired by defendants.
- The suspension of the privilege of the writ of habeas corpus does not destroy petitioners' right and cause of action for damages for illegal arrest and detention and other violations of their constitutional rights. The suspension does not render valid an otherwise illegal arrest or detention. What is suspended is merely the right of the individual to seek release from detention through the writ of habeas corpus as a speedy means of obtaining his liberty.
- it does not and cannot suspend their rights and causes of action for injuries suffered because of respondents' confiscation of complainants' private belongings, the violation of their right to remain silent and to counsel and their right to protection against unreasonable searches and seizures and against torture and other cruel and inhuman treatment.

274 MHP Garments, Inc vs. CA |
G.R. No. 117009. October 11, 1995|

FACTS

- MHP Garments, Inc., was awarded by the Boy Scouts of the Philippines, the exclusive franchise to sell and distribute official Boy Scouts uniforms, supplies, badges, and insignias. In their Memorandum Agreement, petitioner corporation was given the authority to "undertake or cause to be undertaken the prosecution in court of all illegal sources of scout uniforms and other scouting supplies."
- MHP received information that private respondents Agnes Villa Cruz, Mirasol Lugatiman, and Gertrudes Gonzales were selling Boy Scouts items and paraphernalia without any authority. Petitioner de Guzman, an employee of petitioner corporation, was tasked to undertake the necessary surveillance and to make a report to the Philippine Constabulary (PC).
- de Guzman, Captain Renato M. Peñafiel, and two (2) other constabulary men of the Reaction Force Battalion, Sikatuna Village, Diliman, Quezon City went to the stores of respondents at the Marikina Public Market. Without any warrant, they seized the boy and girl scouts pants, dresses, and suits on display at respondents' stalls. The seizure caused a commotion and embarrassed private respondents. Receipts were issued for the seized items. The items were then turned over by Captain Peñafiel to petitioner corporation for safekeeping.

ISSUES & ARGUMENTS

- W/N de Guzman, Captain Penafiel and the constabulary men are liable for damages because of their warrantless search and seizure.

HOLDING & RATIO DECIDENDI

THEY ARE LIABLE FOR DAMAGES

Art. 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.

(9) The rights to be secure in one's person, house, papers, and effects against unreasonable searches and seizures.

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

The very nature of Article 32 is that the wrong may be civil or criminal. It is not necessary therefore that there should be malice or bad faith. To make such a requisite would defeat the main purpose of Article 32 which is the effective protection of individual rights. Public officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties. Precisely, the object of the Article is to put an end to official abuse by plea of the good faith. In the United States this remedy is in the nature of a tort.

275 Obra v CA | Mendoza.
G.R. No. 120852, October 28, 1999 |

FACTS

- Petitioner Obra was a regional director of the Bureau of Mines and Geo Sciences in Baguio City. On June 26, 1985 Jeannette Grybos wrote him a letter in behalf of the Gillies heirs in Mankayan. The letter alleged that the spouses James and June Brett were conducting illegal mining activities in lands owned by the said heirs and without the requisite permits.

- Obra then wrote Regional Unified Command 1 (RUC-1) Brig. Gen. Dumipit and enlisted his help in stopping a truck allegedly used by respondents in shipping the illegally mined ores. Obra also wrote the provincial commander of Benguet Col. Estepa and requested that he stop any mining activities over the contested area. Elements of RUC-1 seized an Isuzu Elf truck belonging to respondents and impounded it.

- Private respondents filed a complaint for injunction and damages with an application for a TRO in the RTC due to violations of Art. 32 and 19-21 of the Civil Code. Court likewise ruled that no investigation had been made and according to jurisprudence respondents are entitled to damages for violation of their rights.

ISSUES & ARGUMENTS

- **W/N Petitioners could not be held liable for damages in the performance of their duty in Good Faith**
- **W/N Petitioners are entitled to an award of Damages**

HOLDING & RATIO DECIDENDI

PETITION IS WITHOUT MERIT, CA DECISION AFFIRMED

- PD No. 1281gave powers to order arrest, even without warrant, of persons violation PD No. 463 or any laws being enforced by Bureau of Mines and seize tools used for the same in favor of the government and to deputize any PC, police agency, barangay or any person qualified to police mining activities. The petitioners contend that this grant of power is valid even in the Constitution

- The Constitution merely makes valid the grant of power to issue warrants but did not in any way exempt the agencies so empowered from the duty of determining probable cause as basis for the issuance of warrants. The real question is whether or not petitioner conducted any investigation at all.
- Court held that Obra did not conduct an investigation and was even going to hold the investigation to determine the veracity of Grybos allegations. The Court also found that the Brett family had a valid permit over the lands and that the Gillies family did not have the permit although it worked the claim first.

- Seizure of the truck could not fall under the moving vehicle doctrine as the truck was transporting the minerals within the claim.
- Likewise Dumipit cannot disclaim liability, he is a ranking military officer and cannot claim to have acted ministerially on the orders of Obra.

276 German v. Barangan | Escolin
G.R. No. L-68828 March 27, 1985 | 135 SCRA 514

FACTS

- At about 5:00 in the afternoon of October 2, 1984, petitioners, composed of about 50 businessmen, students and office employees (August 21 Movement 'ATOM'), petitioner German was the leader of ATOM, converged at J.P. Laurel Street, Manila, for the ostensible purpose of hearing Mass at the St. Jude Chapel which adjoins the Malacañang grounds located in the same street.
- They were wearing the now familiar inscribed yellow T-shirts, they started to march down said street with raised clenched fists and shouts of anti-government invectives.
- Along the way, however, they were barred by respondent Major lsabelo Lariosa, upon orders of his superior and co-respondent Gen. Santiago Barangan, from proceeding any further, on the ground that St. Jude Chapel was located within the Malacañang security area.
- Earlier however, another ATOM leader Ramon Pedrosa who was wearing a *barong tagalog* had gone through unnoticed to the church with some ten others. (from the dissent's facts.. para lang it looks like we actually read all the dissenting opions)
- They then knelt on the pavement in front of the barricade and prayed the holy Rosary. Afterwards, they sang *Bayan ko* with clenched fists of protest against the violation of their rights and thereafter dispersed peacefully
- Having been then warned that any further attempts on their part to enter the church would be similarly barred, they filed the petition at bar (to enter the church), which was heard and submitted for resolution on October 16, 1984 (rendering moot their prayer to enter the church on October 12, 1984 but not as to any open subsequent date, as prayed for).
-

ISSUES & ARGUMENTS

- **W/N Major Lariosa is liable for damages in denying ATOM entry to the St. Jude Chapel**
  - **Petitioners:** ATOM posits that their purpose in converging at J.P. Laurel Street was to pray and hear mass at St. Jude Chapel.
  - **Respondents:** They maintain however, that ATOM's intention was not really to perform an act of religious worship, but to conduct an anti-government demonstration at a place close to the very residence and offices of the President of the Republic. Respondents further lament petitioners' attempt to disguise their true motive with a ritual as sacred and solemn as the Holy Sacrifice of the Mass. Undoubtedly, the yellow T-shirts worn by some of the marchers, their raised clenched fists, and chants of anti-government slogans strongly tend to substantiate respondents allegation

HOLDING & RATIO DECIDENDI

NO.

- Given the circumstances, there was a valid exercise of police power, consequently there was no violation of the right to religious freedom.
- Since 1972, when mobs of demonstrators crashed through the Malacañang gates and scaled its perimeter fence, the use by the public of J.P. Laurel Street and the streets approaching it have been restricted.
- The reasonableness of this restriction is readily perceived and appreciated if it is considered that the same is designed to protect the lives of the President and his family, as well as other government officials, diplomats and foreign guests transacting business with Malacañang.
- The need to secure the safety of heads of state and other government officials cannot be overemphasized. The threat to their lives and safety is constant, real and felt throughout the world
- In the case at bar, petitioners are not denied or restrained of their freedom of belief or choice of their religion, but only in the manner by which they had attempted to translate the same into action

SEPARATE OPINIONS

- **FERNANDO, *C.J.,*** concurring:
  - The separation of church and state shall be inviolable." The point, I wish to make, however, is that had there been no clear manifestation by both petitioners and respondents that the right to attend mass at St. Jude's Church would be respected, even if it is located in a security area but with due precautionary measures taken to avoid infiltration by subversive elements, this Court would have been called upon to rule and, if possible, to delineate with some degree of precision the scope of such a right to free exercise and enjoyment of religious profession and worship.
- **TEEHANKEE, *J.,*** dissenting:
  - I vote to grant the petition on the ground that the right of free worship and movement is a preferred right that enjoys precedence and primacy and is not subject to prior restraint except where there exists the clear and present danger of a substantive evil sought to be prevented. There was and is manifestly no such danger in this case.
  - Over and above all, public officials should ever be guided by the testament over half a century ago of the late Justice Jose Abad Santos in his dissenting opinion in *People vs. Rubio* [13] that the "commendable zeal. . if allowed to override constitutional limitations would become 'obnoxious to fundamental principles of liberty.' And if we are to be saved from the sad experiences of some countries which have constitutions only in name, we must insist that governmental authority be exercised within constitutional limits; for, after all, what matters is not so much what the people write in their constitutions as the spirit in which they observe their provisions." To require the citizen at every step to assert his rights and to go to court is to render illusory his rights

- The burden to show the existence of grave and imminent danger that would justify prior restraint and bar a group of persons from entering the church of their choice for prayer and worship lies on the military or police officials who would so physically restrain them. Indeed, there is no precedent in this time and age where churchgoers whose right of free exercise of their religion is recognized have been physically prevented from entering their church on grounds of national security. On the other hand, it does not lie within the compentence nor authority of such officials to demand of churchgoers that they show and establish their "sincerity and good faith . . . . in invoking the constitutional guarantee of freedom of religious worship and of locomotion" as a pre-condition, as seems to be the thrust of the majority decision. Nor is there any burden on the churchgoer to make "a satisfactory showing of a claim deeply rooted in religious conviction" before he may worship at the church of his choice—as appears to be the basis of Justice Gutierrez' concurring opinion for dismissal of the petition. The exercise of such basic and sacred rights would be too tenuous if they were made to depend on the snap judgment and disposition of such officials as to one's good faith and his attire. In fact, Article 132 of the Revised Penal Code penalizes public officers and employees who "prevent or disturb the ceremonies or manifestations of any religion" while **Article 32 of the Civil Code grants an independent cause of action for moral and exemplary damages and "for other relief" against such officials or employees or private individuals "who directly or indirectly obstruct, defeat, violate or in any manner impede or impair (the) freedom of religion (and) freedom of speech" of any person.**
-

- **MAKASIAR, *J.,*** dissenting:
  - The petitioners gave the assurance that they are marching towards St. Jude's Church only for the purpose of praying or attending mass therein; that they were and are going to march in an orderly manner without blocking the traffic and with the marshals policing and Identifying the marchers; that they are not armed and are not going to be armed with any kind of weapon; and that they are willing to be frisked.
  - With the assurances aforestated given by both petitioners and respondents, there is no clear and present danger to public peace and order or to the security of persons within the premises of Malacañang and the adjacent areas, as the respondents have adopted measures and are prepared to insure against any public disturbance or violence.

- **ABAD SANTOS, *J.,*** dissenting:
  - True it is that the free exercise of religion can be restrained under the clear and present danger principle. But I fail to perceive the presence of any clear danger to the security of Malacañang due to the action of the petitioners. The danger existed only in the fertile minds of the overzealous guardians of the complex which is protected by a stout steel fence.
- **MELENCIO-HERRERA, *J.,*** dissenting:
  - The location of the St. Jude Chapel within the perimeter of the Malacañang security area is not, to my mind, sufficient reason for a prior restraint on petitioners' right to freedom of religious worship. Proper security measures can always be taken. It is only when petitioners, in the exercise of their religious beliefs, exceed those bounds and translate their freedoms into acts detrimental or inimical to the superior rights of public peace and order, that the test of a clear and present danger of a substantive evil is met and the acts having a religious significance may be infringed upon in the exercise of the police power of the State. "Freedom of worship is susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect" (West Virginia State Board of Education vs. Barnette (319 U.S. 624 [1943]).
- **RELOVA, *J.,*** Separate vote and statement.
  - The fact that petitioners chose a Tuesday to hear mass and/or pray for their special intention negates the suspicion that they were out to stage a demonstration.
  - Respondents should have allowed petitioners to hear mass and/or pray and, thereafter, see what they would do. Only then would We know what were really in their minds. What respondents did by acting before petitioners could display themselves was tantamount to prohibiting free exercise and enjoyment of religious worship. Demonstrations about or near the premises of St. Jude Chapel because of its proximity to the residence of the President may be restricted, but certainly, for petitioners or any group of men for that matter, to hear mass and/or pray at the chapel should be tolerated.
- **GUTIERREZ, JR., *J.*:** concurring:
  - Any claim to the free exercise of religion must be a genuine or valid one. This Court is keenly sensitive to problems arising from the freedom of religion clause. We examine allegations of its violation to check any infringement of this preferred freedom. A claim based on it should be rooted in genuine religious conviction, although as mentioned by Justice Ameurfina A. Melencio-Herrera we have to take into account the presumption of good faith.

277 Habana v. Robles
G.R. No. 131522 July 19, 1999

FACTS

- Habana was the author and copyright owner of a college textbook entitled "College English Today" . He discovered that another textbook, which was written by Robles, was similarly written with regard to the conten, illustrations and examples. Several pages of Robles' book was directly plagiarized from his book. Habana sued Robles for unfair competition, copyright infringement and damages.

ISSUES & ARGUMENTS

- **W/N Habana is entitled to damages**

HOLDING & RATIO DECIDENDI

Habana is entitled to damages.

Robles is guilty of copyright infringement. Infringment of copyright consists of copying of anything without the consent of the owner with whom is vested the sole right to do anything. It may be likened to trespassing wherein a person trespasses on the private dominion of another. With regard to literary works, such as a book, copyrighting is a protection given to the intellectual product of an author. In such the copying must be coupled with an injurious effect.
In the case at bar, even if Robles did not copy all of Habana's book, if so much is taken that it substantially reduces the value of the book, then Robles is guilty of infringement. Robles should have acknowledged Habana as the source, because the copying without permission is injurious enough.

278 Liwayway Vizons-Chato vs. Fortune Tobacco Corpation| YNARES-SANTIAGO, J.:
G.R. No. 141309 | June 19, 2007

FACTS

- Petitioner, the Commissioner of Internal Revenue issued RMC 37-93 which subjected cigarette brands "Champion," "Hope," and "More," to 55% ad valorem tax.

- Respondent company filed a petition for review with the Court of Tax Appeals, which ultimately ruled that RMC 37-93 as defective, invalid and unenforceable. Such pronouncement was affirmed by the CA and the SC, for being an invalid administrative issuance.

- Thereafter, respondent filed with the RTC a complaint for damages against petitioner in her private capacity, under Article 32, considering that the issuance of the RMC violated the constitutional right of the respondent against deprivation of property without due process of law and the right to equal protection of the laws.

- Petitioner's motion to dismiss was denied by the RTC, and eventually the case got to the SC, wherein it is contended that it is Section 38, Book I of the Administrative Code which should be applied. Under this provision, liability will attach only when there is a clear showing of bad faith, malice, or gross negligence.

ISSUES

Is petitioner liable in his/her private capacity for acts done in connection with the discharge of the functions of his/her office?

Does Article 32 of the NCC, or Sec 38, Book I of the Admin Code should govern in determining whether the instant complaint states a cause of action?

HOLDING & RATIO DECIDENDI

- **Petitioner in the case at bar is liable for damages.**

- Although the general rule provides that a public officer is not liable for damages which a person may suffer arising from the just performance of his official duties and within the scope of his assigned tasks, there are exceptions to such,
  (1) where said public officer acted with malice, bad faith, or negligence; or
  (2) where the public officer violated a constitutional right of the plaintiff.

  The second exception is clearly applicable in the instant case.

- **Article 32 is the governing provision in determining whether or not respondents' complaint had a valid cause of action.**

- Article 32 was patterned after the "tort" in American law. Presence of good motive, or rather, the absence of an evil motive, does not render lawful an act which is otherwise an invasion of another's legal right; that is, liability in tort is not precluded by the fact that defendant acted without evil intent. The clear intention therefore of the legislature was to create a distinct cause of action in the nature of tort for violation of constitutional rights, irrespective of the motive or intent of the defendant.

- While the Civil Code, specifically, the Chapter on Human Relations is a general law, Article 32 of the same Chapter is a special and specific provision that holds a public officer liable for and allows redress from a particular class of wrongful acts that may be committed by public officers.

- Compared thus with Section 38 of the Administrative Code, which broadly deals with civil liability arising from errors in the performance of duties, Article 32 of the Civil Code is the specific provision which must be applied in the instant case precisely filed to seek damages for violation of constitutional rights.

- The complaint in the instant case was brought under Article 32 of the Civil Code. Considering that bad faith and malice are not necessary in an action based on Article 32 of the Civil Code, the failure to specifically allege the same will not amount to failure to state a cause of action. The courts below therefore correctly denied the motion to dismiss on the ground of failure to state a cause of action, since it is enough that the complaint avers a violation of a constitutional right of the plaintiff.

Petition denied.

JR RUIZ

279 Liwayway Vinzons-Chato vs. Fortune Tobacco Corporation| Nachura
G.R. No. 141309 December 23, 2008|

FACTS

- **On June 10, 1993, the legislature enacted Republic Act No. 7654 (RA 7654), which took effect on July 3, 1993**. Prior to its effectivity, cigarette brands 'Champion," "Hope," and "More" were considered local brands subjected to an ad valorem tax at the rate of 20-45%. However, **on July 1, 1993, or two days before RA 7654 took effect, petitioner issued RMC 37-93** reclassifying "Champion," "Hope," and "More" as locally manufactured cigarettes bearing a foreign brand subject to the 55% ad valorem tax. RMC 37-93 in effect subjected "Hope," "More," and "Champion" cigarettes to the provisions of RA 7654, specifically, to Sec. 142, (c)(1) on locally manufactured cigarettes which are currently classified and taxed at 55%, and which imposes an ad valorem tax of "55% provided that the minimum tax shall not be less than Five Pesos (P5.00) per pack."
- **On July 2, 1993, at about 5:50 p.m., BIR Deputy Commissioner Victor A. Deoferio, Jr. sent via telefax a copy of RMC 37-93 to Fortune Tobacco** but it was addressed to no one in particular. On July 15, 1993, Fortune Tobacco received, by ordinary mail, a certified xerox copy of RMC 37-93. **On July 20, 1993, respondent filed a motion for reconsideration requesting the recall of RMC 37-93, but was denied in a letter dated July 30, 1993. The same letter assessed respondent for ad valorem tax deficiency amounting to P9,598,334.00 (computed on the basis of RMC 37-93) and demanded payment within 10 days from receipt thereof**. **On August 3, 1993, respondent filed a petition for review with the Court of Tax Appeals** (CTA), which on September 30, 1993, **issued an injunction enjoining the implementation of RMC 37-93**. In its decision dated August 10, 1994, **the CTA ruled that RMC 37-93 is defective, invalid, and unenforceable and further enjoined petitioner from collecting the deficiency tax assessment issued pursuant to RMC No. 37-93. This ruling was affirmed by the Court of Appeals, and finally by this Court in Commissioner of Internal Revenue v. Court of Appeals.** It was held, among others, that RMC 37-93, has fallen short of the requirements for a valid administrative issuance.
- **On April 10, 1997, respondent filed before the RTC a complaint for damages against petitioner in her private capacity**. Respondent contended that the latter should be held liable for **damages under Article 32 of the Civil Code considering that the issuance of RMC 37-93 violated its constitutional right against deprivation of property without due process of law and the right to equal protection of the laws**.
- Petitioner filed a motion to dismiss contending that: (1) respondent has no cause of action against her because she issued RMC 37-93 in the performance of her official function and within the scope of her authority. She claimed that she acted merely as an agent of the Republic and therefore the latter is the one responsible for her acts; (2) the complaint states no cause of action for lack of allegation of malice or bad faith; and (3) the certification against forum shopping was signed by respondent's counsel in violation of the rule that it is the plaintiff or the principal party who should sign the same.
- On September 29, 1997, the RTC denied petitioner's motion to dismiss; the case was subsequently elevated to the Court of Appeals via a petition for certiorari under Rule 65. However, same was dismissed on the ground that under Article 32 of the Civil Code, liability may arise even if the defendant did not act with malice or bad faith. [*It seems that in effect both RTC and CA ruled in favor of Fortune Tobacco and held Vinzons-Chato liable for damages under Art. 32 of NCC)*
- In a decision dated June 19, 2007, **SC affirmed the decision of the CA**. MR denied, **petitioner filed, on April 29, 2008 her Motion to Refer [the case] to the Honorable Court En Banc**. She contends that the petition raises a legal question that is novel and is of paramount importance. The earlier decision rendered by the Court will send a chilling effect to public officers, and will adversely affect the performance of duties of superior public officers in departments or agencies with rule-making and quasi-judicial powers. With the said decision, the Commissioner of Internal Revenue will have reason to hesitate or refrain from performing his/her official duties despite the due process safeguards in Section 228 of the National Internal Revenue Code. Petitioner hence moves for the reconsideration of the June 19, 2007 Decision.

ISSUES & ARGUMENTS

- **Can a public officer, in particular, BIR, be held liable for damages under Art. 32 of NCC for violating the respondent's consti right against deprivation of property without due process of law and the right to equal protection of the laws, on the basis of the court's decision holding that the RMC issued by said official is defective, invalid and unenforceable?**

HOLDING & RATIO DECIDENDI

NO. When what is involved is a "duty owing to the public in general", an individual cannot have a cause of action for damages against the public officer, even though he may have been injured by the action or inaction of the officer. The remedy in this case is not judicial but political. The exception to this rule occurs when the complaining individual suffers a particular or special injury on account of the public officer's improper performance or non-performance of his public duty.

- There are two kinds of duties exercised by public officers: the "duty owing to the public collectively" (the body politic), and the "duty owing to particular individuals, thus:
    1. **Of Duties to the Public.** – The first of these classes embraces those officers whose duty is owing primarily to the public collectively --- to the body politic --- and not to any particular individual; who act for the public at large, and who are ordinarily paid out of the public treasury. The officers whose duties fall wholly or partially within this class are numerous and the distinction will be readily recognized.

Thus, the governor owes a duty to the public to see that the laws are properly executed, that fit and competent officials are appointed by him, that unworthy and ill-considered acts of the legislature do not receive his approval, but these, and many others of a like nature, are duties which he owes to the public at large and no one individual could single himself out and assert that they were duties owing to him alone. So, members of the legislature owe a duty to the public to pass only wise and proper laws, but no one person could pretend that the duty was owing to himself rather than to another. Highway commissioners owe a duty that they will be governed only by considerations of the public good in deciding upon the opening or closing of highways, but it is not a duty to any particular individual of the community.

2. **Of Duties to Individuals**. - The second class above referred to includes those who, while they owe to the public the general duty of a proper administration of their respective offices, yet become, by reason of their employment by a particular individual to do some act for him in an official capacity, under a special and particular obligation to him as an individual. They serve individuals chiefly and usually receive their compensation from fees paid by each individual who employs them.

   A sheriff or constable in serving civil process for a private suitor, a recorder of deeds in recording the deed or mortgage of an individual, a clerk of court in entering up a private judgment, a notary public in protesting negotiable paper, an inspector of elections in passing upon the qualifications of an elector, each owes a general duty of official good conduct to the public, but he is also under a special duty to the particular individual concerned which gives the latter a peculiar interest in his due performance.

- An individual can never be suffered to sue for an injury which, technically, is one to the public only; he must show a wrong which he specially suffers, and damage alone does not constitute a wrong. A contrary precept (that an individual, in the absence of a special and peculiar injury, can still institute an action against a public officer on account of an improper performance or non-performance of a duty owing to the public generally) will lead to a deluge of suits, for if one man might have an action, all men might have the like-the complaining individual has no better right than anybody else. If such were the case, no one will serve a public office. Thus, the rule restated is that an individual cannot have a particular action against a public officer without a particular injury, or a particular right, which are the grounds upon which all actions are founded.
- Juxtaposed with **Article 32 of the Civil Code, the principle may now translate into the rule that an individual can hold a public officer personally liable for damages on account of an act or omission that violates a constitutional right only if it results in a particular wrong or injury to the former**. This is consistent with this Court's pronouncement in its June 19, 2007 Decision (subject of petitioner's motion for reconsideration) that Article 32, in fact, allows a damage suit for "tort for impairment of rights and liberties."
- It may be recalled that in tort law, for a plaintiff to maintain an action for damages for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed the plaintiff, meaning a concurrence of injury to the plaintiff and legal responsibility by the person causing it. Indeed, central to an award of tort damages is the premise that an individual was injured in contemplation of law.
- **In the instant case, what is involved is a public officer's duty owing to the public in general.** The petitioner, as the then Commissioner of the Bureau of Internal Revenue, is being taken to task for Revenue Memorandum Circular (RMC) No. 37-93 which she issued without the requisite notice, hearing and publication, and which, in Commissioner of Internal Revenue v. Court of Appeals, we declared as having "fallen short of a valid and effective administrative issuance." **A public officer, such as the petitioner, vested with quasi-legislative or rule-making power, owes a duty to the public to promulgate rules which are compliant with the requirements of valid administrative regulations. But it is a duty owed not to the respondent alone, but to the entire body politic who would be affected, directly or indirectly, by the administrative rule.**
- Furthermore, as discussed above, **to have a cause of action for damages against the petitioner, respondent must allege that it suffered a particular or special injury on account of the non-performance by petitioner of the public duty. A careful reading of the complaint filed with the trial court reveals that no particular injury is alleged to have been sustained by the respondent. The phrase "financial and business difficulties" mentioned in the complaint is a vague notion, ambiguous in concept, and cannot translate into a "particular injury."** In contrast, the facts of the case eloquently demonstrate that the petitioner took nothing from the respondent, as the latter did not pay a single centavo on the tax assessment levied by the former by virtue of RMC 37-93.
- The complaint in this case does not impute bad faith on the petitioner. Without any allegation of bad faith, the cause of action in the respondent's complaint (specifically, paragraph 2.02 thereof) for damages under Article 32 of the Civil Code would be premised on the findings of this Court in Commissioner of Internal Revenue v. Court of Appeals (CIR v. CA), where we ruled that RMC No. 37-93, issued by petitioner in her capacity as Commissioner of Internal Revenue, had "fallen short of a valid and effective administrative issuance."
- If we divest the complaint of its reliance on CIR v. CA, what remains of respondent's cause of action for violation of constitutional rights would be paragraph 2.01, which reads:

> 2.01. On or about July 1, 1993, defendant issued Revenue Memorandum Circular No. 37-93 (hereinafter referred to as RMC No. 37-93) reclassifying specifically "Champion", "Hope" and "More" as locally manufactured cigarettes bearing a foreign brand. A copy of the aforesaid circular is attached hereto and made an integral part hereof as ANNEX "A". The issuance of a circular and its implementation resulted in the "deprivation of property" of plaintiff. They were done without due process of law and in violation of the right of plaintiff to the equal protection of the laws. (Italics supplied.)

- But, as intimated above, the bare allegations, "done without due process of law" and "in violation of the right of plaintiff to the equal protection of the laws" are conclusions of law. They are not hypothetically admitted in petitioner's motion to dismiss and, for purposes of the motion to dismiss, are not deemed as facts.
- Furthermore, in an action for damages under Article 32 of the Civil Code premised on violation of due process, it may be necessary to harmonize the Civil Code provision with subsequent legislative enactments, particularly those related to taxation and tax collection. Judicial notice may be taken of the provisions of the National Internal Revenue Code, as amended, and of the law creating the Court of Tax Appeals. Both statutes provide ample remedies to aggrieved taxpayers; remedies which, in fact, were availed of by the respondent-without even having to pay the assessment under protest-as recounted by this Court in CIR v. CA. **The availability of the remedies against the assailed administrative action, the opportunity to avail of the same, and actual recourse to these remedies, contradict the respondent's claim of due process infringement.**
- The Court discussed the American jurisprudence on this matter and in summary it provides that "when the design of a Government program suggests that Congress has provided what it considers adequate remedial mechanisms for constitutional violations that may occur in the course of its administration, additional Bivens remedies (Art. 32 of NCC in the Philippines) cannot be claimed.
- Lastly, citing **Section 227 of RA 8424 (Tax Reform Act of 1997) which provides that any judgment, damages or costs recovered in an action brought against any Internal Revenue officer shall be satisfied by the Commissioner, upon approval of the Secretary of Finance, or if the same be paid by the person sued shall be repaid or reimbursed to him. The exception being where the person has acted negligently or in bad faith, or with willful oppression. Because the respondent's complaint does not impute negligence or bad faith to the petitioner, any money judgment by the trial court against her will have to be assumed by the Republic of the Philippines. As such, the complaint is in the nature of a suit against the State.**

Petitioner's MR is GRANTED and the case pending in the RTC against the former (for damages under Art. 32) is DISMISSED.

TEL VIRTUDEZ

280 Gilchrist vs. Cuddy, 29 Phil. 542 | TRENT, J.

FACTS:

- Cuddy was the owner of the film "*Zigomar*" and that on the 24th of April 1913 he rented it to C. S. Gilchrist for a week for P125, and it was to be delivered on the 26th of May 1913, the week beginning that day. Gilchrist paid the rental payment in advance.

- A few days prior to this (26th of May 1913) Cuddy sent the money back to Gilchrist, which he had forwarded to him in Manila, saying that he had made other arrangements with his film.

- The other arrangements was the rental to the partners Jose Espejo and his partner Mariano Zaldriagga for P350 for the week.

- An injunction was asked by Gilchrist against these parties from showing it for the week beginning the 26th of May.

ISSUE:

Whether or not the partners Espejo and Zaldriagga are liable to Gilchrist for damages because of interference in the contractual relation between Gilchrist and Cuddy?

HOLDING & RATIONALE:

YES.

- The only motive for the interference with the Gilchrist - Cuddy contract on the part of the appellants was a desire to make a profit by exhibiting the film in their theater. There was no malice beyond this desire; *but this fact does not relieve them of the legal liability for interfering with that contract and causing its breach.* It is, therefore, clear, that they are liable to Gilchrist for the damages caused by their acts.

- The liability of the Espejo and Zaldriagga arises from unlawful acts and not from contractual obligations, as they were under no such obligations to induce Cuddy to violate his contract with Gilchrist. So that if the action of Gilchrist had been one for damages, it would be governed by chapter 2, title 16, book 4 of the Civil Code. Article 1902 of that code provides that a person who, by act or omission, causes damages to another when there is fault or negligence, shall be obliged to repair the damage so done.

- There is nothing in this article which requires as a condition precedent to the liability of a tort-feasor that he must know the identity of a person to whom he causes damages. In fact, the chapter wherein this article is found clearly shows that no such knowledge is required in order that the injured party may recover for the damage suffered.

281 Daywalt v. Corporacion De Los Padres Agustinos Recoletos | Street
G.R. L-13505, Feb. 4, 1919 | 39 Phil 587

FACTS

- In 1902, plaintiff and Teodorica Endencia entered into a contract for the conveyance of a tract of land owned by the latter to the former; the deed should be executed as soon as the title to the land should be perfected by proceedings in the Court of Land Registration and a Torrens certificate should be produced in the name of Endencia.
- In 1906, a decree in favor of Endencia was entered but no Torrens title was issued. Upon entry of the decree, Daywalt and Endencia entered into another contract with a view to carry out the original agreement into effect. The 2nd contract was not executed since no Torrens title was issued until the period for performance contemplated in the contract expired.
- In 1908, a 3rd agreement was entered into: that upon receiving the Torrens title, Endencia was to deliver the same to the Hongkong and Shanghai Bank in Manila, to be forwarded to the Crocker National Bank in San Francisco, where it was to be delivered to the plaintiff upon payment of a balance of P3,100.
- In the course of the proceedings for the issuance of the Torrens title, it was found that the boundaries inclosed was 1,248 ha instead of 452 ha stated in the contract. As such, after the issuance of the Torrens title, Endencia was reluctant to convey the title to Daywalt, contending that she did not intend to transfer as big a property as that contained in the title and that she was misinformed of its area.
- Daywalt filed an action against Endencia for specific performance. On appeal before the SC, Daywalt obtained a favorable decision, However, no damages was sought or awarded in the case against Endencia.
- Daywalt filed an action against respondent for interference in contractual relations based on the ff. background:
    - Respondent was the original owner of the property and owned an adjacent tract of land managed by Fr. Sanz, a member of the Order.
    - Fr. Sanz was well acquainted with Endencia and exerted over her an influence and ascendency due to his religious character as well as to the personal friendship which existed between them. Teodorica appears to be a woman of little personal force.
    - Fr. Sanz was fully aware of the contracts with Endencia and with its developments.
    - Between 1909 and 1914, large number of cattle of respondent was pastured in the subject property.
    - When the Torrens title was issued, it was delivered to respondent for safekeeping and only turned it over upon order of the SC in 1914.

ISSUES & ARGUMENTS:

- **W/N petitioner is entitled to P24,000 as compensation for pasturing cattle from 1909 to 1913.**
- **W/N respondent is liable for interference in contractual relations.**

HOLDING & RATIO DECIDENDI

1. No. It is improbable to pasture 1,000 cattle in 1,248 ha of wild Mindoro land. There is no reason to suppose that the value of the property was more (40¢ per head monthly) before the petitioner obtained possession of it and from which respondent rented it at 50¢ per hectare annually.

2. No. Defendants believed in good faith that the contract could not be enforced and that Teodorica would be wronged if it should be carried into effect. Any advice or assistance which they may have given was prompted by no mean or improper motive. Teodorica would have surrendered the documents of title and given possession of the land but for the influence and promptings of members of the defendants corporation. But the idea that they were in any degree influenced to the giving of such advice by the desire to secure to themselves the paltry privilege of grazing their cattle upon the land in question to the prejudice of the just rights of the plaintiff can't be credited.

- What constitutes legal justification for interference - If a party enters into contract to go for another upon a journey to a remote and unhealthful climate, and a third person, with a *bona fide* purpose of benefiting the one who is under contract to go, dissuades him from the step, no action will lie. But if the advice is not disinterested and the persuasion is used for "the indirect purpose of benefiting the defendant at the expense of the plaintiff," the intermedler is liable if his advice is taken and the contract broken.
- If performance is prevented by unlawful means such as force, intimidation, coercion, or threats, or by false or defamatory statements, or by nuisance or riot, the person is, under all the authorities, liable for the damage which ensues.
- Whatever may be the character of the liability which a stranger to a contract may incur by advising or assisting one of the parties to evade performance, the stranger cannot become more extensively liable in damages for the nonperformance of the contract than the party in whose behalf he intermeddles.
    - As to damages, the defense of res judicata of the case between plaintiff and Endencia cannot apply to the defendant who was not a party thereto. Damages recoverable in case of the breach of a contract are two sorts, namely, (1) the ordinary, natural, and in a sense necessary damage; and (2) special damages.

    - Ordinary damages is found in all breaches of contract where there are no special circumstances to distinguish the case specially from other contracts. The consideration paid for an unperformed promise is an

instance of this sort of damage. In all such cases the damages recoverable are such as naturally and generally would result from such a breach, "according to the usual course of things." In case involving only ordinary damage no discussion is ever indulged as to whether that damage was contemplated or not. This is conclusively presumed from the immediateness and inevitableness of the damage, and the recovery of such damage follows as a necessary legal consequence of the breach. Ordinary damage is assumed as a matter of law to be within the contemplation of the parties.

- Special damage, is such as follows less directly from the breach than ordinary damage. It is only found in case where some external condition, apart from the actual terms to the contract exists or intervenes, as it were, to give a turn to affairs and to increase damage in a way that the promisor, without actual notice of that external condition, could not reasonably be expected to foresee

- Damages claimed could not be recovered from her, first, because the damages in question are special damages which were not within contemplation of the parties when the contract was made, and secondly, because said damages are too remote to be the subject of recovery.

- By advising Teodorica not to perform the contract, said corporation could in no event render itself more extensively liable than the principle in the contract.

282 People's Bank vs. Dahican Lumber |
20 SCRA 84

FACTS

- Atlantic Gulf and Pacific Company of Manila sold and assigned all its rights in the Dahican Lumber Concession to Dahican Lumber Company (DALCO) for$ 500,000
- Out of this amount, only $50,000 was paid
- Dalco loaned money from People's Bank & Trust Company and as a security, a deed of mortgage covering 5 parcels of land was executed
- Dalco executed a second mortgage on the same properties in favor of ATLANTIC to secure payment of its unpaid balance of the sale price of the lumber concession
- The deed contained a provision to the effect that all property of every nature and description within the mortgaged property shall also be subject to said mortgage and the mortgagor shall furnish mortgagee an accurate inventory of all substituted and subsequently acquired property.
- DALCO failed to pay its fifth promissory note upon maturity; the bank gave it up to April 1, 1953 to pay.
- DALCO bought various machinery and equipment in addition and as replacement to what it already owns. Pursuant to their agreement, the BANK demanded DALCO to submit a list of the properties they acquired but it failed to do so.
- The Board of Directors of DALCO passed a resolution to rescind abovementioned sales. Agreements of Rescission of sale were executed by Connel.
- On January 13,1953 the bank and Atlantic demanded that the rescission agreements be cancelled but Connel and DALCO refused. The Bank commenced foreclosure proceedings.
- **ISSUE: W/N defendants are liable for damages for being guilty of an attempt to defraud the plaintiff when they sought to rescind the sales in order to defeat the mortgage lien**

HOLDING & RATIO DECIDENDI

YES. Defendants' liability for damages is clear.

- **The execution of rescission of sale appears to be an attempt to improve Connel and DALCO's position by enabling the to assume the role of unpaid suppliers and claim a vendor's lien over the after acquired properties.**
- **As to the plaintiff's right to recover damages, the law provides that creditors are protected in case of contracts intended to defraud them and that any third person who induces another to violate his contract shall be liable to damages to the other contracting party. Similar liability is demandeable under Arts. 20 and 21.**

283 Rubio vs. CA | Gutierrez, Jr.
G.R. No. L-50911, March 12, 1986 |

FACTS

- A TRO was issued against the defendant to prevent and restrain them from further unlawfully and willfully interference with the transaction between the plaintiff corporation with Alfonso T. Yuchengco on the sale of the shares of stock of Hacienda Benito, Inc.,
- It appears that the Perez Rubio spouses owned shares of stock in Hacienda Benito, Inc. The Perez Rubios, sold said shares to Robert O. Phillips and Sons, Inc. for P5,500,000.00 payable in installments
- Robert O. Phillips, in his behalf and in that of his wife and Robert O. Phillips and Sons, Inc., entered into negotiations for the sale of their shares of stock in Hacienda Benito, Inc. to Alfonso Yuchengco. Upon being informed of this, the Perez Rubios, through their attorney-in-fact, Joaquin Ramirez, reminded the Phillips spouses and the Phillips corporation in writing of their obligations under the contract of sale reminded them in particular that the shares subject matter thereof were still subject to the payment of the unpaid balance of the sale price
- The Phillips (individuals and corporation), through their attorney, Juan T. David, sent a letter to the Perez Rubios telling them, in substance, that the only obstacle to the consummation of the Phillips-Yuchengco sale of the shares of stock of Hacienda Benito, Inc. **was their letter of November 24, 1964 and warned that unless the same was withdrawn by March 29, they would seek redress elsewhere.** Perez Rubio did not withdraw the letter.
- Because of the issuance of a preliminary injunction ex parte which restrained petitioner Perez Rubio from interfering with the Yuchengco transaction and the denial of a motion to dissolve the injunction petitioner Perez Rubio was constrained to file a petition for certiorari with this Court alleging that the lower court committed a grave abuse of discretion in issuing the preliminary injunction

ISSUES & ARGUMENTS

- **W/N the Perez Rubio unlawfully interfered in the transaction between Philips and Yuchengco**

HOLDING & RATIO DECIDENDI

No, he is not liable.

- A thorough examination of the record reveals that the factual findings of the appellate court are incomplete and do not reflect the actual events that transpired concerning the sale of shares of stock of Hacienda Benito to Alfonso Yuchengco.
- The important point left out by the appellate court refers to the controversial letter of the petitioner to Phillips and Sons and to the Phillips spouses wherein the petition stated that he has a vendor's lien over the shares of stock of Hacienda Benito and that he still has the option to rescind the contract as regards his sale of stock of the Hacienda. A copy of the letter was sent to Alfonso Yuchengeo, the prospective buyer of the shares of stock of Hacienda Benito, **but even after receipt of the letter, the negotiations on the sale of the shares of stock of Hacienda Benito to Alfonso Yuchengco continued.**
- All the details of the negotiations in the sale of the shares of stock of Hacienda Benito, Inc. from Phillips and Sons to Mr. Yuchengco, there is no factual or legal basis for the appellate court's conclusion that the petitioner unlawfully and inofficiously interfered with the negotiations
- There is no reason why the petitioner should be accused of unlawful interference in maintaining his stand regarding the sale of shares of stock of Hacienda Benito, Inc. that **he still had the option to rescind the contract between him and Phillips and Sons and stating the existence of his vendor's hen over said shares of stock**
- The petitioner never pretended that he still had full control of the shares of stock which he sold to Phillips and Sons. He in fact admitted that the shares of stock were already transferred to the corporation and that he did not have a recorded lien therein. He merely made of record his right to rescind under the original contract of sale. **The details pertaining to the earlier transaction governing the sale of the shares of stock between the petitioner and Phillips and Sons were in fact, all known to Yuchengco. And, more important, it is obvious from the records that the petitioner's interest was only in the payment of the P4,250,000.00 balance due him from Phillips and Sons**.
- He had the right to refuse to withdraw the November 24, 1964 letter. We see nothing illegal or inofficious about the letter or the refusal to withdraw it.

284 Laforteza vs Machuca | Gonzaga-Reyes
G.R. No.137552 16 June 2000|

FACTS

- The property involved in this case consists of a house and lot located at Green Village Paranaque City, registered in the name of Francisco Laforteza.
- On August 2, 1988, defendant Lea Laforteza executed a special power of attorney in favor of defendants Roberto and Gonzalo Laforteza, appointing both as her Attorney in fact and authorizing them jointly to sell the subject property and sign any document for the settlement of the estate of the late Francisco Laforteza.
- On the same day, defendant Michael Laforteza executed a Special Power of Attorney in favor of defendant Roberto Laforteza for the purpose of sellng the subject property.
- On October 27, 1988, defendant Dennis Laforteza executed a Special Power of Attorney in favor of defendant Roberto Laforteza for the purpose of selling the property.
- In the exercise of the above authority, Roberto and Gonzalo entered into a Contract to sell with the plaintiff over the subject property for the sum of P 630,000. P30,000 was paid as earnest money which is to be forfeited if the sale is not effected due to the fault of the plaintiff. P660,000 shall be paid upon issuance of the new Certificate of title in the name of the late Francisco Laforteza and upon execution of the extra judicial partition.
- On January 20, 1989 the plaintiff paid the earnest money. On September 18, 1989 the plaintiff sent the defendant a letter stating that his request for an extension of thirty days within which to produce the balance of P660,000.
- On November 15, 1989 plaintiff informed the defendant heirs through Roberto Laforteza that he already had the balance of P660,000.
- The defendants refused to accept the balance. Defendant Roberto Laforteza informed him that the subject property was no longer for sale.
- On November 20, 1998, the defendants informed the plaintiff that they are canceling the contract to sell in view of the plaintiffs failure to comply with his contractual obligations.
- Plaintiff reiterated his request to tender payment for the balance. The defendants still insisted to rescind the contract.
- The plaintiff filed the instant action for specific performance. The lower court ruled in favor of the plaintiff.
- A motion for reconsideration was filed but it was denied. The judgement was modified so as to absolve Gonzalo Laforteza from paying damages.

ISSUES & ARGUMENTS

Whether the petitioners are in bad faith so as to make them liable for damages?

HOLDING & RATIO DECIDENDI

Yes.

The Court of Appeals correctly found the petitioners guilty of bad faith and awarded moral damages to the respondent. As found by the said court, the petitioners refused to comply with their obligation for the reason that they were offered a higher price therefore and the respondent was even offered P100,000 by the petitioners' lawyer, Atty. Gutierrez, to relinquish his rights over the peoperty.

The award of moral damages is in accordance with Art 1191 of the New Civil Code to Art 2220 which provides that moral damages may be awarded in case of a breach of contract where the defendant acted in bad faith. The amount awarded depends on the discretion of the court based on the circumstances of each case. Under the circumstances, the award given by the Court of Appeals amounting to P50,000 is fair and reasonable.

285 So Ping Bun vs. CA
GR No. 120554. September 21, 1999 / J. Quisimbing

Topic:

Interference in Contractual Relation (Under Article 1314, New Civil Code)

Synopsis:

Tek Hua Enterprises is the lessee of Dee C. Chuan & Sons, Inc. in the latter's premises in Binondo but it was So Ping Bun who was occupying the same for his Trendsetter Marketing. Later, Mr. Manuel Tiong asked So Ping Bun to vacate the premises but the batter refused and entered into formal contracts of lease with DCCSI. In a suit for injunction, private respondents pressed for the nullification of the lease contracts between DCCSI and petitioner, and for damages. The trial court ruled in favor of private respondents and the same was affirmed by the Court of Appeals.

There was tort interference in the case at bar as petitioner deprived respondent corporation of the latter's property right. However, nothing on record imputed malice on petitioner; thus, precluding damages. But although the extent of damages was not quantifiable, it does not relieve petitioner of the legal liability for entering into contracts and causing breach of existing ones. Hence, the Court confirmed the permanent injunction and nullification of the lease contracts between DCCSI and Trendsetter Marketing.

FACTS:

- In 1963, Tek Hua Trading Co, through its managing partner, So Pek Giok, entered into lease agreements with lessor Dee C. Chuan & Sons Inc. (DCCSI). Subjects of four (4) lease contracts were premises located at Soler Street, Binondo, Manila. Tek Hua used the areas to store its textiles. The contracts each had a one-year term. They provided that should the lessee continue to occupy the premises after the term, the lease shall be on a month-to-month basis.
- When the contracts expired, the parties did not renew the contracts, but Tek Hua continued to occupy the premises. In 1976, Tek Hua Trading Co. was dissolved. Later, the original members of Tek Hua Trading Co. including Manuel C. Tiong, formed Tek Hua Enterprising Corp., herein respondent corporation.
- So Pek Giok, managing partner of Tek Hua Trading, died in 1986. So Pek Giok's grandson, petitioner So Ping Bun, occupied the warehouse for his own textile business, Trendsetter Marketing.
- On August 1, 1989, lessor DCCSI sent letters addressed to Tek Hua Enterprises, informing the latter of the 25% increase in rent effective September 1, 1989. The rent increase was later on reduced to 20% effective January 1, 1990, upon other lessees' demand. Again on December 1, 1990, the lessor implemented a 30% rent increase. Enclosed in these letters were new lease contracts for signing. DCCSI warned that failure of the lessee to accomplish the contracts shall be deemed as lack of interest on the lessee's part, and agreement to the termination of the lease. Private respondents did not answer any of these letters. Still, the lease contracts were not rescinded.
- On March 1, 1991, private respondent Tiong sent a letter to petitioner, which reads as follows:

March 1, 1991

Dear Mr. So,

Due to my closed (sic) business associate (sic) for three decades with your late grandfather Mr. So Pek Giok and late father, Mr. So Chong Bon, I allowed you temporarily to use the warehouse of Tek Hua Enterprising Corp. for several years to generate your personal business.

Since I decided to go back into textile business, I need a warehouse immediately for my stocks. Therefore, please be advised to vacate all your stocks in Tek Hua Enterprising Corp. Warehouse. You are hereby given 14 days to vacate the premises unless you have good reasons that you have the right to stay. Otherwise, I will be constrained to take measure to protect my interest.

Please give this urgent matter your preferential attention to avoid inconvenience on your part.

Very truly yours,
(Sgd) Manuel C. Tiong

- Petitioner refused to vacate. On March 4, 1992, petitioner requested formal contracts of lease with DCCSI in favor Trendsetter Marketing. So Ping Bun claimed that after the death of his grandfather, So Pek Giok, he had been occupying the premises for his textile business and religiously paid rent. DCCSI acceded to petitioner's request. The lease contracts in favor of Trendsetter were executed.
- In the suit for injunction, private respondents pressed for the nullification of the lease contracts between DCCSI and petitioner and as well prayed for damages. The Trial Court ruled in their favor as upheld by the Court of Appeals.

ISSUE:

WHETHER THE APPELLATE COURT ERRED IN AFFIRMING THE TRIAL COURT'S DECISION FINDING SO PING BUN GUILTY OF TORTUOUS INTERFERENCE OF CONTRACT (Given that no award for damages were given to the private respondents)?

HOLDING & RATIO DECIDENDI

PETITION IS DENIED.

The CA did not err in its decision. There can still be tortuous interference despite no award for damages were given by the Court.

Damage is the loss, hurt, or harm which results from injury, and damages are the recompense or compensation awarded for the damage suffered. One becomes liable in an action for damages for a non-trespassory invasion of another's interest in the private use and enjoyment of asset if *(a) the other has property rights and privileges with respect to the use or enjoyment interfered with, (b) the invasion is substantial, (c) the defendant's conduct is a legal cause of the invasion, and (d) the invasion is either intentional and unreasonable or unintentional and actionable under general negligence rules.* The elements of tort interference are: *(1) existence of*

valid contract; (2) knowledge on the part of the third person of the existence of contract; and (3) interference of the third person is without legal justification or excuse.

In the instant case, it is clear that petitioner So Ping Bun prevailed upon DCCSI to lease the warehouse to his enterprise at the expense of respondent corporation. Though petitioner took interest in the property of respondent corporation and benefited from it, nothing on record imputes deliberate wrongful motives or malice on him.

Section 1314 of the Civil Code categorically provides also that, "*Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.*" Petitioner argues that damage is an essential element of tort interference, and since the trial court and the appellate court ruled that private respondents were not entitled to actual, moral or exemplary damages, it follows that he ought to be absolved of any liability, including attorney's fees.

It is true that the lower courts did not award damages, but this was only because the extent of damages was not quantifiable. We had a similar situation in *Gilchrist*, where it was difficult or impossible to determine the extent of damage and there was nothing on record to serve as basis thereof. In that case we refrained from awarding damages. We believe the same conclusion applies in this case.

While we do not encourage tort interferers seeking their economic interest to intrude into existing contracts at the expense of others, however, we find that the conduct herein complained of did not transcend the limits forbidding an obligatory award for damages in the absence of any malice. The business desire is there to make some gain to the detriment of the contracting parties. Lack of malice, however, precludes damages. But it does not relieve petitioner of the legal liability for entering into contracts and causing breach of existing ones. The respondent appellate court correctly confirmed the permanent injunction and nullification of the lease contracts between DCCSI and Trendsetter Marketing, without awarding damages. The injunction saved the respondents from further damage or injury caused by petitioner's interference.

286 Lagon vs. CA and Lapuz | Corona
G.R. No. 119107, March 18, 2005 |

FACTS

- Petitioner Jose Lagon purchased from the estate of Bai Tonina Sepi, through an intestate court, two parcels of land located at Tacurong, Sultan Kudarat. A few months after the sale, private respondent Menandro Lapuz filed a complaint for torts and damages against petitioner before the RTC of Sultan Kudarat.
- Respondent claimed that he entered into a contract of lease with the late Bai Tonina Sepi Mengelen Guiabar over three parcels of land. One of the provisions agreed upon was for private respondent to put up commercial buildings which would, in turn, be leased to new tenants. The rentals to be paid by those tenants would answer for the rent private respondent was obligated to pay Bai Tonina Sepi for the lease.
- When Bai Tonina Sepi died, private respondent started remitting his rent to the court-appointed administrator of her estate. But when the administrator advised him to stop collecting rentals from the tenants of the buildings he constructed, he discovered that petitioner, representing himself as the new owner of the property, had been collecting rentals from the tenants. He thus filed a complaint against the latter.
- Petitioner claimed that before he bought the property, he went to Atty. Benjamin Fajardo, the lawyer who allegedly notarized the lease contract between private respondent and Bai Tonina Sepi, to verify if the parties indeed renewed the lease contract after it expired in 1974. Petitioner averred that Atty. Fajardo showed him four copies of the lease renewal but these were all unsigned.

ISSUES & ARGUMENTS

W/N THE PURCHASE BY PETITIONER OF THE PROPERTY DURING THE EXISTENCE OF RESPONDENT'S LEASE CONTRACT CONSTITUTED TORTUOUS INTERFERENCE?

HOLDING & RATIO DECIDENDI

NO, NOT ALL THREE ELEMENTS TO HOLD PETITIONER LIABLE FOR TORTUOUS INTERFERENCE ARE PRESENT

- Article 1314 of the Civil Code provides that any third person who induces another to violate his contract shall be liable for damages to the other contracting party. The tort recognized in that provision is known as interference with contractual relations. The interference is penalized because it violates the property rights of a party in a contract to reap the benefits that should result therefrom.
- The Court, in the case of *So Ping Bun v. Court of Appeals*, down the elements of tortuous interference with contractual relations**: (a) existence of a valid contract; (b) knowledge on the part of the third person of the existence of the contract and (c) interference of the third person without legal justification or excuse.**
- The second and third elements are not present. Petitioner conducted his own personal investigation and inquiry, and unearthed no suspicious circumstance that would have made a cautious man probe deeper and watch out for any conflicting claim over the property. An examination of the entire property's title bore no indication of the leasehold interest of private respondent. Even the registry of property had no record of the same.
- The records do not support the allegation of private respondent that petitioner induced the heirs of Bai Tonina Sepi to sell the property to him. Records show that the decision of the heirs of the late Bai Tonina Sepi to sell the property was completely of their own volition and that petitioner did absolutely nothing to influence their judgment. Private respondent himself did not proffer any evidence to support his claim. **In short, even assuming that private respondent was able to prove the renewal of his lease contract with Bai Tonina Sepi, the fact was that he was unable to prove malice or bad faith on the part of petitioner in purchasing the property. Therefore, the claim of tortuous interference was never established.**
- Petitioner's purchase of the subject property was merely an advancement of his financial or economic interests, absent any proof that he was enthused by improper motives. In the very early case of Gilchrist v. Cuddy, the Court declared that a person is not a malicious interferer if his conduct is impelled by a proper business interest. In other words, **a financial or profit motivation will not necessarily make a person an officious interferer liable for damages as long as there is no malice or bad faith involved.**
- This case is one of *damnum absque injuria* or damage without injury. "Injury" is the legal invasion of a legal right while "damage" is the hurt, loss or harm which results from the injury.

BON ARCILLA

287 People of the Philippines v. Relova | Feliciano
G.R. No. L-45129, March 6, 1987 | 148 SCRA 292

FACTS

- Equipped with a search warrant, members of the Batangas City Police together with personnel of the Batangas Electric Light System search and examined the premises of Opulencia Carpena Ice Plant and Cold Storage owned and operated by private respondent Manuel Opulencia.
- They discovered that electric wiring, devices and contraptions had been installed, without the necessary authority from the city government and architecturally concealed inside the walls of the building. The devices were designed purposely to decrease the readings of electric current consumption in the electric meter of the plant.
- Opulencia admitted in a written statement that he had caused the installation of the devices in order to decrease the readings of his electric meter.
- Assistant City Fiscal of Batangas filed an information against Opulencia for violation of Ordinance No. I, Series of 1974, Batangas City.
- Trial Court dismissed the information on the ground of prescription.
- 14 days later, Acting City Fiscal of Batangas City filed another information for theft under Article 308, RPC.
- Trial Court dismissed the case on the ground that the 2nd information will violate the right of the accused against double jeopardy.
- Acting City Fiscal filed a Petition for Certiorari and Mandamus.

ISSUES & ARGUMENTS

- **W/N the filing of the 2nd information constitutes violation of the right against double jeopardy.**
- **W/N the extinction of the criminal liability carries with it the extinction of civil liability arising from the offense charged.**

HOLDING & RATIO DECIDENDI

YES. THE 2ND INFORMATION CONSTITUTES VIOLATION OF THE RIGHT AGAINST DOUBLE JEOPARDY.

- The constitution provides that "no person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."
- The first sentence sets forth the general rule- the constitutional protection against double jeopardy is NOT available where the second prosecution is for an offense that is DIFFERENT from the offense charged in the first prosecution, although both the 1st and 2nd offenses may be based upon the same act. The second sentence embodies an exception- the constitutional protection against double jeopardy IS available although the prior offense charged under the ordinance be DIFFERENT from the offense charged subsequently under a national statute, provided that both offenses spring from the same act.
- Where the offenses charged are penalized either by different sections of the same statute or by different statutes, the important inquiry relates to the IDENTITY OF OFFENSES CHARGED. The constitutional protection against double jeopardy is available only where an identity is shown to exist between the earlier and the subsequent offense charged. In contrast, where one offense is charged under a municipal ordinance while the other is penalized by a statute, the critical inquiry is to the IDENTITY OF THE ACTS. The constitutional protection against double jeopardy is available so long as the acts which constitute or have given rise to the 1st offense under a municipal ordinance are the same acts which constitute or have given rise to the offense charged under a statute.
- The question of IDENTITY OF OFFENSES is addressed by examining the essential elements of each of the 2 offenses charged. The question of IDENTITY OF THE ACTS must be addressed by examining the location of such acts in time and space.
- In the instant case, the relevant acts took place within the same time frame. The taking of electric current was integral with the unauthorized installation of electric wiring and devices.
- The dismissal by the lower court of the information for the violation of the Ordinance upon the ground that such offense had already prescribed amounts to an acquittal. An order sustaining a motion to quash based on prescription is a bar to another prosecution for the same act.

NO. THE EXTINCTION OF CRIMINAL LIABILITY DOES NOT CARRY WITH IT THE EXTINCTION OF CIVIL LIABILITY ARISING FROM THE OFFENSE CHARGED.

- Because no reservation of the right to file a separate civil action was made, the civil action for recovery of civil liability arising from the offense charged was impliedly instituted with the criminal action.
- However, the extinction of criminal liability whether by prescription or by the bar of double jeopardy does not carry with it the extinction of civil liability arising from the offense charged.
- Since there is no evidence in the record as to the amount or value of the electric power appropriated by Opulencia, the civil action should be remanded to the CFI of Batangas City for reception of evidence on the amount or value of the electric power appropriated and converted by Opulencia.

Petition denied. Civil action for related civil liability remanded to the CFI.

TIN OCAMPO-TAN

288 Manuel vs. Alfeche, Jr. | Panganiban
G.R. No. 115683, July 26, 1996 | 259 SCRA 475

FACTS

- The City Prosecutor of Roxas City filed with the RTC and Information for libel against Celino (writer/author), Fajardo (editor-in-chief), Fernandez (associate editor), and Tia (assistant editor) of the regional newspaper "Panay News" for allegedly publishing an article entitled "Local Shabu Peddler Now a Millionaire."
- According to the Information, the said article stated that Delia Manuel was the "Shabu Queen" of Western Visayas, and has been raking in millions since she started peddling prohibited drugs, thereby (unjustly) besmirching her reputation, good name, and character as a private person and as a businesswoman.
- Thus, as a direct consequence of the publication, it was also alleged that Manuel suffered actual, moral, and exemplary damages in the amount of TEN MILLION PESOS.
- The respondent judge finding three of the accused guilty and acquitting the fourth. However, he dismissed the civil indemnity (by way of moral damages) for lack of jurisdiction, on the ground that Manuel did not pay the filing fees therefor. Hence this petition.

ISSUES & ARGUMENTS

- **W/N Manuel is entitled to recover damages through an independent civil action, and despite non-payment of filing fees.**
  - **Petitioner:** Under the New RoC, it is only when the amount of damages other than actual has been specified in the information that the filing fees is required to be paid upon filing, and that since in this case the amount of damages stated in the information partakes firstly of actual damages and is not entirely other than actual, there is no need to pay such fees upon filing.
  - **Respondents:** The present petition is premature because there is a pending appeal of the conviction for libel before the CA, filed by respondents.

HOLDING & RATIO DECIDENDI

MANUEL NOT ENTITLED TO RECOVER DAMAGES UNDER AN INDEPENDENT CIVIL ACTION.

- The award of moral and exemplary damages by the trial court is inextricably linked and necessarily dependent upon the factual finding of basis therefore, i.e. the existence of the crime of libel. Since such fact is pending determination before the CA, this court cannot entertain the petition of Manuel, in order to avoid an absurd situation wherein the CA reverses the decision of the RTC but this court awards damages in favor of Manuel. Hence, Manuel should have brought the petition before the CA first.
- Petitioner's contention that Article 33 of the NCC allows an independent civil action for damages in cases of defamation, fraud, and physical injuries is misplaced. Here, the civil action had been actually instituted with the criminal prosecution, given that Manuel took an active part in the proceedings by presenting evidence and even filing a Petitioner's Memorandum. Hence, there can be no longer any independent civil action to speak of.
- Petitioner also cites the case of *General vs. Claraval*[15] to prove that there is no need to pay filing fees for moral and exemplary damages if the amounts for such claims are not specified in the Information. However, it must be noted that this ruling was intended to apply to a situation wherein either:
  a) the judgment awards a claim not specified in the pleading, or
  b) the complainant expressly claims moral, exemplary, temperate, and/or nomial damages but has not specified ANY amount at all, leaving it entirely to the trial court's discretion.
- In the present case, since Manuel claimed an amount of TEN MILLION PESOS as damages, the doctrine under *General* has been rendered inapplicable to her petition.

Petition DISMISSED.

CHRISSIE MORAL

[15] "The Manchester doctrine requiring payment of filing fees at the time of commencement of the action is applicable to impliedly instituted civil actions under Section 1, Rule 111 *only when the amount of damages, other than actual, is alleged in the complaint or information."*

289 Reyes Trucking vs. People| Pardo
G.R. No. 129029 April 3, 2000 |SCRA

FACTS

- **Rafael Reyes Trucking Corporation** is a domestic corporation engaged in the business of transporting beer products for the San Miguel Corporation (SMC for short).
- Among its fleets of vehicles for hire is the white truck trailer described above driven by **Romeo Dunca y Tumol**, a duly licensed driver.
- At around 4:00 o'clock in the morning while the truck was descending at a slight downgrade along the national road at Tagaran, Cauayan, Isabela, it approached a damaged portion of the road which was uneven because there were potholes about five to six inches deep. The left lane parallel to this damaged portion is smooth.
- Before approaching the potholes, **Dunca** and his truck helper saw the Nissan with its headlights on coming from the opposite direction. They used to evade this damaged road by taking the left lane but at that particular moment, because of the incoming vehicle, they had to run over it.
- This caused the truck to bounce wildly. **Dunca** lost control of the wheels and the truck swerved to the left invading the lane of the Nissan.
- The Nissan was severely damaged, and its two passengers, namely: Feliciano Balcita and **Francisco Dy, Jr**. died instantly
- **Reyes Trucking** settled the claim of the heirs of Balcita. The **heirs of Dy** opted to pursue the criminal action but did not withdraw the civil case *quasi ex delicto* they filed against **Reyes Trucking**. They also withdrew their reservation to file a separate civil action against **Dunca** and manifested that they would prosecute the civil aspect *ex delicto* in the criminal action.
- TC consolidated both criminal and civil cases and conducted a joint trial of the same. TC held:
  - Accused **Dunca** guilty of the crime of Double Homicide through Reckless Imprudence with violation of the Motor Vehicle Law and liable to indemnify the **heirs of Dy** for damages.
  - Dismissal of the complaint in the separate civil case.
- TC rendered a supplemental decision ordering **Reyes Trucking** subsidiarily liable for all the damages awarded to the **heirs of Francisco Dy, Jr.,** in the event of insolvency of the **Dunca**.

ISSUES & ARGUMENTS

1. **May Reyes Trucking be held subsidiarily liable for the damages awarded to the heirs of Dy in the criminal action against Dunca, despite the filing of a separate civil action against Reyes Trucking?**
2. **May the Court award damages to the heirs of Dy in the criminal case despite the filing of a civil action against Reyes Trucking?**

HOLDING & RATIO DECIDENDI

1.) No. Reyes Trucking, as employer of the accused who has been adjudged guilty in the criminal case for reckless imprudence, can not be held subsidiarily liable because of the filing of the separate civil action based on *quasi delict* against it. However, Reyes Trucking, as defendant in the separate civil action for damages filed against it, based on *quasi delict*, may be held liable thereon.

- **Rule Against Double Recovery:** In negligence cases, the aggrieved party has the choice between (1) an action to enforce **civil liability arising from crime** under Article 100 of the Revised Penal Code *[civil liability ex delicto]*; and (2) a **separate action for *quasi delict*** under Article 2176 of the Civil Code of the Philippines *[civil liability quasi delicto]*. Once the choice is made, the injured party can not avail himself of any other remedy because he may *not* recover damages twice for the same negligent act or omission of the accused (Article 2177 of the Civil Code).
- In the instant case, the offended parties elected to file a **separate civil action for damages** against **Reyes Trucking** as employer of **Dunca**, based on *quasi delict*, under Article 2176 of the Civil Code of the Philippines.
- Under the law, the vicarious liability of the employer is founded on at least two specific provisions of law:

Art. 2176 in relation to Art. 2180 of the Civil Code	Article 103 of the Revised Penal Code
○ Preponderance of Evidence	○ Proof Beyond Reasonable Doubt
○ Liability of employer is Direct and Primary subject to the defense of due diligence in the selection and supervision of the employee.	○ Liability of employer is Subsidiary to the liability of the employee.
○ Employer and employee are solidarily liable, thus, it does not require the employer to be insolvent.	○ Liability attaches when the employee is found to be insolvent.

2. No. The CA and the TC erred in holding Dunca civilly liable, and Reyes Trucking subsidiarily liable for damages arising from crime (*ex delicto*) in the criminal action as the offended parties in fact filed a separate civil action against the employer based on *quasi delict* resulting in the waiver of the civil action *ex delicto*. IN SHORT, THE TC ERRED IN AWARDING CIVIL DAMAGES IN THE CRIMINAL CASE AND IN DISMISSING THE CIVIL ACTION.

- Pursuant to the provision of Rule 111, Section 1, paragraph 3 of the 1985 Rules of Criminal Procedure, the heirs of Dy **reserved the right to file the separate civil action**, they waived other available civil actions predicated on the same act or omission of Dunca. Such civil action includes the recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, and 34 of

the Civil Code of the Philippines arising from the same act or omission of the accused.

- Civil indemnity is not part of the penalty for the crime committed [Ramos vs. Gonong].

Note: *Dunca is guilty of* ***Reckless Imprudence resulting in Homicide and Damage to Property*** *and not double homicide through reckless imprudence. There is no such nomenclature of an offense under the Revised Penal Code.*

- *In* ***intentional crimes****, the act itself is punished; in* ***negligence or imprudence****, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the imprudencia punible.*

290 Bebiano M. Banez vs. Hon. Downey Valdevilla and Oro Marketing
GR 128024, May 9, 2000/ Gonzaga-Reyes

FACTS

- Banez (Petitioner) was the sales operation manager of Oro Marketing (Respondent). The Respondent indefinitely suspended the Petitoner, thus prompting him to file illegal dismissal charges against the respondent.
- The case reached the Supreme Court and it was dismissed due to technical reasons, but the Supreme Court said that there was no GAD of the Labor Arbiter.
- Respondent filed damages against the Petitioner in the RTC due to the losses it made during the stint of Banez as the sales operation manager. They alleged that he constituted another business while being the manager.
    - The RTC ruled in favor of Respondent, awarding damages to the Repondent.
- The Petitioner filed this case stating that the RTC has no jurisdiction for it should be with the NLRC.

ISSUES & ARGUMENTS

Was the RTC acting in GAD in awarding the damages?

HOLDING & RATIO DECIDENDI

Yes

- It will be recalled that years prior to R.A. 6715, jurisdiction over all money claims of workers, including claims for damages, was originally lodged with the Labor Arbiters and the NLRC by Article 217 of the Labor Code. [7] On May 1, 1979, however, Presidential Decree ("P.D.") No. 1367 amended said Article 217 to the effect that "Regional Directors shall not indorse and Labor Arbiters shall not entertain claims for moral or other forms of damages." [8] This limitation in jurisdiction, however, lasted only briefly since on May 1, 1980, P.D. No. 1691 nullified P.D. No. 1367 and restored Article 217 of the Labor Code almost to its original form. Presently, and as amended by R.A. 6715, the jurisdiction of Labor Arbiters and the NLRC in Article 217 is comprehensive enough to include claims for all forms of damages "arising from the employer-employee relations"
- There is no mistaking the fact that in the case before us, private respondent's claim against petitioner for actual damages arose from a prior employer-employee relationship. In the first place, private respondent would not have taken issue with petitioner's "doing business of his own" had the latter not been concurrently its employee.

291 DMPI Employees vs. VELEZ Metal-NAFLU | PARDO, J.
G.R. No. 129282, November 29, 2001

FACTS

An information for estafa was filed against Carmen Mandawe for alleged failure to account to respondent Eriberta Villegas the amount of P608,532.46.
Respondent Villegas entrusted this amount to Carmen Mandawe, an employee of petitioner DMPI-ECCI, for deposit with the teller of petitioner.
Subsequently, on March 29, 1994, respondent Eriberta Villegas filed with the Regional Trial Court, a complaint against Carmen Mandawe and petitioner DMPI-ECCI for a sum of money and damages with preliminary attachment arising out of the same transaction.

In time, petitioner sought the dismissal of the civil case on the ground that there is a pending criminal case in RTC Branch 37, arising from the same facts,

Trial court issued an order dismissing the case. However upon respondent's motion for reconsideration, the order of dismissal was recalled On Feb. 21 1997.

ISSUE

Whether or not the civil case could proceed independently of the criminal case for estafa without the necessary reservation exercised by the party

HOLDING & RATIO DECIDENDI

YES

- As a general rule, an offense causes two (2) classes of injuries. The first is the social injury produced by the criminal act which is sought to be repaired thru the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime which injury is sought to be compensated through indemnity which is civil in nature.

- Thus, "every person criminally liable for a felony is also civilly liable." This is the law governing the recovery of civil liability arising from the commission of an offense.

- Civil liability includes restitution, reparation for damage caused, and indemnification of consequential damages

- The offended party may prove the civil liability of an accused arising from the commission of the offense in the criminal case since the civil action is either deemed instituted with the criminal action or is separately instituted.

- Rule 111, Section 1 of the Revised Rules of Criminal Procedure, which became effective on December 1, 2000, provides that:
  "(a) 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."
- Rule 111, Section 2 further provides that —
  "After the criminal action has been commenced, *the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action*."
- However, with respect to civil actions for recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code arising from the same act or omission, the rule has been changed. Under the present rule, only the civil liability arising from the offense charged is deemed instituted with the criminal action unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.[17]
- There is no more need for a reservation of the right to file the independent civil actions under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines. "The reservation and waiver referred to refers only to the civil action for the recovery of the civil liability arising from the offense charged. This does not include recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission which may be prosecuted separately even without a reservation.

- The changes in the Revised Rules on Criminal Procedure pertaining to independent civil actions which became effective on December 1, 2000 are applicable to this case.

- Procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage. There are no vested rights in the rules of procedure. Thus, Civil Case No. CV-94-214, an independent civil action for damages on account of the fraud committed against respondent Villegas under Article 33 of the Civil Code, may proceed independently even if there was no reservation as to its filing.

TIN DINO

292 Replum (Neplum, Inc.) vs. Obreso | Pangniban, J.
G.R. No. 141986, July 11, 2002 | 384 SCRA 466

FACTS

- This case originated from Criminal Case No. 96-246 wherein on Oct. 29, 1999, the accused was acquitted of the crime of estafa because the prosecution failed to prove guilt beyond reasonable doubt. It must be noted that the accused and her counsel as well as the public and private prosecutors were present during the promulgation of judgment.
- The private prosecutor represented the interests of the petitioner who was the private offended party in Criminal Case No. 96-246.'
- On 12 November 1999, the petitioner, through the private prosecutor, received its copy of the Judgment.
- On 29 November 1999, petitioner filed its 25 November 1999 Motion for Reconsideration (Civil Aspect) of the Judgment.
- Considering that 27 November 1999 was a Saturday, petitioner filed its Motion for Reconsideration on 29 November 1999, a Monday.'
- On 28 January 2000, a Friday, petitioner received its copy of the 24 January 2000 Order of the Trial Court denying for lack of merit petitioner's Motion for Reconsideration.
- On 31 January 2000, a Monday, petitioner filed its 28 January 2000 Notice of Appeal from the Judgment. On the same day, petitioner filed by registered mail its 28 January 2000 Amended Notice of Appeal.
- On 17 February 2000, the Trial Court issued its Challenged Order, which petitioner received through the private prosecutor on 22 February 2000, denying due course to petitioner's Notice of Appeal and Amended Notice of Appeal
- The RTC refused to give due course to petitioner's Notice of Appeal and Amended Notice of Appeal. It accepted respondent's arguments that the Judgment from which the appeal was being taken had become final, because the Notice of Appeal and the Amended Notice of Appeal were filed beyond the reglementary period. The 15-day period was counted by the trial court from the promulgation of the Decision sought to be reviewed.
- Hence, this Petition.

ISSUES & ARGUMENTS

- **Whether the period within which a private offended party may appeal from, or move for a reconsideration of, or otherwise challenge, the civil aspect of a judgment in a criminal action should be reckoned from the date of promulgation or from the date of such party's actual receipt of a copy of such judgment.**
    - It is petitioner's assertion that "the parties would always need a written reference or a copy of the judgment x x x to intelligently examine and consider the judgment from which an appeal will be taken." Thus, it concludes that the 15-day period for filing a notice of appeal must be counted from the time the losing party actually receives a copy of the decision or order. Petitioner ratiocinates that it "could not be expected to capture or memorize all the material details of the judgment during the promulgation thereof." It likewise poses the question: "why require all proceedings in court to be recorded in writing if the parties thereto would not be allowed the benefit of utilizing these written [documents]?"

HOLDING & RATIO DECIDENDI

THE PETITION IS UNMERITORIOUS.

No Need to Reserve Independent Civil Action

- At the outset, we must explain that the 2000 Rules on Criminal Procedure deleted the requirement of reserving independent civil actions and allowed these to proceed separately from criminal ones. Thus, the civil actions referred to in Articles 32, 33, 34 and 2176 of the Civil Code shall remain "separate, distinct and independent" of any criminal prosecution based on the same act. Here are some direct consequences of such revision and omission:
- 1. The right to bring the foregoing actions based on the Civil Code need not be reserved in the criminal prosecution, since they are not deemed included therein.
- 2. The institution or waiver of the right to file a separate civil action arising from the crime charged does not extinguish the right to bring such action.
- 3. The only limitation is that the offended party cannot recover more than once for the same act or omission.
- Thus, deemed instituted in every criminal prosecution is the civil liability arising from the crime or delict per se (civil liability *ex delicto*), but not those liabilities from quasi-delicts, contracts or quasi-contracts. In fact, even if a civil action is filed separately, the *ex delicto* civil liability in the criminal prosecution remains, and the offended party may – subject to the control of the prosecutor – still intervene in the criminal action in order to protect such remaining civil interest therein. By the same token, the offended party may appeal a judgment in a criminal case acquitting the accused on reasonable doubt, but only in regard to the civil liability *ex delicto*.
    - And this is precisely what herein petitioner wanted to do: to appeal the civil liability arising from the crime – the civil liability *ex delicto*.

Period for Perfecting an Appeal

- Section 6 of Rule 122 of the 2000 Rules on Criminal Procedure declares:
    - **Section 6.** *When appeal to be taken.* — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his counsel at which time the balance of the period begins to run. (6a)
- This provision is similar, though not identical, to Section 6 of Rule 122 of the 1985 Rules invoked by petitioner. The difference is that the former makes clear that *promulgation* refers to "judgment," and *notice* refers to "final order appealed from."

Appeal of the Accused Different from That of the Offended Party

- The period to appeal, embodied in Section 6 of Rule 122 of the Rules on Criminal Procedure, cannot be applied equally to both accused-appellant and private

offended party. Further bolstering this argument is the second sentence of this provision which mandates as follows:

- "x x x. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motions has been served *upon the accused or his counsel* at which time the balance of the period begins to run."

- The above-quoted portion provides for the procedure for suspending and resuming the reglementary period of appeal specifically mentioned in the preceding sentence. However, it is clear that the procedure operates only in relation to the accused. This conclusion can be deduced from the fact that after being interrupted, the period to appeal begins to run again only after the *accused or the counsel* of the accused is given notice of the order overruling the motion for reconsideration or for new trial. Verily, the assumption behind this provision is that the appeal was taken by the accused, not by the private offended party.
- **Indeed, the rules governing the period of appeal in a purely civil action should be the same as those covering the civil aspects of criminal judgments. If these rules are not completely identical, the former may be suppletory to the latter. As correctly pointed out by petitioner, "[t]he appeal from the civil aspect of a judgment in a criminal action is, for all intents and purposes, *an appeal from a judgment in a civil action* as such appeal cannot affect the criminal aspect thereof." Being akin to a civil action, the present appeal may be guided by the Rules on Civil Procedure.**
- **However, the offended party or complainant may appeal the civil aspect despite the acquittal of the accused. As such, the present appeal undertaken by the private offended party relating to the civil aspect of the criminal judgment can no longer be considered a criminal action per se, wherein the State prosecutes a person for an act or omission punishable by law. Instead, it becomes a suit analogous to a civil action.**
- **Being in the nature of a civil case, the present intended appeal involves proceedings brought to the Court of Appeals from a decision of the RTC in the exercise of the latter's original jurisdiction. Thus, it should be properly done by filing a notice of appeal. An appeal by virtue of such notice shall be filed within 15 days from notice of the judgment or final order appealed from. For the private offended party, this rule then forecloses the counting of the period to appeal from the "promulgation" of the judgment to the accused.**
- ***In sum, we hold that an offended party's appeal of the civil liability ex delicto of a judgment of acquittal should be filed within 15 days from notice of the judgment or the final order appealed from. To implement this holding, trial courts are hereby directed to cause, in criminal cases, the service of their judgments upon the private offended parties or their duly appointed counsels – the private prosecutors. This step will enable them to appeal the civil aspects under the appropriate circumstances.***

General Rule Not Applicable to the Present Case

- **If we were to follow the reasoning of petitioner, the Notice of Appeal filed on January 31, 2000 was on time**, considering that (1) the Judgment had been received by its counsel only on November 12, 1999; and (2) the Motion for Reconsideration filed on November 29, 2000 interrupted the running of the reglementary period.
- **However, a peculiar circumstance in this case militates against this conclusion. *Here, the private prosecutor himself was present during the promulgation of the Judgment.*** This fact is undeniable, as petitioner itself admits his presence in its Memorandum as follows:
  - "2.01 On 29 October 1999, the Trial Court promulgated its judgment (the 'Judgment') in Criminal Case No. 96-246 acquitting the accused of the crime of estafa on the ground that *the prosecution failed to prove the guilt of the accused beyond reasonable doubt. The accused and her counsel as well as the public and private prosecutors were present during such promulgation.*" (Italics supplied)
  - Further, private prosecutor even signed a copy of the Judgment dated October 29, 1999, a signature which in unequivocal terms signifies notification of the party he represents – herein petitioner.
- Having been present during the promulgation and having been furnished a copy of the judgment at the time, **private offended party was in effect *actually* notified of the Judgment, and from that time already had knowledge of the need to appeal it. Thus, the very *raison d'être* of this Decision is already satisfied: the filing of an appeal by the said party, only after being notified of the Judgment**. As argued by respondent, "did not the public and private prosecutors acquire notice of Judgment at its promulgation because of their presence? Notice of the judgment may not be defined in any other way x x x."

JAY DUHAYLONGSOD

293 Hambon vs. CA| Austria-Martinez
G.R. No. 122150, March 17, 2003 | 399 SCRA 255

FACTS

- Petitioner George Hambon filed before the RTC of Baguio a complaint for damages for the injuries and expenses he sustained after the truck driven by the respondent Valentino Carantes bumped him.
- In answer thereto, respondent contended that the criminal case arising from the same incident, Criminal Case No. 2049 for Serious Physical Injuries thru Reckless Imprudence, earlier filed, had already been provisionally dismissed by the MTC of Tuba, Benguet due to petitioner's lack of interest and that the dismissal was with respect to both criminal and civil liabilities of respondent.
- The RTC ruled that the civil case was not barred by the dismissal of the criminal case and that petitioner is entitled to damages. CA reversed.

ISSUES & ARGUMENTS

- **W/N a civil case for damages based on an independent civil action be duly dismissed for failure to make a reservation to file a separated civil action in a criminal case filed arising from the same act or omission of the accused?**

HOLDING & RATIO DECIDENDI

YES. THE RIGHT TO BRING AN ACTION FOR DAMAGES UNDER THE CIVIL CODE MUST BE RESERVED.

- Section 1, Rule 111 of the 1985 Rules on Criminal Procedure, as amended in 1988, is the prevailing and governing law in this case.
- Section 1, Rule 111 clearly requires that a reservation must be made to institute separately all civil actions for the recovery of civil liability, otherwise they will be deemed to have been instituted with the criminal case.
- The requirement that before a separate civil action may be brought it must be reserved does not impair, diminish or defeat substantive rights, but only regulates their exercise in the general interest of procedure. The requirement is merely procedural in nature.
- Herein petitioner Hambon should have reserved his right to separately institute the civil action for damages in Criminal Case No. 2049. Having failed to do so, Civil Case No. 1761-R for damages subsequently filed by him without prior reservation should be dismissed.

294 Cojuangco, Jr. v. Court of Appeals | Davide, Jr.
G.R. No. 37404 November 18, 1991| 203 SCRA 619

FACTS

- In 1972, Graphic, a weekly magazine of general circulation in the Philippines published a blind item under the column entitled *Social Climbing* by one "Conde de Makati," later identified as George Sison.
- The blind item talked about a certain "Blue Lady" which was frequenting the office of an Honorable Sir. It further said that the said "Blue Lady" was "following up" on her loan and even said expletives such as "ang mahal naman ng kanyang [pussycat doll]!"
- Claiming that the item alludes to petitioners-spouses, and that it is false, malicious, and constitutes a vicious attack on petitioner-wife's virtue as it imputes to her not only the corrupt and immoral act of "following up" on an alleged loan, but also the commission of corrupt and immoral acts of adultery and/or prostitution, petitioners filed a CIVIL case for damages based on Libel against Graphic Publishing Co., and its owner Araneta,, GM and editor Mauricio, and writer Sison.
- Later on, the City Fiscal of QC filed a CRIMINAL case for libel against the same defendants in the civil case.
- Thereafter, petitioners filed separate motions to consolidate the criminal case with the civil case, alleging that the evidence to be presented in both cases would be the same and that much valuable time and effort of the court and of the parties would be saved by such consolidation, and Art.360 of the RPC states that in libel, the civil action shall be filed in the same court where the criminal action is filed and vice-versa, provided, however, that the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts. Defendants opposed such motions.
- RTC issued an order allowing the consolidation. CA set aside such order.

ISSUES & ARGUMENTS

- **W/N the criminal case and the separate and independent civil action to enforce the civil liability arising from the former, filed pursuant to Art.33 of the Civil Code, may be consolidated for joint trial.**

HOLDING & RATIO DECIDENDI

IT MAY BE CONSOLIDATED.

- A court may order several actions pending before it to be tried together where they arise from the same act, event, or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the case to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties.
- Consolidation of actions is expressly authorized under Sec.1, Rule31 of the Rules of Court. The obvious purpose of the above rule is to avoid multiplicity of suits, to guard against oppression and abuse, to prevent delays, to clear congested dockets, to simplify the work of the trial court; in short, the attainment of justice with the least expense and vexation to the parties litigants.
- If the court referred to is a multi-sala court (as in this case, the QC RTC), it may happen that the criminal and civil actions are raffled or assigned to different salas. In this situation, consolidation of one with another earlier filed would not only be practical and economical – it would subserve the very purpose of the law. Consolidation of cases assigned to different branches of a court has already been recognized.
- It is self-evident that the CIVIL and CRIMINAL cases in question involve common or identical questions of fact and law, and that they would even have the same witnesses. These considerations alone justify the exercise by the court of its discretion to consolidate the cases for joint hearing to attain the salutary purpose of consolidation.
- Moreover, what is involved in this case is the crime of libel. As correctly stated by the petitioners, Art.360 of the RPC states that that the criminal case for libel and the civil action for damages arising therefrom must be filed in the same court.

295 Sarmiento Jr VS CA| Austria-Martinez
G.R. No. 122502, December 27, 2002

FACTS

- Sept 6, 1978, Gregorio Limpin and Antonio Apostol, doing business under the name Davao Libra Industrial Sales, filed an application with Associated Bank for an Irrevocable Letter of Credit in favor of LS Parts Hardware and Machine Shop fpr P495,000.
- The application was approved and a Trust Receipt was executed by Limpin and Antonio. It was also signed by Lorenzo Sarmiento Jr wherein they undertook to jointly and severally agree to pay Associated Bank all sums and amount of money Associated Bank may call upon them to pay under the said Trust Receipts.
- The defendants failed to pay despite several demands by the bank. They argued that they cannot be held liable because the items were lost when the vessel transporting them sank.
- Associated Bank filed a criminal complaint against defendants for violation of the trust receipts law. The amended complaint dropped Sarmiento Jr fron the Information while Limpin was convicted.
- The Bank filed a civil case against defendants, the lower Court and CA ruled in favor of the Bank.

ISSUES & ARGUMENTS

- **W/N the civil case will prosper?**

HOLDING & RATIO DECIDENDI

YES.

- The decision of the court in the criminal action did not contain an award of civil liability.
- With respect to Sarmiento Jr, he was dropped from the criminal case and so the decision cannot bar the filing of the present civil action.
- With respect to Limpin, petitioners claim that Associated Bank's right to institute separately the civil action is already barred on the ground that the same was not expressly reserved in the criminal action earlier filed.
- Under the revised Rules of Criminal Procedure, when the criminal action is instituted, the civil action 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.
- The reservation shall be made before the prosecution starts presenting its evidence.
- Such reservation may not necessarily be express but may be implied which may be inferred not only from the acts of the offended party but also from acts other than those of the latter.
- Examples of implied reservation:
    - When the decision of acquittal expressly declared that the remedy of the Bank is civil not criminal in nature. This amounts to a reservation of the civil action.
    - Failure of the court to make any pronouncement in its decision concerning the civil liability of the driver and/or his employer must therefore be due to the fact that the criminal action did not involve at all any claim for civil indemnity.
    - Failure of the trial court to make any pronouncement, favorable or unfavorable, as to the civil liability of the accused amounts to a reservation of the right to have the civil liability litigated and determined in a separate action, for nowhere in the Rules of Court is it provided that if the court fails to determine the civil liability, it becomes no longer enforceable.
- Nothing in the records shows that Associated Bank ever attempted to enforce its right to recover civil liability during the prosecution of the criminal action against petitioners.
- The bank's right to file a separate complaint for a sum of money is governed by Art 30 of CC:
    - When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter.
- The bank's complaint was based on the failure of the petitioners to comply with their obligation under the Trust Receipt. This breach of obligation is separate and distinct from any criminal liability for the misuse/misappropriation of goods or proceeds realized from the sale of goods under the trust receipts.
- Being based on an obligation ex contractu and not ex delicto, the civil action may proceed independently of the criminal proceedings instituted against petitioner regardless of the result of the latter.

PAT FERNANDEZ

296 CARANDANG, petitioner V. SANTIAGO, respondent
G.R. No. L-8238, May 25, 1955 97 PHIL 94

FACTS:

- This is a petition for certiorari against Honorable Vicente Santiago to annul his order in Civil Case No. 21173 suspending the trial of said civil case to await the result of the criminal Case No. 534 Tomas Valenton, Jr. who was found guilty of the crime of frustrated homicide committed against the person of Cesar Carandang, petitioner herein. Tomas Valenton, Jr. appealed the decision to the Court of Appeals where the case is now pending.
- Petitioner herein filed a complaint in the Court of First Instance of Manila to recover from the defendant Tomas Valenton, Jr. and his parents, damages, both actual and moral, for the bodily injuries received by him on occasion of the commission of the crime of frustrated homicide by said accused Tomas Valenton Jr. The judge ruled that the trial of the civil action must await the result of the criminal case on appeal. A motion for reconsideration was submitted, but the court denied the same; hence this petition for certiorari.

ISSUE:

Whether or not Judge Santiago erred in suspending the civil case?

HOLDING & RATIO DECIDENDI

Yes, Article 33 of the new Civil Code provides:

- 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 independently of the criminal prosecution, and shall require only a preponderance of evidence.
- The Code Commission itself states that the civil action allowed under Article 33 is similar to the action in tort for libel or slander and assault and battery under American law. But respondent argue that the term "physical injuries" is used to designate a specific crime defined in the Revised Penal Code, and therefore said term should be understood in its peculiar and technical sense, in accordance with the rules statutory construction
- In the case at bar, the accused was charged with and convicted of the crime of frustrated homicide, and while it was found in the criminal case that a wound was inflicted by the defendant on the body of the petitioner herein Cesar Carandang, which wound is bodily injury, the crime committed is not physical injuries but frustrated homicide, for the reason that the infliction of the wound is attended by the intent to kill. So the question arises whether the term "physical injuries" used in Article 33 means physical injuries in the Revised Penal Code only, or any physical injury or bodily injury, whether inflicted with intent to kill or not.
- The Article in question uses the words "defamation", "fraud" and "physical injuries." Defamation and fraud are used in their ordinary sense because there are no specific provisions in the Revised Penal Code using these terms as means of offenses defined therein, so that these two terms defamation and fraud must have been used not to impart to them any technical meaning in the laws of the Philippines, but in their generic sense. With this apparent circumstance in mind, it is evident that the term "physical injuries" could not have been used in its specific sense as a crime defined in the Revised Penal Code, for it is difficult to believe that the Code Commission would have used terms in the same article, some in their general and another in its technical sense. In other words, the term "physical injuries" should be understood to mean bodily injury, not the crime of physical injuries, because the terms used with the latter are general terms.
- For the foregoing considerations, we find that the respondent judge committed an error in suspending the trial of the civil case, and his order to that affect is hereby revoked, and he is hereby ordered to proceed with the trial of said civil case without awaiting the result of the pending criminal case, with costs against the defendant.

J.C. LERIT

297 Lontoc vs. MD Transit & Taxi Co. | Gutierrez
G.R. No. L-48949 April 15, 1988| 160 SCRA 367

FACTS

- On October 31, 1970 at about 8:30 in the morning a vehicular accident happened along Taft Avenue, Manila, involving a Holden car (driven by Rodolfo Defeo and owned by Jose Lontoc and an MD Bus driven by Ignacio dela Cruz.
- As a result of this accident, dela Cruz, the driver of the MD Bus was charged with the crime of damage to property with physical injuries thru reckless imprudence before the Court of First Instance of Manila.
- After trial on the merits, the court rendered judgment "finding the accused not guilty, because **his guilt has not been proven beyond reasonable doubt** and is hereby **acquitted**."
- Jose Lontoc, the owner of the Holden car then filed a **complaint for recovery of damages** against MD Transit and Taxi Co., Inc., and dela Cruz before the Court of First Instance.
- Instead of filing an answer, MD Transit and dela Cruz filed a **motion to dismiss on the ground "that the complaint fails to state a sufficient cause of action and that the cause of action as alleged in the complaint is barred by a prior final judgment** rendered in the prior criminal case and which in the same case Lontoc ventilated his claim for damages against the MD Transit and Ignacio.
- The trial court then issued an order dismissing the civil case because there **was no reservation made by the complainant to file a separate civil action** and the complainant through counsel intervened in the prosecution of the criminal case which led to the acquittal of the accused.
- The Lontoc appealed the order to the Court of Appeals. As stated earlier, the appellate court certified the case to this Court on the ground that the issues raised are purely questions of law.

ISSUES & ARGUMENTS

Whether or not the Lontoc's non-reservation to file a separate action for damages is fatal to this action for damages

Whether or not the judgment of acquittal of dela Cruz in the criminal case wherein through a private prosecutor, Lontoc presented evidence to prove damages is a bar to the institution of a separate civil action for damages against both the operator of MD transit and Taxi Co., Inc., and its driver, dela Cruz.

HOLDING & RATIO DECIDENDI

UNDER THE FACTS OF THIS CASE, THE FAILURE OF THE PLAINTIFF-APPELLANT TO RESERVE HIS RIGHT TO FILE A SEPARATE CIVIL CASE IS NOT FATAL

The fact that the Lontoc intervened in the criminal case did not bar him from filing a separate civil action for damages especially considering that the accused in the criminal case, dela Cruz, was acquitted *"because his guilt was not proven beyond reasonable doubt"* (Emphasis supplied).

The two cases were anchored on two different causes of action. The criminal case was based solely on dela Cruz's violation of Article 365 of the Penal Code. Any doubt as to the nature of the action is erased by the trial court's statements in the criminal case that the Court finds that the guilt of the accused has not been proven beyond reasonable doubt; *that the owner of the bus is not included in this case being a criminal case"* (emphasis supplied). On the other hand, the complaint for damages was based on quasi-delict and both the driver and bus owner are defendants.

IN VIEW OF THE FACT THAT DELA CRUZ WAS ACQUITTED ON THE GROUND THAT *"HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT*, LONTOC HAS THE RIGHT TO INSTITUTE A SEPARATE CIVIL ACTION TO RECOVER DAMAGES FROM THE MD TRANSIT AND DELA CRUZ.

The well-settled doctrine is that a person, while not criminally liable, may still be civilly liable. "The judgment of acquittal extinguishes the civil liability of the accused only when it includes a declaration that the facts from which the civil liability might arise did not exist". This is based on Article 29 of the Civil Code which provides: When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been *proven 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. ...

It is plain from the judgment in the criminal case that the aspect of civil liability was not passed upon and resolved.

WHEREFORE, the questioned order of the Court of First Instance of Quezon City is REVERSED and SET ASIDE. The case is REMANDED to the court of origin or its successor for further proceedings. No costs.

JON LINA

298 Natividad v. Andamo Emmanuel R. Andamo vs **IAC**| Fernan
G.R. No. 74761 November 6, 1990|

FACTS

- Spouses Andamo are the owners of a parcel of land which is adjacent to that of private respondent, Missionaries of Our Lady of La Salette, Inc., a religious corporation.
- Within the land of respondent corporation, waterpaths and contrivances, including an artificial lake, were constructed, which allegedly inundated and eroded petitioners' land, caused a young man to drown, damaged petitioners' crops and plants, washed away costly fences, endangered the lives of petitioners and their laborers during rainy and stormy seasons, and exposed plants and other improvements to destruction.
- Petitioners filed a criminal and a separate civil action for damages against the respondent.

ISSUES & ARGUMENTS

W/N the IAC erred in affirming the trial court's order dismissing the civil case as the criminal case was still unresolved

- Petitioners contend that the trial court and the Appellate Court erred in dismissing Civil Case No. TG-748 since it is predicated on a quasi-delict
- That the lower court was justified in dismissing the civil action for lack of jurisdiction, as the criminal case, which was instituted ahead of the civil case, was still unresolved

HOLDING & RATIO DECIDENDI

Yes

- A careful examination of the aforequoted complaint shows that the civil action is one under Articles 2176 and 2177 of the Civil Code on quasi-delicts. All the elements of a quasi-delict are present, to wit: (a) damages suffered by the plaintiff, (b) fault or negligence of the defendant, or some other person for whose acts he must respond; and (c) the connection of cause and effect between the fault or negligence of the defendant and the damages incurred by the plaintiff. [11]
- Clearly, from petitioner's complaint, the waterpaths and contrivances built by respondent corporation are alleged to have inundated the land of petitioners. There is therefore, an assertion of a causal connection between the act of building these waterpaths and the damage sustained by petitioners. Such action if proven constitutes fault or negligence which may be the basis for the recovery of damages.
- petitioners' complaint sufficiently alleges that petitioners have sustained and will continue to sustain damage due to the waterpaths and contrivances built by respondent corporation. Indeed, the recitals of the complaint, the alleged presence of damage to the petitioners, the act or omission of respondent corporation supposedly constituting fault or negligence, and the causal connection between the act and the damage, with no pre-existing contractual obligation between the parties make a clear case of a *quasi delict* or *culpa aquiliana.*
- Article 2176, whenever it refers to "fault or negligence", covers not only acts "not punishable by law" but also acts criminal in character, whether intentional and voluntary or negligent. Consequently, a separate civil action lies against the offender in a criminal act, whether or not he is criminally prosecuted and found guilty or acquitted, provided that the offended party is not allowed, (if the tortfeasor is actually charged also criminally), to recover damages on both scores, and would be entitled in such eventuality only to the bigger award of the two, assuming the awards made in the two cases vary.

299 Cancio Jr. vs Isip

FACTS

- Cancio filed three cases of violation of BP 22 and three cases of Estafa against Isip for issuing the following checks without funds.
- The first case was dismissed by the Provincial Prosecutor on the ground that the check was deposited with the drawee bank after 90 days from the date of the check. The other two cases were dismissed by the MTC of Pampanga for failure to prosecute.
- For the three pending estafa cases, the prosecution moved to dismiss the estafa cases after failing to present its second witness.
- The prosecution reserved its right to file a separate civil action arising from the said criminal cases. The MTC granted the motions.
- Cancio filed a case for collection of sum of money, seeking to recover the amount of the checks.
- Isip filed a motion to dismiss on the ground that the action is barred by the doctrine of Res Judicata. Isip also prayed to have Cancio in contempt for forum shopping.
- The trial court ruled in favor of Isip by stating that the action is barred by Res Judicata and the filing of said civil case amounted to forum shopping.

ISSUES & ARGUMENTS

- **Whether the dismissal of the estafa cases against the respondents bars the institution of a civil action for collection of the value of the checks subject of the estafa cases.**

HOLDING & RATIO DECIDENDI

No.

The trial court erred in dismissing Cancio's complaint for collection of the value of the checks issued by respondent. Being an independent civil action which is separate and distinct from any criminal prosecution and which require no prior reservation for its institution, the doctrine of Res Judicata and forum shopping will not operate to bar the same.

300 Roy Padilla, Filomeno Galdones, Ismael Gonzalgo and Jose Farley Benedia, vs. CA| GUTIERREZ, JR., J.
G.R. No. L-39999 May 31, 1984| 129 SCRA 558

FACTS

- Petitioner Padilla was the Mayor of Panganiban, CamNorte, while the other petitioners were policemen, who did a clearing operation of the public market by virtue of the order of the Mayor.
- In this operation, PR Antonio Vergara and his family's stall (Pub Market Bldg 3) was forcibly opened, cleared of its content and demolished by ax, crowbar and hammers.
    - Petitioner's defense: Vergara was given (prior notice) 72 hrs to vacate.
    - Vergara's: Petitioners took they advantage of their positions; must be charged the with grave coercion; there was evident premeditation.
- RTC: Petitioners are guilty of grave coercion, to be punished 5mos &1day imprisonment, and solidarily fined 30K for moral damages, 10K actual and 10K exemplary.
- CA: acquitted, but solidarily liable for actual damages of P9,600.
- MR denied. Petitioners now appeal claiming that they are not liable for damages by virtue of the acquittal.

ISSUES & ARGUMENTS

W/N Petitioners are liable still for civil damages despite acquittal of the CA?
Defense of Petitioner: the civil liability which is included in the criminal action is that arising from and as a consequence of the criminal act, and the defendant was acquitted in the criminal case, (no civil liability arising from the criminal case), no civil liability arising from the criminal charge could be imposed upon him.

HOLDING & RATIO DECIDENDI

PETITIONERS ARE LIABLE TO PAY DAMAGES.

- First, they were acquitted due to REASONABLE DOUBT. Grave coercion is committed if force upon the person is applied, and not force upon things as in this case. The CA held that they should've been charged with threats or malicious mischief. Since, these offenses were not alleged in the complaint, Petitioners cannot be prosecuted for it.
- HOWEVER, the clearing and demolition was not denied. As a result, Vergara indeed suffered damages pertaining to: cost of stall construction (1300), value furniture and equipment(300), value of goods seized(8K), amounting to P9600. Under the law, petitioners are liable.
    - RPC 100: every person criminally liable is civilly liable
    - 2176: damages due under quasi-delict, limited though by 2177: from recovering twice from the same act.
    - ROC Rule 111, Sec 2 last paragraph:
        - **Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.** In other cases, the person entitled to the civil action may institute it in the Jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damage suffered.
    - Art 29, NCC:
        - 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.
- Facts support existence of damage; the extinction of Petitioner's criminal liability (acquittal) did not carry with it the extinction of their civil liability.
- Application of Art 29: action need not be filed in a separate civil action all the time, (as in this case) where fact of injury, its commission and result were already established in the criminal proceeding. Since by preponderance of evidence, civil liability was proven to exist, indemnity is due in favor of Vergara. A separate action will simply delay relief due to Vergara.

Petition DENIED. CA AFFIRMED.

301 Maximo v.Gerochi | Gutierrez
G.R. Nos. L-47994-97 September 24, 1986| 144 SCRA 326

FACTS

- Panghilason was in the business of buying and selling rice. Her supplier was Maximo. She purchased rice from Maximo on a regular basis.
- According to Panghilason, they had an agreement on a 15-day credit term. But Maximo still deposited the checks. The checks were dishonored because the account of Panghilason was already closed
- The City Fiscal of Bacolod filed four (4) informations against Panghilason for estafa. All informations allege that she drew checks against PCIB for about 35K in favor of Maximo, with full knowledge that her account has insufficient funds, or has been closed.
- The Court, however, found that the prosecution failed to establish guilt beyond reasonable doubt. Therefore, Panghilason was consequently acquitted.
- The court also absolved Panghilason of civil liability.
- Maximo now filed this petition to recover from Panghilason the amount due to her representing the civil liability.

ISSUES & ARGUMENTS

- **W/N the Panghilason is liable for damages. Does she incur civil liability?**
    - **Petitioner:** Maximo alleges that when Panghilason was acquitted of estafa, it does not necessarily mean that no civil liability arising from the acts complained of may be awarded in the same judgment.
    - **Respondent (Judge):** Gerochi justified his refusal to award civil liability saying that the civil liability did not arise from any criminal act but only from a civil contract connected to the crime, the action for civil liability must be filed in a "civil court."

HOLDING & RATIO DECIDENDI

PANHILASON MUST PAY ACTUAL DAMAGES AMOUNTING TO ABOUT 35K PLUS 12% INTEREST.

- Panghilason did not deny that she had an obligation to Maximo. Since this obligation was never fulfilled because the checks were dishonored, Panghilason necessarily must pay Maximo the full amount of her indebtedness and the corresponding legal interest.
- The Court may acquit an accused on reasonable doubt and still order payment of civil damages already proved in the same case without need for a separate civil action
- *Padilla v. CA (129 SCRA 558):* To require a separate civil action simply because the accused was acquitted would mean needless clogging of court dockets and unnecessary duplication of litigation with all its attendant less of time, effort, and money on the part of all concerned.

302 Mansion Biscuit Corporation v. CA | Kapunan
G.R. No. 94713, November 23, 1995|250 SCRA 195

FACTS

- Sometime in 1981, Ty Teck Suan, as the president of Edward Ty Brothers Corporation (the Company), ordered numerous cartons of nutri-wafer biscuits from Mansion Biscuit Corporation
- As payment of the orders, Ty Teck Suan issued to Ang Cho Hong, president of Mansion, four (4) postdated checks as payment for the nutri-wafer biscuits before its delivery
- There were other four (4) postdated checks in the amount of P100,000.00 each, issued by Ty Teck Suan with Siy Gui as co-signor
- Subsequently, Mansion Biscuit delivered the goods. However, the first 4 checks were deposited, the same were dishonored for insufficient funds prompting Ang Cho to inform Ty Teck of the dishonor and requested him for its replacement
- Ty Teck failed to replace the dishonored checks, instead delivered 1,150 sacks of Australian flour to Mansion plus cash, which were applied to the amount of the first postdated check that bounced
- Ang Cho then sent Ty Teck a formal demand letter requesting him to make good the dishonored checks within 5 days
- Thereafter, the second batch of checks was issued by Ty Teck and Siy Gui, but these were later on dishonored again**.** This prompted Ang Cho to send a final demand letter and upon failure to comply with it, he will then file an action against Ty Teck
- For failure of Ty Teck to comply, an Information was filed against him for violation of BP Blg. 22; identical information was likewise filed against Siy Gui as treasurer of Edward Ty Brothers Corp.
- Both of them pleaded not guilty to the charges and thereafter filed a bond
- Notwithstanding the bond filed, the RTC issued an order of attachment on some of Ty Teck's real properties, upon Ang Cho's motion
- After the prosecution rested its case, Ty Teck filed a motion to dismiss by way of demurrer to evidence, which later on Siy Gui adopted, on the ground that the checks were issued as a mere guaranty for the payment of the goods delivered and as replacement for the first batch of checks. This was opposed by the prosecution
- The RTC issued an order granting the motion to dismiss claiming that the *stare decisis* in the cases already decided involving the same issue is where the check is issued as part of an arrangement to guarantee or secure the payment of an obligation, whether pre-existing or not the drawer is not criminally liable for either Estafa or Violation of BP Blg. 22, and found that Siy Gui's liability had not been established by the prosecution as it appeared that he had no personal transactions with Ang Cho although he was a co-signatory in the second batch of four checks
- The prosecution then filed a motion for reconsideration and for clarification with regard to their civil liabilities, which the RTC denied and held that they did not incur any civil liability due to their acquittal
- Initially, Ang Cho filed a special civil action of certiorari with the CA to question the order of the RTC setting aside the order of attachment, which the CA annulled. But thereafter, he filed another appeal with the CA assailing the decision of the RTC absolving Ty Teck and Siy Gui from civil liability in criminal cases
- Pending appeal, Ty Teck died so his counsel filed a motion to dismiss but the CA denied and ordered his substitution by his children
- The CA rendered a decision dismissing the appeal and held that the civil liability sought to be enforced by Ang Cho was not the personal obligation of Ty Teck but a contractual obligation of the Company, hence, Ang Cho should file a separate civil action against it
- Hence, this appeal

ISSUES & ARGUMENTS

- **W/N civil liability can be enforced against Ty Teck for non-payment of the goods notwithstanding the fact that the contract was between the Company, on behalf of Ty Teck, and Mansion**

Ang Cho's Argument: *when Ty Teck issued the worthless checks inducing Mansion to deliver the goods, 2 civil liabilities arose, arising from crime (Art. 100, RPC)and from tort or quasi-delict*
Ty Teck's Argument: *they cannot be held liable for the Company's contractual obligations and that Ang Cho should file a separate case against it*

HOLDING & RATIO DECIDENDI

TY TECK AND SIY GUI ARE NOT LIABLE FOR THE CIVIL LIABILITIES ARISING FROM THE CONTRACTUAL OBLIGATION OF THE COMPANY THEY ARE REPRESENTING AS IT IS NOT THEIR PERSONAL LIABILITY

- The civil liability for non-payment of the nutri-wafer biscuits delivered by Mansion Biscuit to the Edward Ty Brothers Corporation cannot be enforced against Ty Teck because the said civil liability was not his personal liability to Mansion Biscuit Corporation, rather, it was the contractual liability of Edward Ty Brothers Corporation, of which Ty Teck Suan was president, to Mansion Biscuit Corporation
- As held by the Court of Appeals:
    - Assuming that plaintiff-appellant has basis for his *quasi-delict* claim, the same must be addressed still against Edward Ty Brothers Corporation for the established facts show that the post-dated checks were issued by accused-appellee not in payment of his personal obligations but of the corporation's. Moreover the fraud allegedly committed by accused-appellee was merely incidental to the contractual obligation, not an independent act which could serve as a source of obligation. The cases cited by plaintiff-appellant, to illustrate that the existence of a contract does not preclude an action on *quasi-delict* where the act that breaks the contract constitutes a *quasi-delict*, have no application because the acts complained of therein were performed to break an existing contract, whereas the alleged fraud herein was committed at the time of the creation of the contractual relationship and as an incident thereof

- In the case at bench, the acquittal of Ty Teck Suan and Siy Gui extinguished both their criminal and civil liability as it is clear from the order acquitting them that the issuance of the checks in question did not constitute a violation of B.P. Blg. 22. Consequently, no civil liability arising from the alleged delict may be awarded

Judgment appealed from AFFIRMED in toto.

303 Heirs of Guaringv. CA| Mendoza
G.R. No. 108395 March 7, 1997

FACTS

- A Philippine Rabbit Bus collided with a Mitsubishi Lancer car, drven buy Guaring, resulting to the death of the of the latter.
- Petitioners, heirs of Guaring , brought an action for damages, based on quasi delict, in the RTC. Their evidence tended to show that the Philippine Rabbit bus tried to overtake Guaring's car by passing on the right shoulder of the road and that in so doing it hit the right rear portion of Guaring's Mitsubishi Lancer. The impact caused the Lancer to swerve to the south-bound lane, as a result of which it collided with the Toyota Cressida car coming from the opposite direction.
- Private respondents, on the other hand, presented evidence tending to show that the accident was due to the negligence of the deceased Guaring. They claimed that it was Guaring who tried to overtake the vehicle ahead of him on the highway and that in doing so he encroached on the south-bound lane and collided with the oncoming Cressida of U.S. Air Force Sgt. Enriquez. Private respondents claim that as a result of the collision the Lancer was thrown back to its lane where it crashed into the Rabbit bus.
- The RTC found the acquitted the driver but awarded damages.
- The CA held that since the petitioner's action was based on the alleged negligence of the driver, the subsequent acquittal of the driver made the action based on quasi delict untenable.

ISSUES & ARGUMENTS

- **W/N the Acquittal in the Criminal Case bars a Civil Action based on Quasi Delict**
-

HOLDING & RATIO DECIDENDI

NO, the Acquittal in the Criminal Case does not Bar a Civil Action based on Quasi Delict.

- The judgment of acquittal extinguishes the liability of the accused for damages only when it includes a declaration that the facts from which the civil might arise did not exist. Thus, the civil liability is not extinguished by acquittal where the acquittal is based on reasonable doubt as only preponderance of evidence is required in civil cases; where the court expressly declares that the liability of the accused is not criminal but only civil in nature as, for instance, in the felonies of estafa, theft, and malicious mischief committed by certain relatives who thereby incur only civil liability; and, where the civil liability does not arise from or is not based upon the criminal act of which the accused was acquitted .

304 Cruz vs. CA (and Umali) | Francisco
G.R. No. 122445, November 18, 1997 | 282 SCRA 188

FACTS

- Rowena Umali de Ocampo accompanied her mother Lydia Umali to the Perpetual Help Clinic and General Hospital in Laguna. Upon examining Umali, respondent Cruz found a "myoma" in her uterus, and scheduled her for a hysterectomy operation.
- Rowena noticed that the clinic was untidy and dusty. She tried to persuade her mother not to proceed with the operation, but Lydia told her that Cruz said she must be operated on as scheduled.
- On separate occasions during the operation, Dr. Ercillo (the anesthesiologist) came out of the operating room and instructed them to buy tagamet ampules and blood. Even after Lydia was brought out of the operating room, they were instructed to buy more blood.
- At one point, Rowena also noticed that her mother was gasping for breath. However, the oxygen supply of the clinic has run out, and they had to go to San Pablo District Hospital to get oxygen. Later on, Lydia went into shock, which necessitated her transfer to San Pablo District Hospital, which was done without the prior consent of the relatives.
- There, Dr. Ercillio re-operated on her because there was blood oozing from the abdominal incision. Eventually, Lydia died. Her death certificate states "shock" as the immediate cause of death and "disseminated intravascular coagulation (DIC)" as the antecedent cause.
- The heirs of Lydia Umali charged Cruz and Ercillo with reckless imprudence and negligence resulting to homicide." Both pleaded not guilty. The MTCC held that Dr. Ercillo was not guilty, but held Cruz responsible for the death of Lydia Umali. RTC and CA affirmed in toto. Hence this petition.

ISSUES & ARGUMENTS

- **W/N the Court may award damages to the heirs of Umali even if it acquitted Cruz.**

HOLDING & RATIO DECIDENDI

AWARD OF MORAL AND EXEMPLARY DAMAGES IS PROPER.

- While the following circumstances are insufficient to sustain a judgment of conviction against Cruz. Nevertheless, this Court finds Cruz civilly liable for the death of Lydia Umali, **for while conviction of a crime requires proof beyond reasonable doubt, only a preponderance of evidence is required to establish civil liability.**
- For insufficiency of evidence this Court was not able to render a sentence of conviction but it is not blind to the reckless and imprudent manner in which Cruz carried out her duties. No amount of compassion and commiseration not words of bereavement can suffice to assuage the sorrow felt by Lydia Umali's heirs.

Dr. Cruz ACQUITTED but is ordered to pay the hairs of the deceased Lydia Umali FIFTY THOUSAND PESOS as civil liability, ONE HUNDRED THOUSAND PESOS as moral damages, and FIFTY THOUSAND PESOS as exemplary damages.

CHRISSIE MORAL

305 Sapiera vs. CA | Bellosillo
G.R. No. 128927, September 14, 1999 | 314 SCRA 370

FACTS

- On several occasions, Sapiera, a sari-sari store owner, purchased from Monrico Mart certain grocery items, mostly cigarettes, and paid for them with checks issued by one de Guzman, signed at the bank by Sapiera.
- When presented for payment, the checks were dishonored because the drawer's account was already closed. Private respondent Sua informed de Guzman and Sapiera about the dishonor, but both failed to pay the value of the checks. Hence, 4 charges of BP 22 were filed against Sapiera, and 2 counts of BP 22 against de Guzman before the RTC.
- The RTC held de Guzman guilty and acquitted Sapiera of all charges of estafa. However, it did not rule on whether she could be held civilly liable.
- Sua filed an appeal with the RTC with regard the civil aspect, but it refused to give due course to the appeal on the ground that the acquittal of Sapiera was absolute. It then filed a petition for mandamus with the CA, which was granted.
- The CA also ordered Sapiera to pay Sua P335,000, representing the aggregate face value of the 4 checks indorsed by Sapiera plus legal interest.
- Sapiera filed a motion for reconsideration, alleging that Sua had already recovered P125,000 under the criminal proceedings. The CA then corrected its previous award by deducting such amount. Hence this petition.

ISSUES & ARGUMENTS

- **W/N the CA erred in requiring Sapiera to pay civil indemnity after the trial court had acquitted her of criminal charges.**

HOLDING & RATIO DECIDENDI

SAPIERA MAY BE ORDERED TO PAY CIVIL INDEMNITY DESPITE ACQUITTAL OF CRIMINAL CHARGES FOR ESTAFA.

- Section 2(b) of Rule 111 of the RoC provides: "Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.
- Thus, the civil liability is not extinguished by acquittal where: (a) the acquittal is based on reasonable doubt; (b) where the court expressly declares that the liability of the accused is not criminal but only civil in nature; and, (c) where the civil liability is not derived from or based on the criminal act of which the accused is acquitted.
- Thus, under Article 29 of the NCC[16].
- The exoneration of Sapiera was based on the failure of the prosecution to present sufficient evidence showing conspiracy between her and the other accused (de Guzman). However, Sapiera had admitted having signed the 4 checks on the reverse side. Hence, she is deemed to be an indorser thereof, and thus made herself liable for the payment of said checks.
- The dismissal of the criminal cases against Sapiera did not erase her civil liability since the dismissal was due to insufficiency of evidence and not from a declaration that the fact from which the civil action might arise did not exist.
- An accused acquitted of estafa may nevertheless be held civilly liable where the facts established by the evidence so warrant.
- The rationale behind the award of civil indemnity despite a judgment of acquittal is that the two liabilities are separate and distinct from one another. While it is just and proper for the purposes of imprisonment of the accused that the offense should be proved beyond reasonable doubt, there is no such evidence required for the purpose of indemnifying the complaining party. For the latter, only a preponderance of evidence should be required.

Petition DENIED. CA decision AFFIRMED.

CHRISSIE MORAL

16 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.

In a criminal case where 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.

306 Manantan vs. Court of Appeals | Quisumbing
G.R. No. 107125, January 29, 2001 |

FACTS

- Fiscal Ambrocio decided to catch shrimps at the irrigation canal at his farm. He invited the deceased who told him that they borrow the Ford Fiera of the accused Manantan. The deceased went to borrow the Ford Fiera but said that the accused also wanted to come along. So Fiscal Ambrocio and the deceased dropped by the accused at the Manantan Technical School. They drank beer there before they proceeded to the farm using the Toyota Starlet of the accused. At the farm they consumed one more case of beer. Later that afternoon they drank beer again until about 8:30 in the evening when the accused invited them to go bowling which they agreed to. While waiting for a vacant alley they drank one beer each.
- After waiting for about 40 minutes and still no alley became vacant the accused invited his companions to go to LBC Night Club. They had drinks and took some lady partners at the LBC. Going home, the accused was driving at a speed of about 40 kilometers per hour along the middle portion of the highway (although according to Cudamon, the car was running at a speed of 80 to 90 kilometers per hours on the wrong lane of the highway because the car was overtaking a tricycle) when they met a passenger jeepney with bright lights on. The accused immediately tried to swerve the car to the right and move his body away from the steering wheel but he was not able to avoid the oncoming vehicle and the two vehicles collided with each other at the center of the road.
- As a result of the collision the car turned turtle twice and landed on its top at the side of the highway. Fiscal Ambrocio lost consciousness. When he regained consciousness he was still inside the car lying on his belly with the deceased on top of him. Ambrocio pushed away the deceased and then he was pulled out of the car by one of the witness. Afterwards, the deceased who was still unconscious was pulled out from the car. Both Fiscal Ambrocio and the deceased were brought to a Clinic. The deceased died that night while Ambrocio suffered only minor injuries to his head and legs.
- RTC: Manantan not guilty and was acquitted. CA modified the decision holding Manantan civilly liable for his negligent and reckless act of driving his car which was the proximate cause of the vehicular accident.

ISSUES & ARGUMENTS

- **W/N petitioner's acquittal foreclosed any further inquiry with regard to his negligence or reckless imprudence? NO.**
- **W/N petitioner's acquittal extinguished his civil liability? NO.**

Issues discussed in seriatim.

HOLDING & RATIO DECIDENDI

PETITIONER IS NOT EXEMPT FROM CIVIL LIABILITY. HIS ACQUITTAL IN THE CRIMINAL CASE WAS BASED ON REASONABLE DOUBT AND DOES NOT BAR A SUIT ENFORCING CIVIL LIABILITY.

- ***On the first issue,*** petitioner opines that the Court of Appeals should not have disturbed the findings of the trial court on the lack of negligence or reckless imprudence under the guise of determining his civil liability. He submits that in finding him liable for indemnity and damages, the appellate court not only placed his acquittal in suspicion, but also put him in "double jeopardy."
- Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. **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 act or omission cannot and can never be held liable for such act or omission. There being no *delict*, civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the *delict* complained of. This is the situation contemplated in **Rule 111 of the Rules of Court**. 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." 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. Hence, notwithstanding herein petitioner's acquittal, the Court of Appeals in determining whether Article 29 applied, was not precluded from looking into the question of petitioner's negligence or reckless imprudence
- ***On the second issue,*** petitioner insists that he was acquitted on a finding that he was neither criminally negligent nor recklessly imprudent. Inasmuch as his civil liability is predicated on the criminal offense, he argues that when the latter is not proved, civil liability cannot be demanded. He concludes that his acquittal bars any civil action.
- Our scrutiny of the lower court's decision supports the conclusion of the appellate court that the acquittal was based on reasonable doubt; hence, petitioner's civil liability was not extinguished by his discharge. We note the trial court's declaration did not discount the possibility that "the accused was really negligent." This clearly shows that petitioner's acquittal was predicated on the conclusion that his guilt had not been established with moral certainty. Stated differently, it is an acquittal based on reasonable doubt and a suit to enforce civil liability for the same act or omission lies.

Petition denied. Decision of Court of Appeals Affirmed.

307 Castillo vs. CA | Fernan C.J.
G.R. No. 48541 August 21, 1989 | 176 SCRA 591

FACTS

- Petitioner Castillo was driving his jeep on the right lane of the McArthur Highway with his wife, father and a minor child, as passengers. Just past San Nicolas bridge he noticed, a speeding oncoming car along the same lane he was driving, overtaking a cargo truck ahead of it. He switched on his headlights to signal the car to return to its own right lane as the way was not clear for it to overtake the truck.
- The car, driven by private respondent Rosario, didn't stop so Castillo swerved his jeep to the right towards the shoulder, because of the impact, the car was badly damaged and the passengers were injured.
- Private respondent Rosario had a different account of what actually happened. He alleged that because of the slow moving truck in front of him, he tried to overtake it but he first made sure that it the road was clear and he even blew his horn. While in the process of overtaking, the car's front left tire suddenly burst due to pressure. Because of this, the car veered towards the left side so private respondent just drove it to that direction to find a safe place to park the car and fix it.
- But barely had the said private respondent parked his car on the left shoulder of the road and just as he was about to get off to fix the flat tire, the car was suddenly bumped by the jeep driven by Castillo which came from the opposite direction.
- A civil case for the recovery of damages was instituted by the petitioners. While this case was pending, the provincial fiscal filed an information against Rosario, for double physical injuries; double less serious physical injuries; and damage to property thru reckless imprudence. RTC convicted him. But he was acquitted by the CA on the ground that his guilt has not been proved beyond reasonable doubt.

ISSUES & ARGUMENTS

W/N an action for damages based on quasi-delict is barred by a decision of the appellate court acquitting the accused, the body of which lays the blame on the plaintiff but in its dispositive part, declares the guilt of the accused not proved beyond reasonable doubt.

HOLDING & RATIO DECIDENDI

Yes.

- There is no dispute that the subject action for damages, being civil in nature, is separate and distinct from the criminal aspect, necessitating only a preponderance of evidence
- Therefore, the acquittal or conviction in the criminal case is entirely irrelevant in the civil case.
- But this rule is not without exception. Thus, Section 2 (c) of Rule 111 of the Rules of Court provides:

  > Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration from a final judgment that the fact from which the civil action might arise did not exist

- Negligence, being the source and foundation of actions of quasi-delict, is the basis for the recovery of damages. In the case at bar, the Court of Appeals found that no negligence was committed by Juanito Rosario to warrant an award of damages to the petitioners.
- It was the Court of Appeals findings that the collision was not due to the negligence of Juanita Rosario but rather it was Castillo's own act of driving the jeep to the shoulder of the road where the car was, which was actually the proximate cause of the collision. With this findings, the Court of Appeals exonerated Juanito Rosario from civil liability on the ground that the alleged negligence did not exist.

308 Bunag, Jr. vs. CA | Regalado, J.:
G.R. No. 101749, July 10, 1992 | 211 SCRA 440

FACTS

- Background:
  - Zenaida and Bunag are lovers and two weeks before the incident they had a fight. On the afternoon of Sept. 8, 1973, the following incident occurred…
- Zenaida Cirilo's version of the story:
  - Bunag, together with an unidentified male companion, abducted her in the vicinity of the San Juan de Dios Hospital in Pasay City
  - She was brought in to a motel where due to her natural weakness, being a woman and her small stature, she was raped
  - After being 'deflowered' against her will and consent, she once again asked Bunag to let her go home but the latter would not agree until they get married
  - They proceeded to the house of Juana de Leon, Bunag's grandmother in Pamplona, Las Pinas, Metro Manila, where the father of Bunag later arrived and assured Zenaida that the following day, they will go to Bacoor, to apply for a marriage license, which they did
  - After filing their applications for a marriage license, they both returned to Juana's house and lived there as husband and wife until Sept. 29, 1973 (21 days)
  - However, after some time, Bunag never returned and Zenaida was forced to go back to her parent's home
- Conrado Bunag Jr.'s version of the story:
  - He claims that they have had earlier plans to elope and get married, and this fact was known to their friends, among them, Architect Chito Rodriguez
  - The couple made good their plans to elope on the afternoon of Sept. 8, 1973, where together with their officemate (Lydia), together with Guillermo Ramos, Jr., they had some snacks in a foursome
  - When Lydia and Guillermo took off, they took a taxi to the Golden Gate and Flamingo Hotels to try to get a room but it was full and they finally got a room at Holiday Hotel
  - After checking out, they proceeded to the house of Juana de Leon at Pamplona, Las Pinas where they stayed until Sept. 29, 1973
  - They had bitter disagreements over money and the threats made to his life prompted him to break off their plan to get married
- Zenaida filed a claim for damages for the breach of promise to marry and the lower courts ruled in her favor granting damages
- Bunag filed a petition claiming the award of damages was excessive and improper but was denied, hence the present petition for review on certiorari

ISSUES & ARGUMENTS

- **W/N Bunag's claim has merits**

HOLDING & RATIO DECIDENDI

NO.

- It is true that in this jurisdiction, we adhere to the time-honored rule that an action for breach of promise to marry has no standing in the civil law, apart from the right to recover money or property advanced by the plaintiff upon the faith of such promise
- Generally, therefore, a breach of promise to marry *per se* is not actionable, except where the plaintiff has actually incurred expenses for the wedding and the necessary incidents thereof
- However, the award of moral damages is allowed in cases specified in or analogous to those provided in Art. 2219 of the Civil Code
  - Correlatively, under Art. 21 of the said Code, in relation to Par. 10 of Art. 2219, any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs, or public policy shall compensate the latter for moral damages
- Generally, the basis of civil liability is the fundamental postulate of our law that every person criminally liable for a felony is also civilly liable
  - In other words, criminal liability will give rise to civil liability *ex delicto* only if the same felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof
  - Hence, extinction of the penal action does not carry with it the extinction of civil liability unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil liability might arise did not exist
- The dismissal of the complaint for forcible abduction with rape was by mere resolution of the fiscal at the preliminary investigation stage
  - There is no declaration in a final judgment that the fact from which the civil case might arise did not exist
  - Consequently, the dismissal did not in any way affect the right of herein private respondent to institute a civil action arising from the offense because such preliminary dismissal of the penal action did not carry with it the extinction of the civil action

309 People of the Philippines v. Relova | Feliciano
G.R. No. L-45129, March 6, 1987 | 148 SCRA 292

FACTS

- Equipped with a search warrant, members of the Batangas City Police together with personnel of the Batangas Electric Light System search and examined the premises of Opulencia Carpena Ice Plant and Cold Storage owned and operated by private respondent Manuel Opulencia.
- They discovered that electric wiring, devices and contraptions had been installed, without the necessary authority from the city government and architecturally concealed inside the walls of the building. The devices were designed purposely to decrease the readings of electric current consumption in the electric meter of the plant.
- Opulencia admitted in a written statement that he had caused the installation of the devices in order to decrease the readings of his electric meter.
- Assistant City Fiscal of Batangas filed an information against Opulencia for violation of Ordinance No. I, Series of 1974, Batangas City.
- Trial Court dismissed the information on the ground of prescription.
- 14 days later, Acting City Fiscal of Batangas City filed another information for theft under Article 308, RPC.
- Trial Court dismissed the case on the ground that the 2nd information will violate the right of the accused against double jeopardy.
- Acting City Fiscal filed a Petition for Certiorari and Mandamus.

ISSUES & ARGUMENTS

- **W/N the filing of the 2nd information constitutes violation of the right against double jeopardy.**
- **W/N the extinction of the criminal liability carries with it the extinction of civil liability arising from the offense charged.**

HOLDING & RATIO DECIDENDI

YES. THE 2ND INFORMATION CONSTITUTES VIOLATION OF THE RIGHT AGAINST DOUBLE JEOPARDY.

- The constitution provides that "no person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."
- The first sentence sets forth the general rule- the constitutional protection against double jeopardy is NOT available where the second prosecution is for an offense that is DIFFERENT from the offense charged in the first prosecution, although both the 1st and 2nd offenses may be based upon the same act. The second sentence embodies an exception- the constitutional protection against double jeopardy IS available although the prior offense charged under the ordinance be DIFFERENT from the offense charged subsequently under a national statute, provided that both offenses spring from the same act.
- Where the offenses charged are penalized either by different sections of the same statute or by different statutes, the important inquiry relates to the IDENTITY OF OFFENSES CHARGED. The constitutional protection against double jeopardy is available only where an identity is shown to exist between the earlier and the subsequent offense charged. In contrast, where one offense is charged under a municipal ordinance while the other is penalized by a statute, the critical inquiry is to the IDENTITY OF THE ACTS. The constitutional protection against double jeopardy is available so long as the acts which constitute or have given rise to the 1st offense under a municipal ordinance are the same acts which constitute or have given rise to the offense charged under a statute.
- The question of IDENTITY OF OFFENSES is addressed by examining the essential elements of each of the 2 offenses charged. The question of IDENTITY OF THE ACTS must be addressed by examining the location of such acts in time and space.
- In the instant case, the relevant acts took place within the same time frame. The taking of electric current was integral with the unauthorized installation of electric wiring and devices.
- The dismissal by the lower court of the information for the violation of the Ordinance upon the ground that such offense had already prescribed amounts to an acquittal. An order sustaining a motion to quash based on prescription is a bar to another prosecution for the same act.

NO. THE EXTINCTION OF CRIMINAL LIABILITY DOES NOT CARRY WITH IT THE EXTINCTION OF CIVIL LIABILITY ARISING FROM THE OFFENSE CHARGED.

- Because no reservation of the right to file a separate civil action was made, the civil action for recovery of civil liability arising from the offense charged was impliedly instituted with the criminal action.
- However, the extinction of criminal liability whether by prescription or by the bar of double jeopardy does not carry with it the extinction of civil liability arising from the offense charged.
- Since there is no evidence in the record as to the amount or value of the electric power appropriated by Opulencia, the civil action should be remanded to the CFI of Batangas City for reception of evidence on the amount or value of the electric power appropriated and converted by Opulencia.

Petition denied. Civil action for related civil liability remanded to the CFI.

TIN OCAMPO-TAN

310 Llorente v Sandiganbayan | Sarmiento
G.R. No. 85464 October 3, 1991 |

FACTS

- As a result of a massive reorganization in 1981, hundreds of Philippine Coconut Authority (PCA) employees resigned effective October 31, 1981. Among them were Mr. Curio, Mrs. Perez, Mr. Azucena, and Mrs. Javier. By reason of which they were all required to apply for PCA clearances in support of their gratuity benefits, one of the condition of which:

  The clearance shall be signed by the PCA officers concemed only when there is no item appearing under "PENDING ACCOUNTABILITY" or after every item previously entered thereunder is fully settled. Settlement thereof shall be written in RED ink.
- After the clearance was signed by the PCA officers concerned, it was to be approved, first, by Atty. Llorente, in the case of a rank-and-file employee, or by Col. Dueñas, the acting administrator, in the case of an officer, and then by Atty. Rodriguez, the corporate auditor .
- The clearance of Mrs. Javier dated October 30, 1991 was signed by all PCA officers concerned, including Mrs. Sotto even though the former had unsettled obligations noted thereon, viz 'SIS loan — P5,387.00 and UCPB car loan P19,705.00, or a total of P25,092.00, and later on approveed by Col. Dueñas, Mrs Javier being an officer, and Atty. Rodriguez. Similarilv the, voucher of Mrs. Javier for her gratuity benefits likewise recited her accountabilities of P25,092.00 plus P92.000.00, which was handwritten. Both accounts were deducted from her gratuity benefits, and the balance released to her on November 16, 1981. The voucher passed post-audit by Atty. Rodriguez on December 1, 1981.
- The said P92,000.00 was the disallowed portion of the cash advances received by Mr. Curio in connection with his duties as "super cargo" in the distribution of seed nuts throughout the country. He received them through and in the name of Mrs. Javier from the UCPB. When the amount was disallowed, the UCPB withheld from the PCA certain receivables; the latter, in turn, deducted the same amount from the gratuity benefits of Mrs. Javier, she being primarily liable therefor. At the time of the deduction, the additional liquidation papers had already been submitted and were in process. Just in case she would not be successful in having the entire amount wiped out, she requested Mr. Curio, who admittedly received it, to execute, as he did, an affidavit dated November 26, 1981, in which he assumed whatever portion thereof might not be allowed.
- The clearance of Mr. Curio dated November 4,1981, likewise favorably passed all officers concerned, including Mrs. Sotto, the latter signing despite the notation handwritten on December 8, 1981, that Mr. Curio had pending accountabilities, namely: GSIS loan — 2,193.74, 201 accounts receivable — P3,897.75, and UCPB loan — P3,623.49, or a total of P10,714.78. However, when the clearance was submitted to Atty. Llorente for approval, he refused to approve stating as cause the fact that he was already aware of the affidavit dated November 26, 1981, in which Mr. Curio assumed to pay any residual liability for the disallowed cash advances, which at the time, December 8, 1981. Moreover, Mr. Curio had other pending obligations noted on his clearance totalling Pl0,714.98. For this reason, the clearance was held up in his office and did not reach Atty. Rodriguez.
- It appears that Mr. Curio heavily pursued the passing of his clearance to the point that he filed a case in the Tanodbayan against Atty. Llorente and Col. Dueñas.
- Subsequently, Mr. Curio was able to file another clearance which did not require the aforesaid condition.
- Between December 1981 and December 1986, Mr. Curio failed to get gainful employment; as a result, his family literally went hungry. In 1981, he applied for work with the Philippine Cotton Authority, but was refused, because he could not present his PCA clearance. The same thing happened when he sought employment with the Philippine Fish Marketing Administration in January 1982. In both prospective employers, the item applied for was P2,500.00 a month. At that time, he was only about 45 years old and still competitive in the job market. But in 1986, being already past 50 years, he could no longer be hired permanently, there being a regulation to that effect. His present employment with the Philippine Ports Authority, which started on March 16, 1987, was casual for that reason. Had his gratuity benefits been paid in 1981, he would have received a bigger amount, considering that since then interest had accrued and the foreign exchange rate of the peso to the dollar had gone up.
- On December 10, 1986, an Information for violation of Section 3(c) of the Anti-Graft and Corrupt Practices Act was filed against Atty. Llorente for which he was acquitted but held civilly liable for damages (P90,000) under Article 19 of the Civil Code.

ISSUES & ARGUMENTS

- **W/N Sandiganbayan erred in holding Atty. Llorente civilly liable despite his acquittal?**
  - **Petitioner':** The Sandiganbayan's Decision is erroneous even if the Sandiganbayan acquitted him therein, because he was never in bad faith as indeed found by the Sandiganbayan.

HOLDING & RATIO DECIDENDI

NO. It is the essence of Article 19 of the Civil Code, under which the petitioner was made to pay damages, together with Article 27, that the performance of duty be done with justice and good faith.

- The records show that the office practice indeed in the PCA was to clear the employee (retiree) and deduct his accountabilities from his gratuity benefits. There seems to be no debate about the existence of this practice (the petitioner admitted it later on) and in fact, he cleared three employees on the condition that their obligations should be deducted from their benefits. The Court quotes:

  Confronted with these evidence (sic), Atty. Llorente conceded, albeit grudgingly, the existence of the practice by the accounting division of not complying with Condition (a). He, however, claimed that he learned of the practice only during the trial of the case and that he must have

inadvertently approved the clearances of Mrs. Perez, Mr. Azucena, and possibly others who were similarly situated (TSN, March 9/88,pp. 4-5). This the evidence belies. First, he himself testified that when the clearance of Mr. Curio was presented to him in December 1981, it already bore the signature of Mrs. Sotto of the accounting division and the notation set opposite her name about the outstanding accountabilities of Mr. Curio; but he (Atty. Llorente) significantly did not ask her why she signed the clearance (TSN, Nov. 24/87, pp. 24-25). Second, in that month, ***Atty. Llorente approved Mrs. Perez's and Mr. Azucena's vouchers showing that hey has pending obligations to the GSIS and the UCPB, which were being deducted from their gratuity benefits (thus are similarly situated with Mr. Curio)****. Attached to those vouchers were the clearances as supporting documents (Exhs. M-2 and N-1; TSN, Dec. 7/87, pp. 13,23). And third, in the same month, Atty. Llorente was already aware of the case of Mrs. Javier whose clearance and voucher were, according to him, precisely withheld because of her unsettled accountability for the cash advances of P92,000.00, but here later on given due course; and her gratuity benefits released on November 16, 1981, minus that amount (TSN, Nov. 24/87, pp. 31-32; Exhs. L, L-1, L-2 and L-3).*

The cash advances of P92,000.00 were the primary obligation of Mrs. Javier, since they were secured through her and in her name from the UCPB. That was why they were charged to and deducted from, her gratuity benefits. Consequently, as early as that date and in so far as the PCA and the UCPB were concerned, the accountability was already fully paid. The assumption of residual liability by Mr. Curio for the cash advances on November 26, 1981, was a matter between him and Mrs. Javier.

- The general rule is that this Court is bound by the findings of fact of the Sandiganbayan.
- The acts of Atty, Llorente were legal (that is, pursuant to procedures), as he insists in this petition, yet it does not follow, as we said, that his acts were done in good faith. For emphasis, he had no valid reason to "go legal" all of a sudden with respect to Mr. Curio, since he had cleared three employees who, as the Sandiganbayan found, "were all similarly circumstanced in that they all had pending obligations when, their clearances were filed for consideration, warranting similar official action."
- The Court is convinced that the petitioner had unjustly discriminated against Mr. Curio.
- It is no defense that the petitioner was motivated by no ill-will (a grudge, according to the Sandiganbayan), since the facts speak for themselves. It is no defense either that he was, after all, complying merely with legal procedures since, as we indicated, he was not as strict with respect to the three retiring other employees. There can be no other logical conclusion that he was acting unfairly, no more, no less, to Mr. Curio.

311 People vs. Corpuz | Ynares-Santiago
G.R. No. 148198, October 1, 2003

FACTS

- In June 1998, Cabantog, San Diego, Pascual and Surio (the original complainants) was introduced by a certain Aling Josie to the company Alga-Moher International Placement Services Corporation which was managed by Evelyn Gloria H. Reyes a.k.a. Mrs. Ty.
- Mrs. Reyes, the Pres. And GM, asked them to accomplish application forms and to pay P10,000 each as the placement fee.
- In July 30, 1998, the four returned but Reyes was not present. As per instructions through a phone call, Beth Corpuz, the secretary, received such payments and allegedly remitted them to Reyes. The treasurer was also absent then.
- The company's license was to expire on Aug 24, 1999. However, unknown to Corpuz, the license was suspended POEA on July 29, 1998, 1 day before she received the placement fees.
- After two months, nothing happened to their applications, so private complainants asked for a refund from Corpuz. When they were forwarded to Mrs. Reyes, the latter said that what Corpuz gave her was a payment to Beth's debt.
- **Beth Corpuz** was then charged with Illegal Recruitment in Large Scale constituting economic sabotage under Sec. 6 (l) and (m) in relation to Sec. 7(b) of R.A. No. 8042, otherwise known as the "*Migrant Workers and Overseas Filipinos Act of 1995*."
- While the case was pending, Corpuz's sister-in-law refunded the placement fees and the complainants desisted.
- Corpuz was found guilty by the RTC and was sentenced with life imprisonment and to pay a fine of P500,000.00. There was no pronouncement as to civil liability as Corpuz reimbursed the placement fees.
- The trial court convicted appellant based on its findings that despite the suspension of the agency's license, appellant still convinced the applicants to give their money with the promise to land a job abroad. Moreover, as the registered secretary of the agency she had management control of the recruitment business.
- She appealed to the SC.

ISSUES & ARGUMENTS

- **W/N Corpuz is guilty of Illegal Recruitment**
- W/N Corpuz has management control.

HOLDING & RATIO DECIDENDI

CORPUZ NOT GUILTY

- An employee of a company or corporation engaged in illegal recruitment may be held liable as principal, together with his employer, if it is shown that he actively and consciously participated in illegal recruitment.
- The culpability of the employee therefore hinges on his knowledge of the offense and his active participation in its commission. Where it is shown that the employee was merely acting under the direction of his superiors and was unaware that his acts constituted a crime, he may not be held criminally liable for an act done for and in behalf of his employer.
- From the foregoing testimony, it is clear that all appellant did was receive the processing fees upon instruction of Mrs. Reyes. She neither convinced the private complainants to give their money nor promised them employment abroad.
- Moreover, it is the prosecution which has the burden of proof in establishing guilt of the accused. The conviction of appellant must rest not on the weakness of his defense, but on the strength of the prosecution's evidence. In the case at bar, the prosecution failed to adduce sufficient evidence to prove appellant's active participation in the illegal recruitment activities of the agency.

312 Falgui vs. Provincial Fiscal |
No. L-27523. February 25, 1975|

FACTS

- On April 11, 1967, respondent Ramos filed a criminal complaint for usury against petitioners with the Office of the Provincial Fiscal of Batangas (I.S. No. 593). In his affidavit-complaint Ramos stated, among others, that what he asked for and obtained from petitioner spouses Pedro Palacio, Sr. and Juliana Macalalad-Palacio, was a loan in the amount of P60,000.00; that, however, the Palacio spouses asked him to execute a deed of sale on August 5, 1965 in favor of their heirs (the other petitioners) over three (3) parcels of land with an aggregate area of sixty-nine (69) hectares whose market value was about P300,000.00; that on the same day he and the other petitioners executed a Contract to Sell (which was, however, dated August 6, 1965) whereby the Palacios granted him an option to repurchase the property for P133,000.00 within two (2) years; that on January 17, 1967, or some seven (7) months before the expiration of the repurchase period, he wrote the Palacios offering to repurchase the property, with a request for the reduction of interest upon the principal amount which he allegedly obtained from the Palacios by way of a loan; that his request for reduction of interest was rejected by the Palacio spouses, who insisted on the repurchase price of P133,000.00; that in view of pressing circumstances, he had to pay the Palacios the said sum of P133,000.00, thus he was compelled to pay the Palacios the sum of P73,000.00 by way of interest for seventeen (17) months on the principal loan of only P60,000.00
- On April 24, 1967, petitioner spouses Pedro Palacio, Sr. and Juliana Macalalad-Palacio filed with the Court of First Instance of Batangas (Balayan Branch) a complaint for damages (Civil Case No. 660) against respondent Ramos for allegedly causing the publication in three (3) metropolitan newspapers of malicious, libelous and defamatory contents of his affidavit to the effect that petitioner spouses "loaned" to respondent the amount of P60,000.00 and that said petitioners charged respondent Ramos with interest in the amount of P73,000.00.
- On April 26, 1967, petitioners filed a motion in I. S. No. 593 asking respondent Provincial Fiscal of Batangas to suspend the preliminary investigation on the ground that prejudicial questions are involved in Civil Case No. 69104 of the Court of First Instance of Manila and in Civil Case No. 660 of the Court of First Instance of Batangas (Balayan Branch). The motion was opposed by respondent Ramos. After extensive arguments between the parties on the issue of pre-judicial question, respondent Assistant Provincial Fiscal denied petitioners' motion for suspension of the preliminary investigation. Petitioners filed a motion for reconsideration, but the same was denied.

ISSUES & ARGUMENTS

- W/N there is a prejudicial question

HOLDING & RATIO DECIDENDI

There is no prejudicial question

A pre-judicial question is one that arises in a case, the resolution of which is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal. [1] It is based on a fact distinct and separate from the crime but so intimately connected with it that it is determinative of the guilt or innocence of the accused. [2] We have heretofore ruled that a pre-judicial question must be determinative of the case before the court and jurisdiction to try the same must be lodged in another tribunal.

Article 36 leaves the procedure for invoking, considering and deciding prejudicial questions to the rules of court promulgated by the Supreme Court. Inasmuch as in Section 5, Rule 111 and Dasalla and Estrella We have provided and ruled that the question of whether or not a criminal action shall he suspended because of a prejudicial question may not be raised during the stage of preliminary investigation but only after a finding of probable cause and the case is already in the court of proper jurisdiction for trial, the contention of petitioners is clearly untenable. (Isip v. Gonzales, 39 SCRA 263-264)

313 Isabelo Apa, Manuel Apa and Leonilo Jacalan v Hon. Fernandez | Mendoza, G.R. No. 112381, March 20, 1995 |

FACTS

- Special Civil Action of Certiorari to set aside orders of Judge Romulo Fernandez of the RTC Branch 54 Lapu-Lapu City. Petitioners' motion for reconsideration in a criminal case filed against them for squatting were denied by respondent judge. Petitioners anchor their claim against said judge on a prior case against private respondents regarding ownership. Respondents allege that the civil case filed by them against respondents would create a prejudicial question.

ISSUES & ARGUMENTS

- **W/N The civil case creates a prejudicial question**

HOLDING & RATIO DECIDENDI

The previous civil case creates a prejudicial question

- A prejudicial question is a question which is based on a fact distinct and separate from the crime but is so connected that its resolution is determinative of the guilt or innocence of accused.
- Elements: (1) civil action involves an issue similar or intimately connected to the issue in the criminal action (2) resolution of such issue resolves whether criminal action proceeds
- Criminal case alleges that petitioners squatted without knowledge or consent of owner Tigol. Civil case was regarding the ownership of the lands in question, the civil case in 1994 nullified the title of Tigol and declared both petitioners and respondents as co-owners of the land.
- Respondents argue that owners can be ejected from their land, this can be but only if there is a reason i.e. he let it to some other person. Here there is no such allegation respondents and petitioners both base their case on ownership.

314 Beltran vs. People , G.R. No. 137567 June 20, 2000 | Buena, *J.*

FACTS:

- Petitioner Meynardo Beltran and wife Charmaine E. Felix were married on June 16, 1973 at the Immaculate Concepcion Parish Church in Cubao, Quezon City.

- On February 7, 1997, after twenty-four years of marriage and four children, petitioner filed a petition for nullity of marriage on the ground of psychological incapacity under Article 36 of the Family Code before Branch 87 of the Regional Trial Court of Quezon City.

- In her Answer to the said petition, petitioner's wife Charmaine Felix alleged that it was petitioner who abandoned the conjugal home and lived with a certain woman named Milagros Salting. [4] Charmaine subsequently filed a criminal complaint for concubinage [5] under Article 334 of the Revised Penal Code against petitioner and his paramour before the City Prosecutor's Office of Makati who, in a Resolution dated September 16, 1997, found probable cause and ordered the filing of an Information [6] against them.

- On March 20, 1998, petitioner, in order to forestall the issuance of a warrant for his arrest, filed a Motion to Defer Proceedings Including the Issuance of the Warrant of Arrest in the criminal case. Petitioner argued that the pendency of the civil case for declaration of nullity of his marriage posed a prejudicial question to the determination of the criminal case. Judge Alden Vasquez Cervantes denied the foregoing motion in the Order [7] dated August 31, 1998. Then, petitioner filed the instant petition for review in the Supreme COurt.

- Petitioner contends that the pendency of the petition for declaration of nullity of his marriage based on psychological incapacity under Article 36 of the Family Code is a prejudicial question that should merit the suspension of the criminal case for concubinage filed against him by his wife.

- Petitioner also contends that there is a possibility that two conflicting decisions might result from the civil case for annulment of marriage and the criminal case for concubinage. In the civil case, the trial court might declare the marriage as valid by dismissing petitioner's complaint but in the criminal case, the trial court might acquit petitioner because the evidence shows that his marriage is void on ground of psychological incapacity. Petitioner submits that the possible conflict of the courts' ruling regarding petitioner's marriage can be avoided, if the criminal case will be suspended, until the court rules on the validity of marriage; that if petitioner's marriage is declared void by reason of psychological incapacity then by reason of the arguments submitted in the subject petition, his marriage has never existed; and that, accordingly, petitioner could not be convicted in the criminal case because he was never before a married man.

ISSUE:

Whether or not Beltran is correct in with his contentions?

HOLDING & RATION DECIDENCI:

NO.

A. The rationale behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements:

   a.) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; **and**

   b.) the resolution of such issue determines whether or not the criminal action may proceed.

The pendency of the case for declaration of nullity of petitioner's marriage is not a prejudicial question to the concubinage case.

For a civil case to be considered prejudicial to a criminal action as to cause the suspension of the latter pending the final determination of the civil case, it must appear not only that the said civil case involves the same facts upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the aforesaid civil action, the guilt or innocence of the accused would necessarily be determined.

The import of Article 40 of the Family Code, as explained in the case of *Domingo vs. CA,* is that for purposes of remarriage, the only legally acceptable basis for declaring a previous marriage an absolute nullity is a final judgment declaring such previous marriage void, whereas, for purposes of other than remarriage, other evidence is acceptable.

B. With regard to petitioner's argument that he could be acquitted of the charge of concubinage should his marriage be declared null and void, suffice it to state that even a subsequent pronouncement that his marriage is void from the beginning is not a defense. Thus, in the case at bar it must also be held that parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void, and so long as there is no such declaration the presumption is that the marriage exists for all intents and purposes.

315 Mercado vs. Tan | Panganiban
GR 137110, August 1, 2000 |

FACTS

- Vincent Mercado and Consuelo Tan got married on June 27,1991. At that point however, we was still legally married to Theresa Oliva with whom he had been married since 1976.
- On October 1992, Tan filed a complaint for Bigamy against Mercado and the case was filed on March 1993. On Nov 1992, Mercado filed a declaration of nullity of void marriage against Oliva which was granted in May 1993.

ISSUES & ARGUMENTS

- **W/N Mercado was guilty of Bigamy**
- **W/N Tan can claim damages and Attorney's Fees**

HOLDING & RATIO DECIDENDI

Yes

- The elements are: 1.That the offender has been legally married; 2. That the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; 3. That he contracts a second or subsequent marriage; 4. That the second or subsequent marriage has all the essential requisites for validity. All 4 were present at the time the information was filed
- The subsequent declaration of void marriage does not cure the charge of bigamy. The previous case of Mendoza vs. Aragon which said that the bigamy case would no longer prosper if the prior marriage was declared void ab initio was been overturned by Article 40 of the Family Code.

No

- Prior to contracting the marriage, Tan knew that Mercado was previously married and had 2 kids. The fact that she entered into the marriage anyway cannot give rise to a claim for damages as it was through her own conscious decision to marry Mercado. That her reputation was later besmirched is her problem.

316 Marbella-Bobis v. Bobis | Ynares-Santiago
G.R. 138509, July 31, 2000

FACTS

- On October 21, 1985, respondent contracted a first marriage with Maria Dulce Javier. Without said marriage having been annulled, nullified or terminated, respondent contracted a second marriage with petitioner on January 25, 1996 and allegedly a third marriage with a certain Julia Sally Hernandez.
- An information for bigamy was filed based on petitioner's complaint-affidavit on Feb. 1998. Thereafter, respondent initiated an action for declaration of nullity of the first marriage on the ground of lack of marriage license. He then filed a motion to suspend the criminal proceeding on the ground that the civil case for nullity of the first marriage was a prejudicial question to the criminal case.
- TC granted motion. Petitioner moved to reconsider but was denied.

ISSUES & ARGUMENTS

- **W/N subsequent filing of civil action for declaration of nullity of previous marriage constitutes prejudicial question to criminal case for bigamy.**

HOLDING & RATIO DECIDENDI

- No. A prejudicial question is one which arises in a case the resolution of which is a logical antecedent of the issue involved therein. It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused. It must appear not only that the civil case involves facts upon which the criminal action is based, but also that the resolution of the issues raised in the civil action would necessarily be determinative of the criminal case. The defense must involve an issue similar or intimately related to the same issue raised in the criminal action and its resolution determinative of whether or not the latter action may proceed.
- It's elements are:
    - the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and
    - the resolution of such issue determines whether or not the criminal action may proceed.
- It does not conclusively resolve the guilt or innocence of the accused but simply tests the sufficiency of the allegations in the information in order to sustain the further prosecution of the criminal case.
- A party who raises a prejudicial question is deemed to have hypothetically admitted that all the essential elements of a crime have been adequately alleged in the information. A challenge of the allegations in the information on the ground of prejudicial question is in effect a question on the merits of the criminal charge through a non-criminal suit.
- Art. 40 of the FC requires prior judicial declaration of nullity of a previous marriage before a party may remarry. It is not for the parties to determine the validity of the marriage. Whether or not the first marriage was void for lack of a license is a matter of defense because there is still no judicial declaration of its nullity at the time the second marriage was contracted. It should be remembered that bigamy can successfully be prosecuted provided all its elements concur – two of which are a previous marriage and a subsequent marriage which would have been valid had it not been for the existence at the material time of the first marriage.
- Respondent's clear intent is to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is to disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first.
- A marriage though void still needs a judicial declaration of such fact before any party can marry again; otherwise the second marriage will also be void. Without a judicial declaration of its nullity, the first marriage is presumed to be subsisting. In the case at bar, respondent was for all legal intents and purposes regarded as a married man at the time he contracted his second marriage with petitioner. Against this legal backdrop, any decision in the civil action for nullity would not erase the fact that respondent entered into a second marriage during the subsistence of a first marriage. Thus, a decision in the civil case is not essential to the determination of the criminal charge. It is, therefore, not a prejudicial question. As stated above, respondent cannot be permitted to use his own malfeasance to defeat the criminal action against him.

AYEN QUA

317 First Producers Holding Corporation v. Luis Co | Panganiban
G.R. No. 139655. July 27, 2000|

FACTS

- Producers Bank of the Philippines adopted a resolution to buy 3 shares in Manila Polo Club. The shares were assigned to Co Bun Chun, Henry Co, and Luis Co.
- When Luis Co resigned from Producers Bank, the company asked Mr. Co to transfer the said share to the newly elected assignee, Mrs. Bautista. There were several requests but Mr. Co refused to assign the shares to her.
- Mr Co subsequently went to the General Manager of Manila Polo Club and submitted an Affidavit of Loss for the Certificate, making it appear that he was the legitimate owner of the subject share.
- The original certificates are all with in the possession of the corporation, including that which was assigned to Mr. Co.
- Upon the issuance of the new certificate, Producers Bank again demanded that the certificate be assigned to Mrs. Bauitista. The value of the certificate is about 5.6M
- A criminal case was filed against Mr. Co for estafa and perjury in March 1997.
- On November 1997, Mr. Co filed a separate action, questioning the ownership of the Manila Polo Club proprietary share.
- The Court consequently suspended the criminal action, pursuant to Rule 111 of the Rules of Court.

ISSUES & ARGUMENTS

- **W/N the suspension of the criminal case by reason of a prejudicial question was proper in this case.**
    - **Petitioner:** The Bank alleges that this was just a mere dilatory tactic and such cannot be a valid reason to suspend the criminal proceedings.
    - **Respondent:** Mr Co posits that the question of ownership is rightly raised within the time provided for in the Rules of Court, "at the time before the prosecution rests." The question of ownership is intimately related to the resolution of the criminal action of estafa, therefore it is a prejudicial question that validly suspends the criminal action.

HOLDING & RATIO DECIDENDI

THE SUSPENSION IS INVALID. THE SEPARATE ACTION FILED TO DETERMINE THE OWNERSHIP OF THE SHARE IS A MERE DILATORY TACTIC.

- The criminal action was filed on March 1997 and it was only after 8 months that Mr. Co decided to file a separate action to determine the ownership of the share. The issue was raised as early as 1994. The filing of a separate action was clearly made as an afterthought, and is considered a strategy to delay the criminal proceedings.
- The trial court resolve the question of ownership in its own tribunal as there is no law or rule that prohibits the court from doing do. The trial court has jurisdiction to hear this defense.
- Rule 111 Section 5 states the elements of a Prejudicial Question
    - The civil action involves an issue similar or intimately related to the issue raised in the criminal action
    - The resolution of such issue determines whether or not the criminal action may proceed.
- Rule 111 Section 6 states, "When the criminal action has been filed in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests"
- Justice Panganiban in his decision declares, "A criminal proceeding, as a rule, may be suspended upon a showing that a prejudicial question determinative of the guilt or innocence of the accused is the very issue to be decided in a civil case pending in another tribunal. However, such suspension cannot be allowed if it is apparent that the civil action was filed as an afterthought for the purpose of delaying the ongoing criminal action. This exception applies especially in cases in which the trial court trying the criminal action has authority to decide such issue, and the civil action was instituted merely to delay the criminal proceeding and thereby multiply suits and vex the court system with unnecessary cases. Procedural rules should be construed to promote substantial justice, not to frustrate or delay its delivery."

CHESKA RESPICIO

318 Torres vs. Gatchalian | Callejo
G.R. No.153666, December 27, 2002 |

FACTS

- Susana Realty is the registered owner of two parcels of land in Cavite which are adjacent to the sea and whose portions are submerged by seawater. It has a caretaker named Domingo Fernandez
- 10/10/97: Mayor Torres of Noveleta,Cavite ordered the reclamation of submerged area to use it as relocation site of displaced squatters over the protests of the caretaker Fernandez
- 10/16/97 SRI gave the Mayor copies of their Title and surveys over the land
- 10/27/97 SRI sent a letter to the Mayor formally protesting the reclamation and demanding that he desist
- 10/31/97 the Mayor and SRI representatives had a conference. The Mayor offered to help SRI with its other projects in Cavite provided it will not file a case to enjoin the reclamation. SRI requested that the reclamation be deffered but it learned that five squatter families were already occupying the property.
- SRI filed a petition for injunctive relief to enjoin a reclamation and leveling of the property. It also filed a criminal complaint with the ombudsman against Mayor Torres for violation of RA 3019. After preliminary investigation, ombudsman found probable cause.
- 9/1/98 The Republic filed a case in the RTC for the reversion of the said property against the SRI and RoD of Cavite alleging the land is part of Manila Bay and is land of public domain
- Torres filed a motion for suspension of proceedings with the Sandiganbayan with regard to his criminal case in light of the prejudicial question which arose due to the civil case. The Sandiganbayan issued a resolution denying the motion.
- Torres filed a Petition for Certiorari to nullify the Sandiganbayan Resolution which the court dismissed.Torres again filed a Motion to Suspend proceedings with the Sandiganbayan on ground of a prejudicial question but the same was denied. Torres was arraigned and entered a not guilty plea.

ISSUES & ARGUMENTS

- **W/N The public respondent committed a grave abuse of discretion in denying the Motion to suspend proceedings**

HOLDING & RATIO DECIDENDI

No.

- In order that there be a prejudicial question, the civil case must be instituted prior to the criminal action. In this case, the information was filed with the Sandiganbayan prior to the filing of the civil case.

319 People of the Philippines vs. Consing | YNARES-SANTIAGO, J.:
G.R. No. 148193 January 16, 2003|

FACTS

- Plus Builders Inc. (PBI) purchased from Consing (respondent) and his mother Cruz a lot relying on the latter's representation that he and his mother are the true and lawful owners of the lot. Consing further represented that that he and her mother acquired it from Tan Teng and Yu.

- PBI later discovered that Consing did not have a valid title over the said lot. Tan Teng and Yu apparently never sold the lot to respondents. PBI was then ousted possession of the lot by Tan Teng and Yu. Respondent then refused to return the amount used by PBI for the purchase of the lot, despite verbal and written demands.

- Respondent then filed a case for "injunctive relief" while, PBI filed against respondent and his mother a complaint for "Damages and Attachment". There was also a criminal case subsequently filed against respondent and his mother, for estafa through falsification of public document.

- Respondent sought to defer arraignment on ground of prejudicial question, specifically the pendency of the cases for "injunctive relief" and "damages and attachment." This was denied by the RTC.

- The CA then ruled on petition for certiorari that there exists a prejudicial question. Hence, petitioner herein, People of the Philippines, represented by the Solicitor General, filed this case for petition for review under Rule 45.

ISSUE

Whether or not the pendency of the cases for "injunctive relief" and "damages and attachment" is a prejudicial question which justifies the suspension of the proceedings in the criminal case?

HOLDING & RATIO DECIDENDI

- **The pendency of the cases is not a prejudicial question.**

- There lies no prejudicial question that would justify the suspension of the proceedings in the criminal case. The issue in the case for Injunctive Relief is whether or not respondent merely acted as an agent of his mother, while in Civil Case No. 99-95381, for Damages and Attachment, the question is whether respondent and his mother are liable to pay damages and to return the amount paid by PBI for the purchase of the disputed lot.

- Even if respondent is declared merely an agent of his mother in the transaction involving the sale of the questioned lot, he cannot be adjudged free from criminal liability. An agent or any person may be held liable for conspiring to falsify public documents. Hence, the determination of the issue involved in the case for Injunctive Relief is irrelevant to the guilt or innocence of the respondent in the criminal case for estafa through falsification of public document.

- Also, the resolution of PBI's right to be paid damages and the purchase price of the lot in question will not be determinative of the culpability of the respondent in the criminal case for even if PBI is held entitled to the return of the purchase price plus damages, it does not ipso facto follow that respondent should be held guilty of estafa through falsification of public document.

- In addition, neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other. Under Rule 111, Section 3 of the Revised Rules on Criminal Procedure, in the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code, 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.

- The case for Damages and Attachment on account of the alleged fraud committed by respondent and his mother in selling the disputed lot to PBI is an independent civil action under Article 33 of the Civil Code. As such, it will not operate as a prejudicial question that will justify the suspension of the criminal case at bar.

JR RUIZ

320 Bantoto v. Bobis | JBL Reyes
G.R. No. L-18966 November 22, 1966

FACTS

- Crispin Vallejo was the registered owner of a "jeepney" named "Jovil 11", with plate TPU-20948, that was operated by him in Bacolod City through driver Salvador Bobis.
- On 24 October 1948, through the driver's negligence, the "jeepney" struck a 3-year old girl, Damiana Bantoto, inflicting serious injuries that led to her death a few days later.
- The City Fiscal of Bacolod filed an information charging Bobis with homicide through reckless imprudence, to which Bobis pleaded guilty. He was, accordingly, sentenced to 2 months and 1 day of arresto mayor and to indemnify the deceased girl's heirs (appellees herein) in the sum of P3,000.00.
- Batoto now was asking in his amended complaint that Crispin Vallejo be colodarily liable for damages, consisting of the civil indemnity required of the driver Bobis in the judgment of conviction, plus moral and exemplary damages and attorneys' fees and costs.

ISSUES & ARGUMENTS

W/N Vallejo is solidarily liable with Bobis, even if it was not stated that Bobis was insolvent.

- Petitioner: Batoto posits that Vallejo is liable under art 103 of the RPC.
- Respondent: The subsidiary liability of the master, according to the provisions of Article 103 of the Revised Penal Code, arises and takes place only when the servant, subordinate, or employee commits a punishable criminal act while in the actual performance of his ordinary duties and service, and he is insolvent thereby rendering him incapable of satisfying by himself his own civil liability, since the complaint did not aver that Bobis was insolvent, then the complaint must be dismisse (citing *Marquez v. Castillo*)

HOLDING & RATION DECIDENDI

VALLEJO IS LIABLE

- The master's liability, under the Revised Penal Code, for the crimes committed by his servants and employees in the discharge of their duties, is not predicated upon the insolvency of the latter. Article 103 of the Penal Code prescribes that:

  ART. 103. Subsidiary civil liability of other persons. — The subsidiary liability established in the next preceding article shall also apply to employees, 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 insolvency of the servant or employee is nowhere mentioned in said article as a condition precedent. In truth, such insolvency is required only when the liability of the master is being made effective by execution levy, but not for the rendition of judgment against the master.
- The subsidiary character of the employer's responsibility merely imports that the latter's property is not be seized without first exhausting that of the servant..
- *Marquez v. Castillo* cannot hold because it is a mere obiter.

321 Dionisio Carpio v. Doroja | Paras
G.R. No. 84516, Dec. 5. 1989|

FACTS

Sometime on October 23, 1985, accused-respondent Edwin Ramirez, while driving a passenger Fuso Jitney owned and operated by Eduardo Toribio, bumped Dionisio Carpio, a pedestrian crossing the street, as a consequence of which the latter suffered from a fractured left clavicle as reflected in the medico-legal certificate and sustained injuries which required medical attention for a period of (3) three months.

An information for Reckless Imprudence Resulting to Serious Physical Injuries was filed against Edwin Ramirez with the Municipal Trial Court of Zamboanga City, Branch IV. On January 14, 1987, the accused voluntarily pleaded guilty to a lesser offense and was accordingly convicted for Reckless Imprudence Resulting to Less Serious Physical Injuries under an amended information punishable under Article 365 of the Revised Penal Code.

At the early stage of the trial, the private prosecutor manifested his desire to present evidence to establish the civil liability of either the accused driver or the owner-operator of the vehicle. Accused's counsel moved that the court summon the owner of the vehicle to afford the latter a day in court, on the ground that the accused is not only indigent but also jobless and thus cannot answer any civil liability that may be imposed upon him by the court. The private prosecutor, however, did not move for the appearance of Eduardo Toribio.

Thereafter, a writ of execution dated March 10, 1988 was duly served upon the accused but was, however, returned unsatisfied due to the insolvency of the accused as shown by the sheriffs return. Thus, complainant moved for a subsidiary writ of execution against the subsidiary liability of the owner-operator of the vehicle. The same was denied by the trial court on two grounds, namely, the decision of the appellate court made no mention of the subsidiary liability of Eduardo Toribio, and the nature of the accident falls under "culpa-aquiliana" and not culpa-contractual." A motion for reconsideration of the said order was disallowed for the reason that complainant having failed to raise the matter of subsidiary liability with the appellate court, said court rendered its decision which has become final and executory and the trial court has no power to alter or modify such decision.

ISSUES & ARGUMENTS

- **Whether** the subsidiary liability of the owner-operator may be enforced in the same criminal proceeding against the driver where the award was given, or in a separate civil action

HOLDING & RATIO DECIDENDI

The subsidiary liability in Art. 103 should be distinguished from the primary liability of employers, which is quasi-delictual in character as provided in Art. 2180 of the New Civil Code. Under Art. 103, the liability emanated from a delict. On the other hand, the liability under Art. 2180 is founded on culpa-aquiliana. The present case is neither an action for culpa-contractual nor for culpa-aquiliana. This is basically an action to enforce the civil liability arising from crime under Art. 100 of the Revised Penal Code. In no case can this be regarded as a civil action for the primary liability of the employer under Art. 2180 of the New Civil Code, i.e., action for *culpa-aquiliana.*

In order that an employer may be held subsidiarily liable for the employee's civil liability in the criminal action, it should be shown (1) that the employer, etc. is engaged in any kind of industry, (2) that the employee committed the offense in the discharge of his duties and (3) that he is insolvent (Basa Marketing Corp. v. Bolinao, 117 SCRA 156). The subsidiary liability of the employer, however, arises only after conviction of the employee in the criminal action. All these requisites are present, the employer becomes ipso facto subsidiarily liable upon the employee's conviction and upon proof of the latter's insolvency. Needless to say, the case at bar satisfies all these requirements.

DIKKI SIAN

322 Yonaha Vs. Court of Appeals | Vitug
G.R. No. 112346. March 29, 1996 | 255 SCRA 397

FACTS

- Elmer Ouano was charged with the crime of "Reckless Imprudence Resulting In Homicide". The incident was laid out in his Information[17].
- When arraigned, the accused pleaded "guilty". Taking into account the mitigating circumstances of voluntary surrender and his plea of guilty, the court held him to suffer and undergo an imprisonment of 1 year and 1 day to 1 year and 8 months and to pay the heirs of the victim the sum of P50,000.00 for the death of the victim; P30,000.00 for actual damages incurred in connection with the burial and the nightly prayer of the deceased victim and P10,000.00 as attorney's fees.
- A writ of execution was issued for the satisfaction of the monetary award. In his Return of Service, dated 07 May 1992, the MTCC Deputy City Sheriff stated that he had served the writ on accused Elmer Ouano but that the latter had manifested his inability to pay the money obligation.
- Forthwith, private respondents presented a "motion for subsidiary execution" **with neither a notice of hearing nor notice to petitioner**. Acting on the motion, nevertheless, the trial court issued an order, dated 29 May 1992, directing the issuance of a writ of subsidiary execution. The sheriff went to petitioner's residence to enforce the writ, and it was then, **allegedly for the first time**, that petitioner was informed of Ouano's conviction. Petitioner filed a motion to stay and to recall the subsidiary writ of execution principally anchored on the lack of prior notice to her and on the fact that the employer's liability had yet to be established. Private respondents opposed the motion.
- On 24 August 1992, the trial court denied petitioner's motion. On 23 September 1992, petitioner's plea for reconsideration of the denial was likewise rejected.
- Petitioner promptly elevated the matter to the Court of Appeals (CA-GR SP No. 29116) for review. The appellate court initially restrained the implementation of the assailed orders and issued a writ of preliminary injunction upon the filing of a P10,000.00 bond. Ultimately, however, the appellate court, in its decision of 28 September 1993, dismissed the petition for lack of merit and thereby lifted the writ of preliminary injunction.
- In the instant appeal, petitioner additionally reminds the Court that **Ouano's conviction was not the result of a finding of proof beyond reasonable doubt but from his spontaneous plea of guilt.**

ISSUES & ARGUMENTS

- **W/N petitioner should be held liable for subsidiary liability under Art 103 of RPC**

HOLDING & RATIO DECIDENDI

NO, PETITIONER MUST BE GIVEN DAY IN COURT AS A MATTER OF DUE PROCESS FIRST.

- The statutory basis for an employer's subsidiary liability is found in Article 103 of the Revised Penal Code. This Court has since sanctioned the enforcement of this subsidiary liability in the same criminal proceedings in which the employee is adjudged guilty, on the thesis that it really is a part of, and merely an incident in, the execution process of the judgment. But, execution against the employer must *not* issue as just a matter of course, and it behooves the court, as a measure of due process to the employer, to determine and resolve *a priori,* in a hearing set for the purpose, the legal applicability and propriety of the employer's liability. The requirement is mandatory even when it appears prima *facie* that execution against the convicted employee cannot be satisfied. The court must convince itself that the convicted employee is in truth in the employ of the employer; that the latter is engaged in an industry of some kind; that the employee has committed the crime to which civil liability attaches while in the performance of his duties as such; and that execution against the employee is unsuccessful by reason of insolvency.
- The assumption that, since petitioner in this case did not aver any exculpatory facts in her "motion to stay and recall," as well as in her motion for reconsideration, which could save her from liability, a hearing would be a futile and a sheer rigmarole is unacceptable. The employer must be given his full day in court.
- To repeat, the subsidiary liability of an employer under Article 103 of the Revised Penal Code requires (a) the existence of an employer-employee relationship; (b) that the employer is engaged in some kind of industry; (c) that the employee is adjudged guilty of the wrongful act and found to have committed the offense in the discharge of his duties (not necessarily any offense he commits "while" in the discharge of such duties); and (d) that said employee is insolvent. The judgment of conviction of the employee, of course, concludes the employer and the subsidiary liability may be enforced in the same criminal case, but **to afford the employer due process, the court should hear and decide that liability on the basis of the conditions required therefor by law**

Petitioner shall be given the right to a hearing on the motion for the issuance of a writ of subsidiary execution filed by private respondents, and the case is REMANDED to the trial court for further proceedings conformably with our foregoing opinion.

FRANK TAMARGO

17 "That on April 14, 1990, at or about 11:45 A.M., in Basak, Lapulapu City, Philippines, within the jurisdiction of this Honorable Court, the aforenamed accused, while driving a Toyota Tamaraw sporting Plate No. GCX-237 duly registered in the name of Raul Cabahug and owned by EK SEA Products, did then and there unlawfully and feloniously maneuver and operate it in a negligent and reckless manner, without taking the necessary precaution to avoid injuries to person and damage to property, as a result thereof the motor vehicle he was then driving bumped and hit Hector Cañete, which caused the latter's instantaneous death, due to the multiple severe traumatic injuries at different parts of his body."

323 Basilio vs Court of Appeals | Quisumbing
G.R. No.113433 17 March 2000|

FACTS

- On July 23, 1987, Simplicio Pronebo was charged by the Provincial Fiscal of Rizal with the crime of Reckless imprudence resulting to damage to property with double momicide and double physical injuries.
- Simplicio Pronebo was the driver of a dump truck with plate number NMW 609 owned and registered under the name of Luisito Basilio. The said driver operated the truck without due regard to traffic laws, rules and regulations and without taking the necessary care and precaution to prevent damage to property and avoid injuries to persons.
- As a result of which said dump truck hit and sideswiped a motorized tricycle, Toyota Corona, motorized tricycle, Mitsubishi Lancer and a Ford Econo Van.
- After arraignment and trial, the court rendered judgment convicting the driver. The trial court also found out that Pronebo was an employee of Luisito Basilio.
- Pronebo applied for probation so that the above judgement will become final and executory.
- On March 27, 1991, Luisito Basilio filed with the trial court a Special Appearance and Motion for Reconsideration to set aside the judgement rendered last February 4, 1991. He said that it affected him and subjected him to subsidiary liability for the civil aspect of the criminal case. This motion was denied for lack of merit.
- On September 23, 1991, private respondent filed a motion for execution of the subsidiary liability of petitioner Basilio.

ISSUES & ARGUMENTS

Whether the CA erred in holding that the petitioner is neither an accused or a party in criminal case and he is not entitled to file a motion for reconsideration of the judgment of Subsidiary Civil Liability against him?

HOLDING & RATIO DECIDENDI

NO.

The statutory basis for an employer's subsidiary liability is found in Article 103 of the Revised penal Code. This liability is enforceable in the same criminal proceeding where the award is made.

However, before execution against an employer ensues, there must be a determination , in a hearing set for the purpose of

1) the existence of an employer-employee relationship

2) that the employer is engaged in some kind of industry

3) that the employee is adjudged guilty of the wrongful act and found to have committed the offense in the discharge of his duties (not necessarily any offense he commits while in the discharge of such duties) and

4) that said employee is insolvent.

There are two instances when the existence of an employer-employee relationship of an accused driver and the alleged vehicle owner may be determined. One during the criminal proceeding, and the other, during the proceeding for the execution of the judgment. In both instances, petitioner should be given the opportunity to be heard, which is the essence of due process.

Petitioner knew of the criminal case that was filed against the accused because it was his truck that was involved in the incident. Further, it was the insurance company, with which his truck was insured, that provided the counsel for the accused, pursuant to the stipulations in their contract.

SATURDAY ALCISIO

324 Pepe and Auriliana Catacutan vs. Heirs of Kadusale | Ynares-Santiago
GR No. 131280. October 18, 2000

Topic:

Subsidiary Liability (Articles 102-103, Revised Penal Code)

FACTS

- Petitioner Aureliana Catacutan is the registered owner and operator of a jeepney, driven by the accused Porferio Vendiola, which bumped a tricycle on April 11, 1991, in Banilad, Bacong, Negros Oriental, thereby causing the death of its driver, Norman Kadusale, and its passenger, Lito Amancio, and serious physical injuries to another passenger, respondent Gil B. Izon.
- Respondents thus filed a criminal case against Porferio Vendiola, for Reckless Imprudence Resulting in Double Homicide with Physical Injuries and Damages to Property on July 26, 1991, before the Regional Trial Court of Negros Oriental.
- On December 1, 1995, the trial court rendered judgment in favor of the private respondents convicting the accused and sentenced to proper penalties under the law and awarded damages to the victims. The accused did not appeal conviction but instead applied for probation. The judgment became final and executory, respondents moved for the issuance of a writ of execution and the corresponding writ was issued however, per the Sheriff's Return of Service, the writ was unsatisfied as the accused had "nothing to pay off the damages in the decision." Hence on August 28, 1996, respondents filed a Motion for Subsidiary Writ of Execution praying that such writ be issued against petitioner Aureliana Catacutan as registered owner and operator of the jeepney driven by the accused when the collision occurred. Petitioner Aureliana Catacutan then filed her Opposition thereto, arguing that she was never a party to the case and that to proceed against her would be in violation of the due process clause of the Constitution. Petitioner also argued that the subsidiary liability of the employer is not determined in the criminal case against the employee.

ISSUE

WHETHER OR NOT A SUBSIDIARY WRIT OF EXECUTION MAY ISSUE AGAINST THE EMPLOYERS OF AN ACCUSED, AGAINST WHOM A JUDGMENT OF CONVICTION HAD BEEN ENTERED, EVEN WHEN SAID EMPLOYERS NEVER TOOK PART IN THE CRIMINAL PROCEEDINGS WHERE THE ACCUSED WAS CHARGED, TRIED AND CONVICTED.

HOLDING & RATIO DECIDENDI

The subsidiary liability of the employer is entrenched in our criminal law and jurisprudence. Moreover, petitioner was given ample opportunity to be heard.

- Petitioners were given ample opportunity to present their side: (*The Lower Court admitted their "Urgent Ex Parte Motion for Time to File Necessary Pleadings" and also issued an order suspending the execution of the writ dated 24 October 1980 and as well granted petitioners until 5 November 1980 within which to file their comment and/or opposition to the Motion for Issuance of the Writ of Subsidiary Execution. On 4 November 1980, petitioners filed their Motion for Reconsideration of the order of 24 October 1980 and To Set Aside Subsidiary Writ of Execution. This was opposed by private respondent. On 21 November 1980, an order of denial of the Motion dated 4 November 1980 was issued. A second motion for reconsideration was filed by petitioners which were again opposed by private respondent. Petitioners filed their reply thereto. Acting on the pleadings, respondent judge issued a resolution denying petitioners' second motion for reconsideration.*)
- In the instant case, we find no reason why the subsidiary writ of execution issued against petitioner Aureliana Catacutan should be set aside. To begin with, as in *Yusay and Basilio*, petitioners cannot complain of having been deprived of their day in court. They were duly furnished a copy of respondents' Motion for Subsidiary Writ of Execution to which they filed their Opposition.

  So, too, we find no good ground to order a separate hearing to determine the subsidiary liability of petitioner Aureliana Catacutan, as was ordered in the case of *Pajarito v. Señeris:* to do so would entail a waste of both time and resources of the trial court as the requisites for the attachment of the subsidiary liability of the employer have already been established, to wit: *First*, the existence of an employer-employee relationship. *Second*, the employer is engaged in some kind of industry, land transportation industry in this case as the jeep driven by accused was admittedly a passenger jeep. *Third*, the employee has already been adjudged guilty of the wrongful act and found to have committed the offense in the discharge of his duties. *Finally*, said employee is insolvent. This, in connection to the statutory basis for an employer's subsidiary liability as found in Article 103 of the Revised Penal Code. This liability is enforceable in the same criminal proceeding where the award is made. (Rules of Court, Rule 111, Sec. 1

  PETITION IS DENIED.

JOY ADRANEDA

325 International Flavors and Fragrances (Phil.), Inc. vs. Argos | Quisumbing
G.R. No. 130362, September 10, 2001 |

FACTS

- Petitioner International Flavors and Fragrances (Phils.) Inc., hereafter IFFI, is a corporation organized and existing under Philippine laws. Respondents Merlin J. Argos and Jaja C. Pineda are the general manager and commercial director, respectively, of the Fragrances Division of IFFI.
- In 1992, the office of managing director was created to head the corporation's operation in the Philippines. Hernan H. Costa, a Spaniard, was appointed managing director. Costa and respondents had serious differences. When the positions of the general managers became redundant, respondents agreed to the termination of their services. They signed a "Release, Waiver and Quitclaim" on December 10, 1993. On the same date, Costa issued a "Personnel Announcement" which described respondents as "*persona non grata*" and urged employees not to have further dealings with them.
- Thereafter, respondents filed a criminal complaint for libel against Costa. They also filed a civil case for against Costa and IFFI, in its subsidiary capacity as employer. Herein petitioner IFFI moved to dismiss the complaint.
-

ISSUES & ARGUMENTS

W/N PRIVATE RESPONDENTS CAN SUE PETITIONER FOR DAMAGES BASED ON SUBSIDIARY LIABILITY IN AN INDEPENDENT CIVIL ACTION UNDER ART. 33 DURING THE PENDENCY OF THE CRIMINAL LIBEL CASE AGAINST ITS EMPLOYEE?

HOLDING & RATIO DECIDENDI

NO, RESPONDENTS' SUIT BASED ON SUBSIDIARY LIABILITY IS PREMATURE

- Petitioner avers that the Court of Appeals erred when it treated said complaint as one to enforce petitioner's primary liability under Article 33 of the Civil Code. It asserts that in so doing the appellate court introduced a new cause of action not alleged nor prayed for in respondents' complaint. Petitioner argues that a cause of action is determined by the allegations and prayer in a complaint. **Respondents in their complaint did not allege that IFFI was primarily liable for damages. On the contrary, petitioner says the complaint was replete with references that IFFI was being sued in its subsidiary capacity.**
- The well-established rule is that the allegations in the complaint and the character of the relief sought determine the nature of an action. A perusal of the respondents' civil complaint before the regional trial court plainly shows that respondents is suing IFFI in a subsidiary and not primary capacity insofar as the damages claimed are concerned.
- The prayer of the complaint reads: *"WHEREFORE, it is respectfully prayed that after hearing, this Honorable Court renders judgment against the defendant, Hernan H. Costa and/or against defendant International Flavors and Fragrances (Phil.), Inc., in its subsidiary capacity (subsidiary liability) as an employer..."*
- Nothing could be clearer than that herein respondents are suing IFFI civilly in its subsidiary capacity for Costa's alleged defamatory acts. Moreover, the appellate court could not convert allegations of subsidiary liability to read as averments of primary liability without committing a fundamental unfairness to the adverse party.
- Article 33 of the Civil Code provides specifically that in cases of defamation, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action proceeds independently of the criminal prosecution and requires only a preponderance of evidence. **It does not apply to an action against the employer to enforce its subsidiary civil liability, because such liability arises only after conviction of the employee in the criminal case or when the employee is adjudged guilty of the wrongful act in a criminal action and found to have committed the offense in the discharge of his duties.** Any action brought against the employer based on its subsidiary liability before the conviction of its employee is premature.
- Respondents did not base their civil action on petitioner IFFI's primary liability under Art. 33 but claimed damages from IFFI based on its subsidiary liability as employer of Costa, prematurely.

BON ARCILLA

326 Arambulo vs. Manila Electric Co. | Villa-Real
No. 33229, October 23, 1930 | 55 PHIL 75

FACTS

- Two policeman who were standing on the front platform of car No. 130 (then 20 meters from the corner of Ylaya and Raxa Matanda Sts. Tondo), beside the motorman (Simeon Marzo) and a student-motorman (the one driving), caught sight of Basilisa Pacheco (aged mother of plaintiff), stepping off the curb at the corner to cross Ylaya St. The student-motorman drove 35-40 kph and did not slacken speed until the danger was imminent and could not be averted. When the car came within 5 meters of the old woman, who had by that time reached the tracks, the regular motorman seized the hand gear from the student, applied the brakes and switched on to reverse, causing the electric box overhead to explode. Notwithstanding all these emergency measures, the car hit the woman, throwing her to the ground. She was taken to the hospital where she died 8 days thereafter.
- The motorman referred to was in charge of one of the electric streetcars belonging to defendant Manila Electric. After was charged with homicide by simple negligence, and sentenced to pay the heirs of the deceased P1000, Manila Electric was then held subsidiarily liable for damages.

ISSUES & ARGUMENTS

- **W/N Manila Electric is liable to pay damages to Arambulo.**

Defendant: It is exempt from civil liability. It has used all the diligence of a good father of a family to prevent the accident, taking every precaution to assure itself that the motorman Marzo was careful, experienced and skillful in running the car to be entrusted to him before doing so.

HOLDING & RATIO DECIDENDI

MANILA ELECTRIC CO. LIABLE TO PAY DAMAGES. HOWEVER, ITS SUBSIDIARY CIVIL LIABILITY CAN IN NO CASE EXCEED THAT OF THE PRINCIPAL CIVIL LIABILITY.

- The exemption from civil liability established in Art. 1903 of the Civil Code for all who have acted with the diligence of a good father of a family, is not applicable to the subsidiary civil liability provided in Art. 20 of the Penal Code.

Judgment appealed from MODIFIED. Defendant Manila Electric Company is required to pay plaintiff Arambulo P1,000 indemnity, with legal interest from the promulgation hereof.

327 Yumul vs. Juliano and Pampanga Bus Co. | Laurel
G.R. No. 47690, April 28, 1941 | 72 Phil. 94

FACTS

- Teresita Yumul was struck by a truck of the Pampanga Bus Co., as it was being driven by Juliano.
- Juliano was prosecuted and convicted of homicide through reckless imprudence. However, no pronouncement was made as to the civil liability since the private prosecution reserved its right to file a separate action.
- Juliano was declared in default, and the CFI sentenced him to pay P2,000.00, but absolved Pampanga Bus Co. on the ground that it is exempted from responsibility under Articles 1903 of the Civil Code, since it appears that it exercised all the diligence of a good father of a family to prevent the damage.
- Upon appeal to the CA, the case was certified to this court, it involving only a question of law.

ISSUES & ARGUMENTS

- **W/N Pampanga Bus Co. can be held subsidiarily liable for damages in the event that Juliano is found to be insolvent.**

HOLDING & RATIO DECIDENDI

PAMPANGA BUS CO. SUBSIDIARILY LIABLE TO YUMUL.

- Article 1902 provides: "Civil obligations arising from crimes and misdemeanors shall be governed by the provisions of the Penal Code."
- The lower court should have applied Articles 102[18] and 103[19] to the case at bar.
- While it is true that Article 1903 provides that the subsidiary liability shall cease in case the persons mentioned prove that they exercised all the diligence of a good father of a family to prevent the damage," such liability refers to fault or negligence not punishable by law.
- It is admitted by Pampanga Bus Co. that Juliano was its employee and the chauffeur of its truck. It follows then that Pampanga Bus Co. is subsidiarily liable for the damages caused by the said Juliano under the provisions of the Articles 102 and 103 of the RPC, **and it is no defense for the Pampanga Bus Co. to allege or prove that it exercised all the diligence of a good father of a family in the employment and training of Juliano in order to prevent the damage.**

Decision MODIFIED.

18

19

328 Connel Bros. vs. Aduna| Montemayor
G.R. No. L-4057 March 31, 1952 |SCRA

FACTS

- Defendant **Francisco Aduna**, employed as chauffeur by his co-defendant, **Ex-Meralco Employees Transportation Company**, while driving his co-defendant's passenger buss on F.B. Harrison Street, Rizal City bumped and hit an old mobile car owned by **plaintiff Connel Bros. Company (Phil.).**
- As a result of the collision the automobile fell into a canal and was damaged, Esther P. Boomer and Myrna Nichol who were then passengers in the said car sustained physical injuries which necessitated hospitalization and medical care.
- Francisco **Aduna** was prosecuted and convicted of *damage to property* and *serious physical injuries thru reckless imprudence* and had served his prison sentence.
- At the trial of said criminal case the **Connel Bros.** reserved their right to file the corresponding civil suit for damages. In pursuance of said reservation the present civil action was filed in the lower court to recover damages caused by the criminal negligence committed by defendant **Aduna.**
- **Ex-Meralco Employees Transportation Company:**
  - In carrying out its business, they had been following the same practices and procedure employed by the Manila Electric Company (MERALCO) in exercising due diligence in hiring and supervising its employees
  - They had also scrutinized **Aduna's** previous records as a driver
  - They have been carefully supervising the work of its employees in the field particularly its drivers and conductors
  - The accident or collision subject-matter of this case is the first collision in which a bus or an employee of them has been involved
  - The present case was brought under the provisions of Arts. 1902[20] and 1903[21], of the Civil Code.
  - Barredo vs. Garcia and Almario:
    - The Court in that case tried or sought to enlarge the field of tort or *culpa aquiliana*, believing that the remedy provided by the penal code for the recovery of damages by the party damaged is more burdensome and difficult, particularly in the amount or extent of proof to establish his rights to damages, because to establish the guilt of the offender guilty of negligence, *proof beyond reasonable doubt* is required, whereas in a purely civil action to recover the same damages under Arts. 1902 and 1903 of the Civil Code, only *preponderance of the evidence is required.*
    - The court in that case held that the offended party seeking damages has the right to choose between a criminal action and a civil suit.
- **Connel Bros.**:
  - At the time of the collision, on the back of Francisco Aduna's driver's license appear three entries of penalties and warnings.
- TC:
  - The act of reckless negligence of Aduna causing the damage, is governed by Art. 1092[22] of the Civil Code.
    - Arts. 102 and 103 of the Revised Penal Code which provides for the subsidiary liability of the employer for felonies committed by his servants or employees in the discharge of their duties, should be applied.
    - Arambulo vs. Manila Electric Co:
      - The Electric Company was sued on the basis of its subsidiary liability, and said Electric Company was not allowed to prove and invoke the employment of the diligence of a good father of a family to prevent the accident by carefully selecting its employees.
      - Said defense is available not in cases covered by the penal code but only in those covered by the articles of the Civil Code such as Arts. 1903, 1902 and 1093 thereof.
    -

ISSUES & ARGUMENTS

W/N the TC was correct in ruling that the negligence of Aduna causing the damage is governed by Art. 1092, and not Arts. 1902 and 1903 of the Civil Code.

HOLDING & RATIO DECIDENDI

Yes. The TC was correct in ruling that the negligence of Aduna causing the damage is governed by Art. 1092, and not Arts. 1902 and 1903 of the Civil Code.

- In *Barredo vs. Garcia and Almario*, the liability sought to be imposed upon the employer in that case was not a civil obligation arising from a felony or misdemeanor (crime committed by Pedro Fontanilla) but an obligation imposed by art. 1903 of the Civil Code because of his negligence in the selection and supervision of his servants or employees. In the present case, however, the plaintiffs have

[20] Art. 1902. Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done.

[21] Art. 1903. The obligation imposed by the next proceeding article is inforcible, not only for personal acts and omissions, but also for those of persons for whom another is responsible.
x x x x x x x x x
Owners or directors of an establishment or business are equally liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on occasion of the performance of their duties.
x x x x x x x x x
The liability imposed by this article shall cease in case the persons mentioned therein prove that they exercised all the diligence of a good father of a family to prevent the damage.

[22] Art. 1092. Civil obligations arising from the crimes or misdemeanors shall be governed by the provisions of the Penal Code.

chosen to rely upon the provisions of the Penal Code and have based their action on the result of the criminal case against Francisco Aduna.

- In fact, no evidence to show the negligence of Aduna was submitted except his conviction in the criminal case.
- Furthermore, both Aduna and his employer, the Ex-Meralco Employees Transportation Company, were sued, whereas in the case of Barredo vs. Garcia, only Barredo was sued.

329 Nakpil vs CA, UNITED Construction, Juan A. Carlos and the Philippine Bar Association

GR 128024, May 9, 2000/ Gonzaga-Reyes

FACTS

- Plaintiff-appellant Philippine Bar Association (PBA for short) decided to construct an office building on its 840 square meters lot located at the corner of Aduana and Arzobispo Streets, Intramuros, Manila. For the plans, specifications and design, PBA contracted the services of third-party defendants-appellants Juan F. Nakpil & Sons and Juan F. Nakpil (NAKPILS for short). For the construction of the building, PBA contracted the services of United Construction Company, Inc. (UNITED for short) on an administration basis.
- On August 2, 1968, an unusually strong earthquake hit Manila and its environs and the building in question sustained major damage. The front columns of the building buckled causing the building to tilt forward dangerously. As a temporary remedial measure, the building was shored up by UCCI at the expense of P13,661.28.
- On November 29, 1968, PBA commenced this action for recovery of damages against UCCI and its President and General Manager Juan J. Carlos, claiming that the collapse of the building was caused by defects in the construction. UNITED, in turn, filed a third-party complaint against the NAKPILS, alleging in essence that the collapse of the building was due to the defects in the architects" plans, specifications and design. Roman Ozaeta, the then President of PBA, was included as a third-party defendant for damages for having included Juan J. Carlos, President of UNITED as party defendant.
- PBA moved that the building be demolished but it was denied. When the motion was finally granted, more earthquakes already hit it and caused more damage
- The Commissioner found cause for damage the 3 parties, but the TC. CA, and the SC agreed.
- Thus this MR

ISSUES & ARGUMENTS

Who should shoulder the damages resulting from the partial and the eventual collapse of the building?

HOLDING & RATIO DECIDENDI

Nakpil and UNITED

- A party who negligently causes a dangerous condition cannot escape liability for the natural and probable causes thereof, although the act of a 3rd person or God for which he is not responsible, intervene to precipitate the cause. The wanton negligence of the parties in effecting the plans and designs is equivalent to bad faith.
- When it comes to the five-fold increase in damages, the court said that during the time when the commissioner gave out the rate of damages, wa 20 years before this decision. He did not consider the subsequent earthquakes, nor the tearing of the building.

330 Filinvest Credit vs. IAC | SARMIENTO, J
G.R. No. L-65935, September 30, 1988 | 166 SCRA 155

FACTS

- A case for damages was filed by Nestor B. Sunga Jr., a businessman and owner of the NBS Machineries Marketing and the NAP-NAP Transit.
- Plaintiff alleged that he purchased a passenger minibus Mazda from the Motor center, Inc and for which he executed a promissory note to cover the amount of P62,592.00 payable monthly in the amount of P2,608.00 for 24 months due and payable the 1st day of each month starting May 1, 1978 thru and inclusive of May 1, 1980.
- On the same date, however, a chattel mortgage was executed by him in favor of the Motor center, Inc
- The Chattel Mortgage and Assignment was assigned to the Filinvest Credit Corporation with the conformity of the plaintiff.
- Nestor Sunga claimed that on October 21, 1978, the minibus was seized by two (2) employees of the defendant Filinvest Credit Corporation upon orders of the branch manager Mr. Gaspar de los Santos, without any receipt, who claimed that he was delinquent in the payments of his vehicle.
- The plaintiff reported the loss to the PC and after proper verification from the office of the Filinvest, the said vehicle was recovered from the Crisologo Compound which was later released by Rosario Fronda Assistant Manager of the Filinvest
- The police blotter shows that Nestor Sunga sought the assistance of the Dagupan police and one Florence Onia of the Filinvest explained that the minibus was confiscated because the balance was already past due.
- After verification that his accounts are all in order, Florence Onia admitted it was their fault. The motor vehicle was returned to the plaintiff upon proper receipt.
- The court *a quo* rendered its decision ordering defendant Filinvest to pay the plaintiff Nestor Sunga Jr. the following damages, to wit: (a) Moral Damages P30,000.00(b) Loss on Income of the minibus for three days 600.00 (c) Actual damages 500.00(d) Litigation expenses 5,000.00(e) Attorney's Fees 10,000.00
- IAC affirmed the same in toto except with regard to the moral damages which, under the circumstances of the accounting error incurred by Filinvest, was increased from P30,000.00 to P50,000.00.

ISSUES & ARGUMENTS

- **W/N respondent court erred in increasing the amount of moral damages**

HOLDING & RATIO DECIDENDI

YES

Respondent court committed a grave abuse of discretion in increasing extravagantly the award of moral damages and in granting litigation expenses.

Plaintiff-appellee (respondent Sunga) did not appeal from the decision of the court *a quo* which awarded him the sum of P30,000.00 by way of moral damages.

Well settled is the rule in this jurisdiction that whenever an appeal is taken in a civil case, an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below

Verily the respondent court disregarded such a well settled rule when it increased the award for moral damages from P30,000.00 to P50,000.00, notwithstanding the fact that the private respondent did not appeal from the judgment of the trial court.

There is no dispute that the private respondent, a businessman and owner of the NBS Machineries Marketing and NAP-NAP Transit, is entitled to moral damages due to the unwarranted seizure of the minibus Mazda, allegedly because he was delinquent in the payment of its monthly amortizations, which as stated above, turned out to be incorrect

Such intent tainted private respondent Sunga's reputation in the business community, thus causing him mental anguish, serious anxiety, besmirched reputation, wounded feelings, moral shock, and social humiliation.

Considering, however, that respondent Sunga was dispossessed of his motor vehicle for barely three days and possession of which was restored to him soon after the accounting errors were ironed out, SC ruled that the award of moral damages even in the sum of P30,000.00 is excessive for it must be emphasized that "damages are not intended to enrich the complainant at the expense of a defendant".

The award of moral damages is aimed at a restoration within the limits of the possible, of the spiritual status *quo ante*; and therefore it must be proportionate to the suffering inflicted.

Therefore, petition is partially GRANTED. The award of moral damages is REDUCED to P10,000.00 and the grant of litigation expenses is ELIMINATED. The rest of the judgment is AFFIRMED.

TIN DINO

331 Occena vs. Icamina | Fernan, C.J.
G.R. No. 82146, January 22, 1990 | 181 SCRA 328

FACTS

- On May 31, 1979, herein petitioner Eulogio Occena instituted before the Second Municipal Circuit Trial Court of Sibalom, San Remigio — Belison, Province of Antique, Criminal Case No. 1717, a criminal complaint for Grave Oral Defamation against herein private respondent Cristina Vegafria for allegedly openly, publicly and maliciously uttering the following insulting words and statements: "Gago ikaw nga Barangay Captain, montisco, traidor, malugus, Hudas," which, freely translated, mean: "You are a foolish Barangay Captain, ignoramus, traitor, tyrant, Judas" and other words and statements of similar import which caused great and irreparable damage and injury to his person and honor.
- Private respondent as accused therein entered a plea of not guilty. Trial thereafter ensued, at which petitioner, without reserving his right to file a separate civil action for damages actively intervened thru a private prosecutor.
- After trial, private respondent was convicted of the offense of Slight Oral Defamation and was sentenced to pay a fine of Fifty Pesos (P50.00) with subsidiary imprisonment in case of insolvency and to pay the costs. No damages were awarded to petitioner in view of the trial court's opinion that "the facts and circumstances of the case as adduced by the evidence do not warrant the awarding of moral damages."
-

ISSUES & ARGUMENTS

- **W/N** the decision of the Second Municipal Trial Court of Sibalom, San-Remigio-Belison, Province of Antique constitutes the final adjudication on the merits of private respondent's civil liability; **and**
- **W/N** petitioner is entitled to an award of damages arising from the remarks uttered by private respondent and found by the trial court to be defamatory.

HOLDING & RATIO DECIDENDI

The decision of the Municipal Circuit Trial Court as affirmed by the Regional Trial Court in Criminal Case No. 1709 cannot be considered as a final adjudication on the civil liability of private respondent simply because said decision has not yet become final due to the timely appeal filed by petitioner with respect to the civil liability of the accused in said case. It was only the unappealed criminal aspect of the case which has become final**.**

- We tackle the second issue by determining the basis of civil liability arising from crime. Civil obligations arising from criminal offenses are governed by Article 100 of the Revised Penal Code which provides that "(E)very person criminally liable for a felony is also civilly liable," in relation to Article 2177 of the Civil Code on quasi-delict, the provisions for independent civil actions in the Chapter on Human Relations and the provisions regulating damages, also found in the Civil Code.
- Underlying the legal principle that a person who is criminally liable is also civilly liable is the view that from the standpoint of its effects, a crime has dual character: (1) as an offense against the state because of the disturbance of the social order; and (2) as an offense against the private person injured by the crime unless it involves the crime of treason, rebellion, espionage, contempt and others wherein no civil liability arises on the part of the offender either because there are no damages to be compensated or there is no private person injured by the crime. [3] In the ultimate analysis, what gives rise to the civil liability is really the obligation of everyone to repair or to make whole the damage caused to another by reason of his act or omission, whether done intentional or negligently and whether or not punishable by law. [4]
- Article 2219, par. (7) of the Civil Code allows the recovery of moral damages in case of libel, slander or any other form of defamation This provision of law establishes the right of an offended party in a case for oral defamation to recover from the guilty party damages for injury to his feelings and reputation. The offended party is likewise allowed to recover punitive or exemplary damages.
- It must be remembered that every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown. And malice may be inferred from the style and tone of publication [5] subject to certain exceptions which are not present in the case at bar.
- Calling petitioner who was a barangay captain an ignoramus, traitor, tyrant and Judas is clearly an imputation of defects in petitioner's character sufficient to cause him embarrassment and social humiliation. Petitioner testified to the feelings of shame and anguish he suffered as a result of the incident complained of. [6] It is patently error for the trial court to overlook this vital piece of evidence and to conclude that the "facts and circumstances of the case as adduced by the evidence do not warrant the awarding of moral damages." Having misapprehended the facts, the trial court's findings with respect thereto is not conclusive upon us.
- From the evidence presented, we rule that for the injury to his feelings and reputation, being a barangay captain, petitioner is entitled to moral damages in the sum of P5,000.00 and a further sum of P5,000.00 as exemplary damages.

JAY DUHAYLONGSOD

332 So Ping Bun v. CA| Quisimbing
GR No. 120554. September 21, 1999

Topic:

Interference in Contractual Relation (Under Article 1314, New Civil Code)

Synopsis:

Tek Hua Enterprises is the lessee of Dee C. Chuan & Sons, Inc. in the latter's premises in Binondo but it was So Ping Bun who was occupying the same for his Trendsetter Marketing. Later, Mr. Manuel Tiong asked So Ping Bun to vacate the premises but the batter refused and entered into formal contracts of lease with DCCSI. In a suit for injunction, private respondents pressed for the nullification of the lease contracts between DCCSI and petitioner, and for damages. The trial court ruled in favor of private respondents and the same was affirmed by the Court of Appeals.

There was tort interference in the case at bar as petitioner deprived respondent corporation of the latter's property right. However, nothing on record imputed malice on petitioner; thus, precluding damages. But although the extent of damages was not quantifiable, it does not relieve petitioner of the legal liability for entering into contracts and causing breach of existing ones. Hence, the Court confirmed the permanent injunction and nullification of the lease contracts between DCCSI and Trendsetter Marketing.

FACTS:

- In 1963, Tek Hua Trading Co, through its managing partner, So Pek Giok, entered into lease agreements with lessor Dee C. Chuan & Sons Inc. (DCCSI). Subjects of four (4) lease contracts were premises located at Soler Street, Binondo, Manila. Tek Hua used the areas to store its textiles. The contracts each had a one-year term. They provided that should the lessee continue to occupy the premises after the term, the lease shall be on a month-to-month basis.
- When the contracts expired, the parties did not renew the contracts, but Tek Hua continued to occupy the premises. In 1976, Tek Hua Trading Co. was dissolved. Later, the original members of Tek Hua Trading Co. including Manuel C. Tiong, formed Tek Hua Enterprising Corp., herein respondent corporation.
- So Pek Giok, managing partner of Tek Hua Trading, died in 1986. So Pek Giok's grandson, petitioner So Ping Bun, occupied the warehouse for his own textile business, Trendsetter Marketing.
- On August 1, 1989, lessor DCCSI sent letters addressed to Tek Hua Enterprises, informing the latter of the 25% increase in rent effective September 1, 1989. The rent increase was later on reduced to 20% effective January 1, 1990, upon other lessees' demand. Again on December 1, 1990, the lessor implemented a 30% rent increase. Enclosed in these letters were new lease contracts for signing. DCCSI warned that failure of the lessee to accomplish the contracts shall be deemed as lack of interest on the lessee's part, and agreement to the termination of the lease. Private respondents did not answer any of these letters. Still, the lease contracts were not rescinded.
- On March 1, 1991, private respondent Tiong sent a letter to petitioner, which reads as follows:

March 1, 1991

Dear Mr. So,

Due to my closed (sic) business associate (sic) for three decades with your late grandfather Mr. So Pek Giok and late father, Mr. So Chong Bon, I allowed you temporarily to use the warehouse of Tek Hua Enterprising Corp. for several years to generate your personal business.

Since I decided to go back into textile business, I need a warehouse immediately for my stocks. Therefore, please be advised to vacate all your stocks in Tek Hua Enterprising Corp. Warehouse. You are hereby given 14 days to vacate the premises unless you have good reasons that you have the right to stay. Otherwise, I will be constrained to take measure to protect my interest.

Please give this urgent matter your preferential attention to avoid inconvenience on your part.

Very truly yours,
(Sgd) Manuel C. Tiong

- Petitioner refused to vacate. On March 4, 1992, petitioner requested formal contracts of lease with DCCSI in favor Trendsetter Marketing. So Ping Bun claimed that after the death of his grandfather, So Pek Giok, he had been occupying the premises for his textile business and religiously paid rent. DCCSI acceded to petitioner's request. The lease contracts in favor of Trendsetter were executed.
- In the suit for injunction, private respondents pressed for the nullification of the lease contracts between DCCSI and petitioner and as well prayed for damages. The Trial Court ruled in their favor as upheld by the Court of Appeals.

ISSUE:

WHETHER THE APPELLATE COURT ERRED IN AFFIRMING THE TRIAL COURT'S DECISION FINDING SO PING BUN GUILTY OF TORTUOUS INTERFERENCE OF CONTRACT (Given that no award for damages were given to the private respondents)?

HOLDING & RATIO DECIDENDI

PETITION IS DENIED.

The CA did not err in its decision. There can still be tortuous interference despite no award for damages were given by the Court.

Damage is the loss, hurt, or harm which results from injury, and damages are the recompense or compensation awarded for the damage suffered. One becomes liable in an action for damages for a non-trespassory invasion of another's interest in the private use and enjoyment of asset if *(a) the other has property rights and privileges with respect to the use or enjoyment interfered with, (b) the invasion is substantial, (c) the defendant's conduct is a legal cause of the invasion, and (d) the invasion is either intentional and unreasonable or unintentional and*

actionable under general negligence rules. The elements of tort interference are: *(1) existence of valid contract; (2) knowledge on the part of the third person of the existence of contract; and (3) interference of the third person is without legal justification or excuse.*

In the instant case, it is clear that petitioner So Ping Bun prevailed upon DCCSI to lease the warehouse to his enterprise at the expense of respondent corporation. Though petitioner took interest in the property of respondent corporation and benefited from it, nothing on record imputes deliberate wrongful motives or malice on him.

Section 1314 of the Civil Code categorically provides also that, "*Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.*" Petitioner argues that damage is an essential element of tort interference, and since the trial court and the appellate court ruled that private respondents were not entitled to actual, moral or exemplary damages, it follows that he ought to be absolved of any liability, including attorney's fees.

It is true that the lower courts did not award damages, but this was only because the extent of damages was not quantifiable. We had a similar situation in *Gilchrist*, where it was difficult or impossible to determine the extent of damage and there was nothing on record to serve as basis thereof. In that case we refrained from awarding damages. We believe the same conclusion applies in this case.

While we do not encourage tort interferers seeking their economic interest to intrude into existing contracts at the expense of others, however, we find that the conduct herein complained of did not transcend the limits forbidding an obligatory award for damages in the absence of any malice. The business desire is there to make some gain to the detriment of the contracting parties. Lack of malice, however, precludes damages. But it does not relieve petitioner of the legal liability for entering into contracts and causing breach of existing ones. The respondent appellate court correctly confirmed the permanent injunction and nullification of the lease contracts between DCCSI and Trendsetter Marketing, without awarding damages. The injunction saved the respondents from further damage or injury caused by petitioner's interference.

333 Spouses Custodio vs. CA| Regalado
G.R. No. 116100, February 9, 1996 | 253 SCRA 483

FACTS

- Original plaintiff Pacifico Mabasa died during the pendency of this case and was substituted by Ofelia Mabasa, his surviving spouse.
- Plaintiff owns a parcel of land with a two-door apartment erected thereon. Said property was surrounded by other immovables pertaining to defendants therein.
- As an access to P. Burgos St. from plaintiff's apartment, there are two possible passageways.
- When plaintiff purchased the property, there were tenants occupying the premises and were acknowledged by Mabasa as tenants.
- When on the tenants vacated the apartment, plaintiff saw that there had been built an adobe fence in the first passageway, making it narrower in width. Said adobe wall was constructed by defendants Santoses along their property, which is also along the first passageway.
- Defendant Morato constructed her adobe fence and even extended said fence in such a way that the entire passageway was enclosed. It was then that the remaining tenants of said apartment vacated the area.
- Plaintiff Mabasa filed a civil case of easement of right of way, which was granted by the trial court. Not satisfied with the decision because it did not award damages, plaintiff represented by his heirs raised it to the CA, which affirmed the trial court decision.

ISSUES & ARGUMENTS

- **W/N the award of damages is in order?**

HOLDING & RATIO DECIDENDI

NO. THE AWARD OF DAMAGES HAS NO SUBSTANTIAL LEGAL BASIS.

- The decision of the CA which awarded damages was based solely on the fact that the original plaintiff, Pacifico Mabasa, incurred losses in the form of unrealized rentals when the tenants vacated the leased premises by reason of the closure of the passageway.
- However, the mere fact that the plaintiffs suffered losses does not give rise to a right to recover damages. To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.
- There is a material distinction between damages and injury. Injury is the illegal invasion of a legal right; damage is the hurt, or harm which results from the injury; and damages are the recompense or compensation awarded for the damage suffered. Thus, there can be damage without injury in those instances in which the loss or harm was not the result of a violation of a legal duty. These situations are often called *damnum absque injuria.*
- In order that a plaintiff may maintain an action for the injuries of which he complains, he must establish that such injuries resulted from a breach of duty which the defendant owed to the plaintiff, a concurrence of injury to the plaintiff, and legal responsibility by the person causing it. The underlying basis for the award of tort damages is the premise that an individual was injured in contemplation of law
- In the case at bar, although there was damage, there was no legal injury. Contrary to the claim of private respondents, petitioners could not be said to have violated the principle of abuse of right. The act of petitioners constructing a fence within their lot is a valid exercise of their right as owners, hence not contrary to morals, good customs or public policy. At the time of the construction of the fence, the lot was not subject to any servitudes.
- The proper exercise of a lawful right cannot constitute a legal wrong for which an action will lie, although the act may result in damage to another, for no legal right has been invaded.

334 Air France v. CA | Padilla
G.R. No. 76093 March 21, 1989| 171 SCRA 399

FACTS

- Private respondent Morales, thru his agent, bought an airline ticket from petitioner's Manila ticketing office. The itinerary covered by the ticket included several cities with certain segments thereof restricted by markings of "non endorsable" and "valid on AF (Air France) only."
- While in New York, respondent obtained medical certificates attesting to an ear infection which necessitated medical treatment. After a few more trips to other cities in Europe, he requested to the petitioner (twice) to shorten his trip by deleting some of the cities in his itinerary so that he can go back to Manila and have his ear checked.
- Petitioner informed respondent that as a matter of procedure, confirmation of the Manila ticketing office must be secured before shortening of the route. His requests were eventually denied. This prompted the respondent to buy an entirely new set of tickets to be able to go back home.
- Upon arriving in Manila, respondent sent a letter-complaint to petitioner thru its Manila ticketing office. The petitioner advised the respondent to surrender the unused flight coupons in order to have them refunded but the respondent kept the said coupons and instead, filed a complaint for breach of contract of carriage and damages.
- RTC held in favor of respondent. CA modified the judgment but it was still for the respondent.

ISSUES & ARGUMENTS

- **W/N there was really a breach of contract of carriage on the part of the petitioner, as to justify the award to private respondent of actual, moral, and exemplary damages?**

HOLDING & RATIO DECIDENDI

THERE WAS NO BREACH OF CONTRACT. PETITIONER IS NOT LIABLE.

- International Air Transportation Association (IATA) Resolution No. 275 e, 2., special note reads: "Where a fare is restricted and such restrictions are not clearly evident from the required entries on the ticket, such restrictions may be written, stamped or reprinted in plain language in the Endorsement/Restrictions" box of the applicable flight coupon(s); or attached thereto by use of an appropriate notice." Voluntary changes to tickets, while allowable, are also covered by (IATA) Resolution No. 1013, Art. II, which provides: "1. changes to the ticket requested by the passenger will be subject to carrier's regulations.
- Private respondent wanted a rerouting to Hamburg, Geneva, Rome, Hongkong and Manila which shortened the original itinerary on the ticket issued by AF Manila through ASPAC, its general sales agent. Considering the original restrictions on the ticket, it was not unreasonable for Air France to deny the request. Besides, a recurring ear infection was pleaded as reason necessitating urgent return to Manila. Assuming *arguendo* a worsening pain or discomfort, private respondent appears to have still proceeded to four (4) other cities covering a period of at least six (6) days and leaving open his date of departure from Hongkong to Manila. And, even if he claimed to have undergone medical examination upon arrival in Manila, no medical certificate was presented. He failed to even remember his date of arrival in Manila.
- With a claim for a large amount of damages, the Court finds it unsual for respondent, a lawyer, to easily forget vital information to substantiate his plea. It is also essential before an award of damages that the claimant must satisfactorily prove during the trial the existence of the factual basis of the damages and its causal connection to defendant's acts.
- Air France employees in Hamburg informed private respondent that his tickets were partly stamped "non-endorsable" and "valid on Air France only." Mere refusal to accede to the passenger's wishes does not necessarily translate into damages in the absence of bad faith. To our mind, respondent has failed to show wanton, malevolent or reckless misconduct imputable to petitioner in its refusal to re-route.
- Air France Manila acted upon the advise of its Manila ticketing office in denying private respondent's request. There was no evident bad faith when it followed the advise not to authorize rerouting. At worst, the situation can be considered a case of inadvertence on the part of petitioner's Manila ticketing office in not explaining the non-endorsable character of the ticket. Of importance, however, is the fact that private respondent is a lawyer, and the restriction box clearly indicated the non-endorsable character of the ticket. Omissions by ordinary passengers may be condoned but more is expected of members of the bar who cannot feign ignorance of such limitations and restrictions. An award of moral and exemplary damages cannot be sustained under the circumstances, but petitioner has to refund the unused coupons in the Air France ticket to the private respondent.

335 Ateneo De Manila Univ vs. CA| Gutierrez
G.R. No. L- 56180, Oct 16, 1986 | 145 SCRA 100

FACTS

- In a letter-complaint addressed to the Dean of Arts&Sciences of Ateneo (Fr. Welsh), Carmelita Mateo, waitress in the caf of Cervini Hall charged Juan Ramon Guanzon, boarder & college freshman, with unbecoming conduct.
- Juan Ramon allegedly cursed and hit Carmelita in public when Juan Ramon was asked to wait for his order (siopao).
- The univ conducted an investigation and dismissed Juan Ramon.
- Juan Ramon's parents filed a complaint for damages against the univ stating that Juan Ramon was expelled w/out giving him a fair trial and that they were prominent residents of Bacolod.
- The lower vourt found for the Guanzons and ordered the univ to pay P92 as actual damages; 50K moral; 5K atty's fees.
- CA initially reversed the lower court but upon MR, reinstated lower court's ruling.
-

ISSUES & ARGUMENTS

- W/N respondents are entitled to the award of damages?

HOLDING & RATIO DECIDENDI

NO. THE UNIV OBSERVED DUE PROCESS, NO BASIS FOR THE AWARD OF DAMAGES.

- After the incident, the Board of Discipline conducted an investigation by interviewing the people who witnessed the incident.
- The accused was fully informed of the accusation against him and he admitted the truth of the charge.
- Notice of the meeting was posted on the bulletin board but Juan Ramon did not care to inform his parents/guardians.
- The Board decided unanimously that Juan Ramon be dropped from the roll of students.
- When the decision was about to be carried out, Juan Ramon voluntarily applied for honorable dismissal.
- The parents of Juan Ramon arranged for a full refund of tuition fees.
- Juan Ramon was never out of school as he was admitted at De La Salle College and was later on transferred to another Jesuit school.
- Juan Ramon was intelligent and mature enough to know his responsibilities and he was fully cognizant of the gravity of his offense.
- The fact that he chose to remain silent and did not inform his parents about the case is not the fault of the univ.
- The penalty was based on reasonable rules and regulations applicable to all students guilty of the same offense.
- No bad faith, malice on the part of Ateneo.

336 PAL V. MIANO

G.R. No. 106664 March 8, 1995

FACTS:

- On August 31, 1988, private respondent took petitioner's flight PR 722, Mabuhay Class, bound for Frankfurt, Germany. He had an immediate onward connecting flight via Lufthansa flight LH 1452 to Vienna, Austria. At the Ninoy Aquino International Airport, he checked-in one brown suitcase weighing twenty (20) kilograms but did not declare a higher valuation. He claimed that his suitcase contained money, documents, one Nikkon camera with zoom lens, suits, sweaters, shirts, pants, shoes, and other accessories.
- Upon private respondent's arrival at Vienna via Lufthansa flight LH 1452, his checked-in baggage was missing. He reported the matter to the Lufthansa authorities. After three (3) hours of waiting in vain, he proceeded to Piestany, Czechoslovakia. Eleven (11) days after or on September 11, 1988, his suitcase was delivered to him in his hotel in Piestany, Czechoslovakia. He claimed that because of the delay in the delivery of his suitcase, he was forced to borrow money to buy some clothes, to pay $200.00 for the transportation of his baggage from Vienna to Piestany, and lost his Nikkon camera.
- In November 1988, private respondent wrote to petitioner a letter demanding: (1) P10,000.00 cost of allegedly lost Nikkon camera; (2) $200.00 for alleged cost of transporting luggage from Vienna to Piestany; and (3) P100,000.00 as damages. In its reply, petitioner informed private respondent that his letter was forwarded to its legal department for investigation.
- Private respondent felt his demand letter was left unheeded. He instituted an action for Damages docketed as Civil Case No. 89-3496 before the Regional Trial Court of Makati.
- Petitioner contested the complaint. It disclaimed any liability on the ground that there was neither a report of mishandled baggage on flight PR 722 nor a tracer telex received from its Vienna Station. It, however, contended that if at all liable its obligation is limited by the Warsaw Convention rate.
- Petitioner filed a Third-Party Complaint against Lufthansa German Airlines imputing the mishandling of private respondent's baggage, but was dismissed for its failure to prosecute.
- In its decision, the trial court observed that petitioner's actuation was not attended by bad faith. Nevertheless, it awarded private respondent moral and exemplary damages and attorney's fees hence this petition for review.

ISSUE:

Whether or not trial court erred in awarding moral and exemplary damages?

HOLDING & RATION DECIDENDI

YES. In breach of contract of carriage by air, moral damages are awarded only if the defendant acted fraudulently or in bad faith. *Bad faith* means a breach of a known duty through same motive of interest or ill will.

The trial court erred in awarding moral damages to private respondent. The established facts evince that petitioner's late delivery of the baggage for eleven (11) days was not motivated by ill will or bad faith. In fact, it immediately coordinated with its Central Baggage Services to trace private respondent's suitcase and succeeded in finding it. At the hearing, petitioner's Manager for Administration of Airport Services Department Miguel Ebio testified that their records disclosed that Manila, the originating station, did *not* receive any *tracer telex*. A *tracer telex*, an airline lingo, is an action of any station that the airlines operate from whom a passenger may complain or have not received his baggage upon his arrival. It was reasonable to presume that the handling of the baggage was normal and regular. Upon inquiry from their Frankfurt Station, it was however discovered that the interline tag of private respondent's baggage was accidentally taken off. According to Mr. Ebio, it was customary for destination stations to hold a tagless baggage until properly identified. The *tracer telex*, which contained information on the baggage, is matched with the tagless luggage for identification. Without the *tracer telex*, the color and the type of baggage are used as basis for the matching, thus, the delay.

We can neither sustain the award of exemplary damages. The prerequisite for the award of exemplary damages in cases of contract or quasi-contract is that the defendant acted in wanton, fraudulent, reckless, oppressive, or malevolent manner. The undisputed facts do not so warrant the characterization of the action of petitioner.

The award of attorney's fees must also be disallowed for lack of legal leg to stand on. The fact that private respondent was compelled to litigate and incur expenses to protect and enforce his claim did not justify the award of attorney's fees. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. Petitioner is willing to pay the just claim of $200.00 as a result of the delay in the transportation of the luggage in accord with the Warsaw Convention. **Needless to say, the award of attorney's fees must be deleted where the award of moral and exemplary damages are eliminated.**

J.C. LERIT

337 DBP v. CA | Davide, Jr.
G.R. No. 118342 January 5, 1998

FACTS

- Lydia P. Cuba is a grantee of a Fishpond Lease the Government; She obtained several loans from the Development Bank of the under the terms stated in the Promissory Notes; As security for said loans, Cuba executed two Deeds of Assignment of her Leasehold Rights;
- Cuba failed to pay her loan on the scheduled dates thereof in accordance with the terms of the Promissory Notes; **Without foreclosure proceedings, whether judicial or extra-judicial, DBP appropriated the Leasehold Rights of Cuba over the fishpond in question;**
- After DBP has appropriated the Leasehold Rights of Cuba over the fishpond in question, DBP, in turn, executed a Deed of Conditional Sale of the Leasehold Rights in favor of Cuba over the same fishpond in question;
- In the negotiation for repurchase, Cuba addressed two letters to the Manager DBP, Dagupan City. DBP thereafter accepted the offer to repurchase in a letter addressed to Cuba;
- After the Deed of Conditional Sale was executed in favor of Cuba , a new Fishpond Lease Agreement was issued by the Ministry of Agriculture and Food in favor of Cuba only, excluding her husband;
- **Cuba failed to pay the amortizations stipulated in the Deed of Conditional Sale**; After Cuba failed to pay the amortization as stated in Deed of Conditional Sale, she entered with the DBP a temporary arrangement whereby in consideration for the deferment of the Notarial Rescission of Deed of Conditional Sale, Cuba promised to make certain payments;
- DBP thereafter sent a Notice of Rescission thru Notarial Act, and which was received by Cuba ; After the Notice of Rescission, DBP took possession of the Leasehold Rights of the fishpond in question;
- That after DBP took possession of the Leasehold Rights over the fishpond in question, DBP thereafter executed a Deed of Conditional Sale in favor of defendant Agripina Caperal through a public sale; Thereafter, Caperal was awarded Fishpond Lease Agreement.

ISSUES & ARGUMENTS

- **W/N Cuba is entitled to recover damages**

HOLDING & RATIO DECIDENDI

YES

Article 2199 provides:
Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.
Actual or compensatory damages cannot be presumed, but must be proved with reasonable degree of certainty. A 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. It must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne.
In the present case, the trial court awarded in favor of CUBA P1,067,500 as actual damages consisting of P550,000 which represented the value of the alleged lost articles of CUBA and P517,500 which represented the value of the 230,000 pieces of bangus allegedly stocked in 1979 when DBP first ejected CUBA from the fishpond and the adjoining house. This award was affirmed by the Court of Appeals.
We find that the alleged loss of personal belongings and equipment was not proved by clear evidence. Other than the testimony of CUBA and her caretaker, there was no proof as to the existence of those items before DBP took over the fishpond in question. As pointed out by DBP, there was not "inventory of the alleged lost items before the loss which is normal in a project which sometimes, if not most often, is left to the care of other persons." Neither was a single receipt or record of acquisition presented.
Curiously, in her complaint dated 17 May 1985, CUBA included "losses of property" as among the damages resulting from DBP's take-over of the fishpond. Yet, it was only in September 1985 when her son and a caretaker went to the fishpond and the adjoining house that she came to know of the alleged loss of several articles. Such claim for "losses of property," having been made before knowledge of the alleged actual loss, was therefore speculative. The alleged loss could have been a mere afterthought or subterfuge to justify her claim for actual damages.
With regard to the award of P517,000 representing the value of the alleged 230,000 pieces of bangus which died when DBP took possession of the fishpond in March 1979, the same was not called for. Such loss was not duly proved; besides, the claim therefor was delayed unreasonably. From 1979 until after the filing of her complaint in court in May 1985, CUBA did not bring to the attention of DBP the alleged loss.
The award of actual damages should, therefore, be struck down for lack of sufficient basis.
In view, however, of DBP's act of appropriating CUBA's leasehold rights which was contrary to law and public policy, as well as its false representation to the then Ministry of Agriculture and Natural Resources that it had "foreclosed the mortgage," an award of moral damages in the amount of P50,000 is in order conformably with Article 2219(10), in relation to Article 21, of the Civil Code. Exemplary or corrective damages in the amount of P25,000 should likewise be awarded by way of example or correction for the public good. 20 There being an award of exemplary damages, attorney's fees are also recoverable.

JON LINA

338 People v Roland Paraiso | Per Curiam
G.R. No. 127840 November 29, 1999 | 319 SCRA 422

FACTS

- Paraiso and a certain John Doe confederating and mutually helping one another, with intent to gain, by means of violence and intimidation, willfully, unlawfully and feloniously entered the home of Lolita Tigley. Once inside, took, stole and carried away: a Role watch, assorted jewelries, 200 in cash, telescope and a video camera. On the occasion thereof, with intent to kill, dragged Lolita inside a room and thereafter assaulted, attacked and stabbed her on different parts of the body which caused her death shortly thereafter.
- These facts were corroborated by eyewitness Sheila Alipio (18yo), niece of the victim, who delivered a 1-gallon water container to Lolita's house during the time of the attack, and was pushed inside the house upon entry by one of the accused. She found Paraiso armed with a gun pointed at her aunt's temple while the other accused had a Batangas fan knife, which the latter poked at her right side.
- The 3 sons of Lolita : Epifanio (15yo), Ferdinand (17yo), and Kim (13yo), who were tied and herded upstairs to one room with Sheila, corroborated Sheila's testimony before the NBI.
- NBI Medico Dr. Zaldarriaga explained the Necropsy Report of the victim and identified her cause of death as: hemorrhage, severe, secondary to stab wounds of the chest
- The RTC of Cebu adjudged: Roland Paraiso and a certain John doe guilty of robbery with homicide with 3 aggravating circumstances (committed in the dwelling, abuse of superior strength and disregard of age and sex). They were sentenced to death (by lethal injection) and made liable to pay:
    - actual damages of P200 (cash stolen) + 179,800 (assorted jewelries, Rolex wristwatch, videocam)
    - exemplary damages of 100k
    - moral damages of 200k
- Case is now on automatic appeal.

ISSUES & ARGUMENTS

- CRIM: W/N Paraiso was guilty?
- **TORTS: W/N the damages awarded were proper?**

HOLDING & RATIO DECIDENDI

GUILTY.

- The alibi that Paraiso was home, as testified by his father, will not proper because in fact he lived 5 houses away only from Lolita's home. Court did not give credence to his alibi because it doesn't discount the possibility that he could've been in the scene and the fact that it was a self-serving testimony of his father.
- They reported the case 2 days later after the incident, but it took 10 months before he was identified considering he has been a neighbor for 7 years. Court held that fact of delay in reporting the crime is not sufficient to doubt the truthfulness of the accusation. Witnesses were able to accurately describe and identify the accused later. The Court took note that the incident lasted for several minutes that the children had sufficient time to develop some kind of familiarity with the accused.
- Paraiso claim non-flight as indication of innocence, but the court held that no law or principle guarantees that non-flight per se is a conclusive proof of innocence.
- Crime was aggravated by the fact that it was committed in the dwelling of the victim and abuse of superior strength. Disregard of sex and age was not present since robbery is a crime against property; this latter aggravating circumstance only applies to crimes against person or honor.

DAMAGES WERE MODIFIED.

- CIVIL INDEMNITY FOR DEATH: **P50,000** (basis, under jurisprudence PPL v Espanola). Fact death and accused's responsibility merits such award; no further proof is necessary to determine award.
- ACTUAL DAMAGES is premised upon competent proof and best evidence obtainable. In this case, only the **P200** is the only amount was sufficiently proven by prosecution. Actual damages were reduced to P200. The 178K valuation of jewelries prepared by Epifanio Sr (the husaband of victim) and the P47,600 burial expense prepare by Linda Alipio (sister-in-law of victim) were not proven, since both of them were not presented as prosecution witnesses.
- EXEMPLARY DAMAGES are awarded after proof that 1 or more aggravating circumstances (AC) attended the crime. Since only 2 AC were present, amount was reduced to **P50,000.**
- MORAL DAMAGES are awarded to compensate the victim (and/or the heirs) for injuries to their feelings; it is not awarded to enrich the heirs of the victim. Court reduced the amount to **P100,000.**

DIANE LIPANA

339 Victory Liner vs. Heirs of Malecdan | Mendoza
G.R. No. 154278, December 27, 2002 |

FACTS

- While crossing the National Highway on his way home from the farm a Dalin Liner bus on the southbound lane stopped to allowed farmer Malecdan and hi carabao tp cross. While he was crossing the highway, a bus of petitioner Victory Liner, driven by Joson bypassed the Dalin bus and hit farmer Malecdan. As a result, Malecdan was thrown off the carabao, while the beast toppled over. The Victory Liner bus sped past the old man, while the Dalin bus proceeded to its destination without helping him.
- The incident was witnessed by Malecdan's neighbor, Lorena, who was resting in a nearby waiting shed after working on his farm. Malecdan sustained a wound on his left shoulder, from which bone fragments protruded (his carabao died). He was taken by Lorena and another person to the Hospital where he died a few hours after arrival. Subsequently, a criminal complaint for reckless imprudence resulting in homicide and damage to property was filed against the
- Actual, Moral and other damages were awarded to him in the manner as follows: a. P50,000.00 as death indemnity; b. P88,339.00 for actual damages; c. P200,000.00 for moral damages; d. P50,000.00 as exemplary damages; e. Thirty percent (30%) as attorney's fees of whatever amount that can be collected by the plaintiff; and f. The costs of the suit.

ISSUES & ARGUMENTS

- **W/N Victory Liner is liable for Actual damages when there are no receipts to substantiate Malecdan's claim.**

HOLDING & RATIO DECIDENDI

VICTORY LINER IS LIABLE BUT THE AMOUNT WAS REDUCED

- To justify an award of actual damages, there should be proof of the actual amount of loss incurred in connection with the death, wake or burial of the victim. We cannot take into account receipts showing expenses incurred some time after the burial of the victim, such as expenses relating to the 9th day, 40th day and 1st year death anniversaries. In this case, the trial court awarded P88,339.00 as actual damages. While these were duly supported by receipts, these included the amount of P5,900.00, the cost of one pig which had been butchered for the 9th day death anniversary of the deceased. This item cannot be allowed. We, therefore, reduce the amount of actual damages to P82,439.00.00.

340 Refractories Corporation of the Philippines v. IAC and Firestone Ceramic |Regalado
G.R. No. 70839, August 17, 1989| 176 SCRA 539

FACTS

- In 1980, Refractories Corporation of the Philippines (Refractories) imported from Japan around 250 metric tons of magnesite "ube" green and magnesia clinker
- When the shipment arrived, they were discovered to be water-damaged and unfit for consumption hence they were stored in its warehouse and as a consequence, it declared the whole cargo a total loss and filed a claim with its insurer, Filriters Guaranty Assurance Corporation (Filriters)
- Subsequently, with the knowledge and consent of Refractories, Filriters placed said shipment on bid for salvage dispose and, in the public auction held by virtue thereof, Sangalang, acting for and in behalf of Firestone Ceramic, Inc. (Firestone), submitted a sealed bid, which resulted in awarding the shipment to it as the highest bidder
- After full payment of the price of the goods, Firestone attempted to withdraw the goods from the warehouse of Refractories, but it refused to release the same on the ground that it had not received its insurance claim payment and the question of whether or not the goods were exempt from customs duties and taxes had yet to be resolved. Later, Refractories withdrew its objection after entering into an agreement with Firestone
- When Firestone paid the custom duties and taxes on the goods, Refractories again refused to release the goods and demanded storage fees claiming that there was delay on the part of Firestone in withdrawing the goods, to which Firestone refused to pay
- Firestone then filed an action for specific performance and damages against Filriters and Refractories. During the pendency of the case, Firestone was able to obtain delivery of 159.28 metric tons of the cargo upon a deposit of the storage fee
- The CFI rendered judgment finding that it was Refractories which prevented the immediate removal of the cargo and if there was any delay on the part of Firestone, the same was caused by the imposition of custom duties and taxes, *and ordered them to pay Firestone jointly and severally the sum of P 234,000.00 as and for actual and compensatory damages*, and for attorney's fees and expenses of litigation
- On appeal, the IAC affirmed with modification the decision of the CFI regarding the interest which it reduced to 12% per annum

ISSUES & ARGUMENTS

- **W/N the action of Firestone is proper entitling it the damages awarded**

HOLDING & RATIO DECIDENDI

THE ACTION FOR SPECIFIC PERFORMANCE WAS JUSTIFIED, BUT THE AWARD FOR DAMAGES AND ATTORNEY'S FEES MUST BE MODIFIED

- Refractorie's demand for payment of storage fees was not one of Firestone's obligations under the agreement, hence there was no need to pay the same before the goods in question could be released
- However, with respect to the awards for damages and attorney's fees, the judgment of the trial court, as affirmed by IAC, require modification. Article 2219 of the Civil Code is explicit as to the requirements for entitlement to actual or compensatory damages, that is, that "(e)xcept as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved." Indeed, before the award of actual or compensatory damages can be made, adequate proof of the pecuniary loss suffered is indispensable. These factual and legal bases must be clearly established and reliance on mere speculation, conjecture or guesswork on the part of the trial court will demand the reversal of the award. The same is true if the proof is flimsy and unsubstantiated
- The foregoing considerations appear to have been lost upon the trial court when it awarded two components of actual and compensatory damages, one for P234,000.00 and another in the sum of P276,672.00 in case of failure to deliver the remaining 96 tons of said water-damaged magnesite and magnesia clinker. With respect to the first, the absence of actual proof thereon to justify the same is evident from the records and transcripts of the proceedings in the case. Other than the recitation of the reliefs prayed for in the complaint, no evidence with respect to said damages was ever pleaded or adduced in court
- Likewise, the award of P276,672.00 which Refractories was ordered to pay is not sustained by the evidence. Such amount was claimed to be equivalent to the insurance payment, but no reason has been advanced, nor is any apparent, as to why the measure of the amount to be paid by Refractories in case of nondelivery of the aforesaid balance of the shipment should be the insurance amount due from Filriters. The agreement is clear that the amount to be paid to Firestone in case of shortage or deficiency in delivery is P450.00 per metric ton. This amount is in fact the same monetary basis of the bid of Firestone which it actually paid for the salvaged cargo. Thus, if ever there should be any pecuniary loss because of the non-delivery of the goods, it should not be based on the insurance coverage or proceeds which would be due only to Refractories because of the declaration of total loss of the cargo since this represents the indemnity for the amount spent in importing the goods and is the value thereof at the time of the loss. Whatever additional damages may be suffered by Firestone because of non-delivery or incomplete delivery shall be covered by the legal interest on the principal amount due, which is 6% per annum from default

Petition DISMISSED; Decision MODIFIED.

KATH MATIBAG

341 David v. CA| J.
G.R. No. **111168** | 290 SCRA 727
Actual Damages

FACTS

- On March 28, 1981, at about 10:00 p.m., while the Nora brothers Arturo, Arnel, Noel and Narciso were walking along Flerida Street in Malabon, Metro Manila on their way home to Capitan Tiago Street, they saw petitioner near the compound of his house. Noel, the deceased, confronted him about derogatory remarks allegedly made by the latter. Petitioner ran to his house to get a gun. When the Nora brothers reached the intersection of Flerida and Capitan Tiago Streets, he shouted at them *Putang ina ninyo* and other epithets, and then fired four times at them. One shot hit Noel, killing him. Another shot hit Narciso Nora on the ankle. Another nearly hit the zipper of Arturo Nora.
- After trial, petitioner was found guilty as charged. And was ordered to pay P37,000 as actual damages.

ISSUES & ARGUMENTS

- **W/N the amount of actual damages awarded is proper**

HOLDING & RATIO DECIDENDI

- Only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victim should be allowed. The award of actual damages cannot be based on the allegation of a witness without any tangible document to support such claim.

342 PNOC Shipping and Transport Corporation vs. CA| Romero
G.R. No. 107518, October 8, 1998 | 297 SCRA 402

FACTS

- The M/V Maria Efigenia XV, owned by Maria Efigenia Fishing Corporation collided with the vessel Petroparcel which at that time was owned by Luzon Stevedoring Corporation (LSC).
- The Board of Marine Inquiry declared Petroparcel to be at fault. After unsuccessful demands on LSC, Marie Efigenia sued the LSC and the Petroparcel captain before the CFI. It prayed for an award of P692,680.00, allegedly representing the value of the fishing nets, boat equipment, and cargoes.
- During the pendency of the case, petitioner PNOC sought to be substituted in the place of LSC as it had already acquired ownership of Petroparcel. Meanwhile, Maria Efigenia sought to amend its complaint by also claiming for the amount of P600,000.00 as the value of the vessel, and alleging that it had also incurred unrealized profits and lost business opportunities.
- The lower court ordered PNOC to pay Maria Efigenia, based on some documentary evidence presented by the latter (in the form of price quotations). The CA affirmed in toto. Hence the instant recourse.

ISSUES & ARGUMENTS

- **W/N the award of actual damages was proper.**

HOLDING & RATIO DECIDENDI

AWARD OF ACTUAL DAMAGES IMPROPER FOR LACK OF EVIDENTIARY BASIS THEREFOR. HOWEVER, THE AWARD OF NOMINAL DAMAGES IS IN ORDER.

- Under Article 2199 of the NCC, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty.
- In actions based on torts and quasi-delicts, actual damages include all the natural and probable consequences of the act or omission complained of. There are two kinds: one is the loss of what a person already possesses (*dano emergente*), and the other is the failure to receive as a benefit that which would have pertained to him (*lucro cesante*).
- In the case of profit-earning chattels, what has to be assessed is the value of the chattel as to its owner as a going concern *at the time and place of the loss*, and this means, at least in the case of ships, that regard must be had to existing and pending engagements.
- If the value of the ship reflects the fact that it is in any case certain of profitable employment, then nothing can be added to that value in respect of charters actually lost, since it would compensate the plaintiff twice over. On the other hand, if the ship is valued without reference to its actual future engagements, then it may be necessary to add to the value the anticipated profit.
- To enable an injured party to recover actual or compensatory damages, he is required to prove the actual amount of loss with reasonable degree of certainty premised upon competent proof and on the best evidence available. He must establish his case by a preponderance of evidence. Damages cannot be presumed by the courts, in making an award it must point out specific facts that could afford a basis for measuring such damages.
- In this case, actual damages were proven through the sole testimony of Maria Efigenia's general manager and certain pieces of documentary evidence. The price quotations are ordinary private writings, and should have been proffered along with the testimony of the authors thereof. In the absence of which, they partake of hearsay evidence. Damages may not be awarded on the basis of hearsay evidence.
- Nonetheless, if there is lack of sufficient proof as to the actual damages suffered, the complainant is entitled to nominal damages.

CA decision MODIFIED.

CHRISSIE MORAL

343 Bank of America vs. American Realty Corp | Buena
G.R. No. 133876, December 29, 2999|

FACTS

- Petitioner Bank of America NT & SA (BANTSA) is an international banking and financing institution duly licensed to do business in the Philippines, while private respondent American Realty Corporation (ARC) is a domestic corporation. Bank of America International Limited (BAIL), on the other hand, is a limited liability company organized and existing under the laws of England.
- BANTSA and BAIL on several occasions granted three major multi-million United States (US) Dollar loans to three (3) corporate borrowers all of which are existing under and by virtue of the laws of the Republic of Panama and are foreign affiliates of private respondent.
- Due to the default in the payment of the loan amortizations, BANTSA and the corporate borrowers signed and entered into restructuring agreements. As additional security for the restructured loans, private respondent ARC as third party mortgagor, executed two real estate mortgages over its parcels of land including improvements thereon located in Bulacan.
- Eventually, the corporate borrowers defaulted in the payment of the restructured loans prompting petitioner BANTSA to file civil actions before foreign courts for the collection of the principal loan. Thereafter, petitioner BANTSA filed before the Office of the Provincial Sheriff of Bulacan, an application for extrajudicial foreclosure of real estate mortgage. After due publication and notice, the mortgaged real properties were sold at public auction in an extrajudicial foreclosure sale.
- Private respondent filed before the Pasig RTC an action for damages against the petitioner, for the latter's act of foreclosing extrajudicially the real estate mortgages despite the pendency of civil suits before foreign courts for the collection of the principal loan.

ISSUES & ARGUMENTS

W/N petitioner is liable to pay damages to private respondent ARC for extradjudicially foreclosing on the property despite the pending civil actions in foreign courts?

HOLDING & RATIO DECIDENDI

PETITIONER LIABLE FOR ACTUAL AND EXEMPLARY DAMAGES.

- Petitioner, by the expediency of filing four civil suits before foreign courts, necessarily abandoned the remedy to foreclose the real estate mortgages constituted over the properties of third-party mortgagor and herein private respondent ARC. Moreover, by filing the four civil actions and by eventually foreclosing extrajudicially the mortgages, petitioner in effect transgressed the rules against splitting a cause of action well-enshrined in jurisprudence and our statute books.
- We hold that the private respondent is entitled to the award of actual or compensatory damages inasmuch as the act of petitioner BANTSA in extrajudicially foreclosing the real estate mortgages constituted a clear violation of the rights of herein private respondent ARC, as third-party mortgagor.
- **Actual or compensatory damages** are those recoverable because of pecuniary loss in business, trade, property, profession, job or occupation and the same must be proved, otherwise if the proof is flimsy and non-substantial, no damages will be given. Indeed, the question of the value of property is always a difficult one to settle as valuation of real property is an imprecise process since real estate has no inherent value readily ascertainable by an appraiser or by the court. The opinions of men vary so much concerning the real value of property that the best the courts can do is hear all of the witnesses which the respective parties desire to present, and then, by carefully weighing that testimony, arrive at a conclusion which is just and equitable
- In the instant case, petitioner assails the Court of Appeals for relying heavily on the valuation made by Philippine Appraisal Company. In arriving at the amount of actual damages, the trial court justified the award by presenting the following ratiocination: The properties consist of about 39 hectares which are not distant from Metro Manila and are easily accessible through well-paved roads; The properties are suitable for development into a subdivision for low cost housing; The pigpens which used to exist in the property have already been demolished; Houses of strong materials are found in the vicinity of the property, and the vicinity is a growing community; It will not be hard to find interested buyers of the property; etc.
- Similarly, we affirm the grant of exemplary damages although the amount of Five Million Pesos (P5,000,000.00) awarded, being excessive, is subject to reduction. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages. Considering its purpose, it must be fair and reasonable in every case and should not be awarded to unjustly enrich a prevailing party.

Petition denied. Decision of the Court of Appeals affirmed.

MAUI MORALES

344 BPI v. Leobrera |Pardo, J.
G.R. No. 137147. January 29, 2002

FACTS

- Leobrera is engaged in shell manufacturer, retail and shell craft export. He has been a valued client of Bank of Philippine Islands
- He obtained a loan of P500k with BPI, and executed a real estate mortgage over certain properties as a form of security.
- Darlene Shells (with which Leobrera had export transaction) sent a remittance in favor of Leobrera through BPI amounting to $8K+. Unfortunately, however, the latter maliciously and in bad faith, refused to accept the said remittance and credit the same to Leobrera's account with BPI. The latter reasoned that the name of the beneficiary in the remittance was not "Carfel Shell Export" but 'Car Sales Shell Export,' notwithstanding earlier and repeated advice by plaintiff-appellee Leobrera upon defendant-appellant BPI that the remittance of Carfel Shell Export from Darlene Shells is forth-coming, and that it could have verified that the correct beneficiary thereof is Carfel Shell Export.
- From the evidence on record, plaintiff-appellee Leobrera already had export business transactions with defendant-appellant BPI for more than ten (10) years.
- Because of this, Leobrera suffered business losses and its two real properties mortgaged to BPI was foreclosed
- RTC ruled in favor of Leobrera and awarded him, among others, P1M actual damages, this was affirmed by the CA

ISSUES & ARGUMENTS

W/N the Court of Appeals erred in awarding actual and moral damages and attorney's fees in amounts that were excessive and exhorbitant.

HOLDING & RATIO DECIDENDI

Yes.

- Whether there was preponderance of evidence to support an award of damages and whether the act from which liability might arise exists, are factual questions. However, the award of P1,000,000.00 as actual damages was not fully supported by evidence. The loss that respondent could only show was the $1,763.50 letter of credit and the remittance of $8,350.94 (totalling $10,114.44).
- the SC therefore reduced the award of actual damages to P200K.

345 Talisay-Silay Milling Co. vs. Associacion de Agricultores de Talisay-Silay, Inc. | Feliciano, J.:
G.R. No. 91852, August 15, 1995 | 247 SCRA 361

FACTS

- EO 525 created Mill District No. 44, also known as the Talisay-Silay Mill District composed of the Talisay-SIlay Milling Co. and its adherent plantations
- EO 900 proportionately distributed among the various mill districts in the Philippines the entire quota of sugar to be exported from the Philippines to the United States
- A state national emergency was declared in Dec., 1934 creating a huge surplurs of unmarketable sugar, hence the Philippine legislature enacted the 'Sugar Limitation Act' which provided that the Tydings Mc-Duffie Act, insofar as the production of Sugar is concerned, would remain in force for 3 years commencing with the 1931-1932 crop year, unless the Governor-General determined that the state of emergency declared had ceased
- On June, 1957, Congress approved RA 1825 which governed the transfer, under certain conditions, of a planter's sugar production allowance or quota from one sugar mill to another
    - Sec. 4 provides: 'The production allowance or quota corresponding to each piece of land under the provisions of this act shall be deemed to be an improvement attaching to the land entitled thereto. In the absence of a milling contract or contracts, or where such milling contract or contract shall have expired, such production allowance or quota shall be transferable preferable within the same district in accordance with such rules and regulations as may be issued by the Sugar Quota Office: *Provided that a plantation owner may transfer his production allowance or quota from one district to another when the following conditions exist*: *(a) when there is no milling contract between the planter and miller or when said contracts shall have expired*; *and (b) when the mill of the district in which the land of the planter lies is not willing to give him the participation laid down in section one of Republic Act Numbered Eight Hundred Nine regarding the division of shares between the sugar mill and plantation owner.* (Emphasis supplied)'
- Petitioners filed a complaint against respondents for transferring its quota in violation of the said provision and was granted
- On appeal, the CA reduced the award of damages from approximately P15.4M to only P1M, hence the present petition

ISSUES & ARGUMENTS

- **W/N the CA erred in reducing the amount of damages**
- **W/N the amount of damages awarded by the TC is supported by the evidence of record**

HOLDING & RATIO DECIDENDI

YES

- Fist, it must be noted that AATSI was found to have violated the provision of Sec. 4, RA 1825 for non-compliance with the 2nd requirement
- Now, the question of the propriety of the decrease of the awarded damages was based on the fact that petitioners failed to amend their complaint (Rule 10, Sec. 5) to conform to the evidence presented during trial which showed that TSMC and TSICA suffered damages amounting to more than P1M by virtue of the illegal transfer of export sugar quota from TSMC to FFMCI
- The court held that if the facts shown entitled plaintiff to relief other than that asked for, no amendment to the complaint was necessary, especially where defendant had himself raised the point on which recovery was based
    - The appellate court could treat the pleadings as amended to conform to the evidence although the pleadings were actually not amended
    - The rule on amendment need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party
    - The trial court should not be precluded from awarding an amount higher than that claimed in the pleadings notwithstanding the absence of the required amendment
        - BUT this is upon the condition that the evidence of such higher amount has been presented properly, with full opportunity on the part of the opposing parties to support their respective contentions and to refute each other's evidence

NO

- Familiar is the rule that 'damages consisting of unrealized profits, frequently referred as '*ganancias frustradas'* or '*lucrum cessans'* are not to be granted on the basis of mere speculation, conjencture or surmise but rather by reference to some reasonably definite standard such as market value, established experience or direct inference from known circumstances
- Evidence of damages must be clear and apparent from the pronouncement of the court
- The court does not distinctly state what facts were considered in arriving at the different figures, what amounts plaintiffs failed to receive, and what were deducted to determine '*unrealized profits'*
- The court's judgment is purely a conclusion of law and not a finding of the essential ultimate facts
- Hence, the case was remanded for the proper determination of the amount of damages

WHEREFORE, the Decision and Resolution of the Court of Appeals in CA-G.R. No. 51350-R dated 30 October 1989 and 10 January 1990, respectively are hereby MODIFIED insofar as the award of actual damages due Talisay-Silay Milling Co., Inc. and Talisay-Silay Industrial Cooperative Association, Inc. are concerned. Subject to the rulings referred to herein, this case is REMANDED to the Court of Appeals for the determination, *with all deliberate dispatch*, of the amount of damages due Talisay-Silay Milling Co., Inc. and Talisay-Silay Industrial Cooperative Association, Inc. considering that this litigation among the parties has already lasted more that twenty-eight (28) years. The rest of the Decision of the Court of Appeals is hereby AFFIRMED. Cost against respondents.

346 G.A. Machineries, Inc. v. Yaptinchay | Gutierrez, Jr.
G.R. No. L-30965, November 29, 1983 | 126 SCRA 78

FACTS

- Appellant G.A. Machineries, Inc. (GAMI), through its agent, sold to Appellee Horacio Yaptinchay, owner of the freight hauling business styled 'Hi-Way Express' a Fordson Diesel Engine at the price of P7,590.00. This was subject to the representation relied upon by appellant that the engine was brand new.
- Within the week after its delivery, the engine started to have a series of malfunctions which necessitated successive trips to GAMI's repair shop. However, the malfunctioning persisted. On inspection, Yaptinchay's mechanic noticed a worn out screw which made Yaptinchay suspicious about the age of the engine. He then wrote GAMI a letter protesting that the engine was not brand-new as represented.
- After the repeatedly recurring defects and continued failure of GAMI to put the engine in good operating condition, Yaptinchay sought the assistance of PC Criminal Investigation Service to check on the authenticity of the serial number of the engine. Tests revealed that the original motor number of the engine was tampered. Further inquiries from the Manila Trading Company disclosed that, unlike Yaptinchay's engine whose body and injection pump were painted with 2 different colors, brand-new engines are painted with only 1 color all over.
- Yaptinchay made demands for indemnification for damages and eventually instituted the present suit.
- GAMI interposed prescription of the action, denied the imputation of misrepresentation, and disputed the propriety and amount of damages claimed.
- TC ruled in favor of Yaptinchay, ordering GAMI to pay actual damages of P54,000.48. CA affirmed.

ISSUES & ARGUMENTS

- **W/N the cause of action against appellant had already prescribed at the time the complaint was filed in the TC.**
- **W/N the factual findings of both TC and CA as regards the engine are supported by evidence.**
- **W/N the award of damages was justified considering the evidence on record.**

HOLDING & RATIO DECIDENDI

NO. The 6-month prescriptive period under Article 1571 of the Civil Code is not applicable.

- The main thrust of the complaint is the contention that the engine delivered by GAMI was not brand-new, contrary to its representations. Instead of a brand-new engine, another engine which was not brand new was delivered resulting in the damages sought to be recovered.
- Therefore, the complaint was for breach of contract of sale, rather than breach of warranty against hidden defects. Action for breach of warranty against hidden defects presupposes that the thing sold is the same thing delivered but with hidden defects.
- Consequently, the 6-month prescriptive period under Article 1571 of the Civil Code is not applicable.

YES.

- Captain Garcia found that the original motor number of the engine was tampered as shown by the presence of fragmentary numbers which appeared in the engine.
- Captain Garcia positively stated the fragmentary numeral to be a numeral or a number but in the absence of key portions, he could not positively identify the exact number. He discounted the possibility that such fragmentary numerals could be mere scratches. He also did not categorically state that any molecular pressure could have caused the fragmentary number.

NO. The award of actual damages is not warranted by the evidence on record.

- The engine delivered was not brand-new. GAMI committed a breach of contract. The misrepresentation of the quality of the engine is tantamount to fraud or bad faith. The return of the purchase price with legal interest from the date of purchase is justified.
- The fact that the defendant does not dispute the amount of this kind of damages does not necessarily imply that the other party outright is entitled to the award of damages.
- Article 2200 of the Civil Code entitles the respondent to recover as compensatory damages not only the value of the loss suffered but also prospective profits. Article 2201 entitles the respondent to recover all damages which may be attributed to the non-performance of the obligation. However, in order to recover this kind of damages, plaintiff must prove his case. The injured party must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover.
- In this case, the award of actual damages of P54,000.88 covers the probable income which respondent failed to realize because of the breach of contract. However, the evidence presented is insufficient to be considered within the purview of 'best evidence'. The document merely shows that every time a truck travels, Yaptinchay earns P369.88. This is multiplied by the number of trips which the truck was unable to make. To prove actual damages, it would have been easy to present the average actual profits realized by the other freight trucks plying the Manila-Baguio route.

Decision modified. The award of actual damages is deleted.

TIN OCAMPO-TAN

347 China Airlines Limited vs. Court of Appeals
G.R. 94590 | July 29, 1992 | Feliciano

FACTS:

- Manuel J. Ocampo bought, through the Ultraman Travel Agency, a round-trip ticket for Manila-San Francisco-Manila from petitioner China Airlines Limited ("CAL"). The ticket purchased was a GV-10, or a Group Tour, ticket for which Ocampo paid a special discounted (reduced) price of P6,063.00. A Group Tour ticket is issued to members of a group of at least ten (10) passengers travelling for a minimum of fourteen (14) days and for a maximum of thirty-five (35) days. It is a condition of a Group Tour ticket that the holder thereof must stay in the place of destination (in this case, the United States), for at least fourteen (14) but not exceeding thirty-five (35) days. The portion of the ticket covering the return trip may be used only after expiration of fourteen (14) days counted from the date of arrival at the place of destination; beyond the thirty-five (35) allowable days, the return trip ticket is no longer valid.
- Ocampo, however, wanted to leave for Manila earlier than 24 May 1979 because he had several business meetings scheduled to be held here prior to 24 May 1979 and because of his desire to attend to his wife's and son's forthcoming departure for Europe scheduled on 24 May 1979.
- Ocampo sought to make special arrangements, through Ultraman Travel Agency, with CAL Manila for a change in schedule. The travel agency was, according to respondent Ocampo, assured that the necessary adjustments would be made and that Mr. Ocampo could definitely take the CAL flight from San Francisco on 18 May 1979.
- Ocampo left Manila for San Francisco's on 9 May 1979 and arrived in San Francisco also on the same day. Next day, he proceeded to CAL San Francisco' office to confirm his revised return flight schedule. CAL San Francisco, however, declined to confirm his return flight, since the date indicated on the ticket was not 18 May 1979 but rather 24 May 1979. Mr. Ocampo, however, apprised CAL San Francisco about the special arrangement that he had requested from CAL Manila. CAL San Francisco contacted CAL Manila by telex requesting verification of the revised schedule for respondent Ocampo. CAL San Francisco, however, received a negative reply from CAL Manila.
- Ocampo persisted in his efforts to book himself on the CAL San Francisco-Honolulu flight on 18 May 1979. By telephone, he contacted his private secretary in Manila to make the necessary inquiry and verification at CAL Manila. His secretary later telephoned back to inform him that CAL Manila would forthwith send a communication to CAL San Francisco to correct the situation. With that information, respondent Ocampo proceeded once more to CAL San Francisco and left his telephone number and address where he could be contacted upon receipt of confirmation from CAL Manila.
- CAL San Francisco never sent any notice to private respondent.
- Upon arrival in Manila, respondent Ocampo demanded an explanation from CAL Manila. He was told candidly that a mistake had been committed by an employee of CAL Manila who had sent a negative reply to CAL San Francisco's request for confirmation without first consulting Ocampo's passenger reservation card. Another employee or representative of CAL Manila offered private respondent compensation for actual expenses incurred by him due to his inability to board the CAL 18 May 1979 flight from San Francisco.
- TC dismissed the complaint and ruled in favor of CAL and the CA reversed the decision

ISSUES:

W/N CAL was in bad faith and therefore liable for damages?

RATIO:

CAL is liable for damages but it was not attended by bad faith
CAL Taipei had confirmed as early as 14 May 1979 the Taipei-Manila sector of Private respondent's return trip, public respondent Court of Appeals considered CAL San Francisco's refusal to board private respondent as an act of bad faith, and awarded private respondent the large amounts he sought by way of moral and exemplary damages totalling P400,000.00.
We consider that private respondent was able to show that petitioner CAL had indeed confirmed a seat for Mr. Ocampo on the 18 May 1979 flight from San Francisco-Honolulu (and all the way to Manila). We agree, therefore, with the Court of Appeals that petitioner CAL had breached its contract of carriage with private respondent by such failure or refusal to board him on that flight.
We are not, however, persuaded that that breach of contractual obligation had been attended by bad faith or malice or gross negligence amounting to bad faith. To the contrary, it appears to the Court that petitioner CAL had exercised diligent efforts to effect the change of schedule which it apparently had earlier stated to private respondent (prior to his departure from Manila) it would carry out. There was clearly a concerted effort among the involved CAL offices as shown by the flow of telexes from one to the others.

The last two (2) telexes sent by CAL Manila to CAL San Francisco on 17 May and 18 May 1979 were presumably received by CAL San Francisco in time to have relayed to respondent Ocampo his acceptance as a passenger on the CAL flight out of San Francisco scheduled for 18 May 1979. Again, however, we do not believe that respondent Ocampo had convincingly shown that the employees of petitioner CAL were motivated by personal malice or bad faith, or that there was patently negligence so gross as to amount to bad faith. Bad faith under the law is not presumed; it must be established by clear and convincing evidence.

Based on Art. 2201 and 2220 the law distinguishes a contractual breach effected in good faith from one attended by bad faith. Where in breaching the contract, the defendant is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of the obligation and which the parties had foreseen or could reasonably have foreseen; and in that case, such liability would not include liability for moral and exemplary damages.[9] Under Article 2232 of the

Civil Code, in a contractual or quasi-contractual relationship, exemplary damages may be awarded only if the defendant had acted in "*a wanton, fraudulent, reckless, oppressive* or *malevolent manner*." We are unable to so characterize the behavior here shown of the employees of CAL Manila and of CAL San Francisco. Thus, we believe and so hold that the damages recoverable by respondent Ocampo are limited to the peso value of the Philippine Airlines ticket it had purchased for his return flight from San Francisco; and reasonable expenses occasioned to private respondent by reason of the delay in his return San Francisco-Manila trip — exercising the Court's discretion, we believe that for such expenses, US$1,500.00 would be a reasonable amount — *plus* attorney's fees in the amount of P15,000.00, considering that respondent Ocampo was ultimately compelled to litigate his claim against petitioner.

WHEREFORE, the Decision of the Court of Appeals dated 25 July 1990 is hereby REVERSED and SET ASIDE. A new judgment is hereby ENTERED requiring petitioner to pay private respondent Ocampo the Philippine Peso equivalent of US$2,101.00, at the rate of exchange prevailing at the time of payment thereof, as reasonable compensatory damages, plus attorney's fees in the amount of P15,000.00 and costs. Petitioner's counterclaim before the trial court is hereby DISMISSED.

348 Consolidated Dairy Products Co. vs. CA| Quisumbing
G.R. No. 100401 August 24, 1992

FACTS

- In 1956, Consolidated Dairy Products Co. of Seattle agreed with Santiago Syjuco Inc. to form Consolidated Philippines Inc. to bring Darigold milk and other dairy products to the Phils. 51% was owned by Consolidated Seattle and 49% was owned by Syjuco Inc. Consolidated Seattle granted exclusive right to the tradename Darigold to Consolidated Phils.
- Initially, Consolidated Phils. imported its can requirements from the US. But due to economic conditions in this country, it began sourcing locally. In 1959, it entered in a 10-yr contract with private respondent Standard Can Company.
- In 1966, Dairy Export Company (Dexco), a subsidiary of Consolidated Seattle, started to do business in the Philippines. It even held its very own office in Consolidated Phils.' building.
- In 1968, Standard, Consolidated Phils and Dexco entered into a memorandum of agreement to extend the can supply contract until 1981.
- In 1974, Consolidated Seattle transferred the right to the tradename Marigold to Dexco. It also offered Syjuco that it could sell its share or buy Syjuco's, or Consolidated Phils. may file bankruptcy. Syjuco chose to sell its share. Subsequently, Consolidated Phils. was dissolved.
- Before Consolidated Phils. was dissolved, however, Dexco already took over the marketing activities and selling of Marigold.
- Even earlier, Consolidated Phils. cancelled its contract with Standard Can. It resulted in the cessation of its operations. Standard can is now claiming against Consolidated Seattle and Dexco for the separation pay of the employees and unrealized profits.
- RTC ruled in favor of Standard Can and CA affirmed in toto.

ISSUES & ARGUMENTS

- **W/N the determination of the actual damages was proper**

HOLDING & RATIO DECIDENDI

The computation for unrealized profits modified but all other awards affirmed.

- First, the court noted that the damages claimed by private respondents do not refer to claims which were already due from the can supply contract. The claims here are for damages caused by the fraudulent termination by petitioners of the can supply contract four (4) years before the end of its term and for such a short notice.
- Regarding the separation pay, evidence supports that the amount actually paid by Standard Can to the separated employee is P929,520.54 plus 10% production pay cost equals P1,022,472.59. It was obligated to pay by virtue of its CBA with its employees.
- According to Art. 2200 of the NCC, indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain.
- Standard Can's profit for the last 5 years of its operation was P8,107,931.13 and it argued that it would have earned as much for the terminated 5 years more of the contract. However, the Court said that the more reasonable amount would be based on average profits. This amount multiplied by five is P5,205,478.80.
- Award on inventory losses was properly awarded by the appellate court. Standard Can incurred inventory losses due to cans which rusted and could not have been disposed of, administrative expenses connected with the cost of the cans, cost of raw materials and depreciated portion of the machinery all amounting to P1,150,197.80. These losses were due to the cancellation of the can supply contract before its agreed expiration date. It is only right that defendants be held liable for them.
- There is no doubt that the breach committed by the petitioners was made in a wanton and fraudulent manner. There was no reason for petitioners to terminate the can supply contract with Standard. The latter was purposely organized for the benefit of Consolidated Philippines. Neither was there a need to close Consolidated Philippines because Consolidated Seattle had all the intentions of continuing its business only this time to be undertaken by its sole subsidiary, Dexco to the prejudice of Standard. Where a defendant violates a contract with plaintiff, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive and malevolent manner (Art. 2232, Civil Code).
- The claim for attorney's fees of 25% percent of all recoveries is unconscionable. It is hereby reduced to 15%.

349 People v. Degoma| Feliciano, J.
G.R. Nos. 89404-05 May 22, 1992 |

FACTS

- Efren Degoma and Mariano D. Taborda were charged and convicted of the crime of Robbery with Homicide. They were sentenced to reclusion perpetua and to jointly and severally indemnify the owners of the Tagbilaran friendly Bazaar the sum of P200.00 and the equivalent of $300.00, indemnify the heirs of late Alexander Parilla in the sum of P36,000.00 for his death, P200,000.00 moral damages, P 87, 947.94 for actual expenses, and P,5,000 for atty's fees.
- Only Mariano D. Taborda appealed the case.

ISSUES & ARGUMENTS

- **W/N the lower court erred in the award of damages**

HOLDING & RATIO DECIDENDI

The lower court overlooked certain evidentiary facts in its award of damages.

In delict, the defendant is liable for all damages which are the natural and probable consequences of the act or omission complained of. To seek recovery for actually damages, it is necessary to prove with reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party, the actual amount of loss. Courts cannot assume and rely on speculation or guesswork.

The court a quo's award of actual damages in the amount of P87,947.94 is not sustained by a review of the evidence of record. The court can only give credence to those supported by receipt and which appear to have been genuinely incurred in connection with the death, wake or burial of the victim. The court cannot take into consideration expenses incurred before the death of the victim or those incurred after a considerable lapse of time from his burial and do not have any relation to the death, wake or burial of the victim. The court cannot take into consideration those expenses incurred for purely aesthetic or social purposes, such as the lining with marble of the tomb of the victim; those which appear to have been modified to show an increase in the amount of expenditure; those which could not reasonably be itemized or determined to have been incurred in connection with the death, wake or burial of the victim; those which were not in fact shouldered by the immediate heirs of the victim, those which would nonetheless have been incurred despite the death, wake or burial of the victim, the death, wake or burial being merely incidental. The court puts the gross expenses proved at P10,275.85.

The court offsets the amount of P4,600.00 representing the alms received, leaving the amount of P3,775.85 as the actual amount of loss. The moral damages are unexplained and unsupported, though incapable of pecuniary estimation, the court considered it proper to reduce it to P10,000.00. The Court increased the amount of indemnity to P50,000.00 in line with present jurisprudence.

350 Hualam Construction and Dev't Corp. v. CA | Davide Jr.
G.R. No. 85466, October 16, 1992 | 214 SCRA 612

FACTS

- Private respondent State Investment House is the owner of State Center Building at 333 Juan Luna St., Binondo, Manila it is divided into several office condominium units for sale or lease.
- Private respondent entered into a contract to sell on 22 Sept. 1983 with petitioner for unit 1505 for total price of P622,653.71 with down payment of P128,111.02 payable in 4 installments and 6 monthly installments of P5218 for aircon rental and monthly amortization P11,590.46 for 60 monts.
- Contract provides for a clause giving automatic nullification of contract upon non-payment of installment or interest and makes vendee an intruder upon nullification of contract due to non-payment
- Petitioner failed to pay despite repeated demands the accumulated downpayment, installments, utility charges and other assessments. Private respondent filed a complaint for ejectment in MTC of Manila.
- On 11 Sept. 1986 petitioner failed to appear, upon motion private respondent was allowed to present evidence ex-parte. MTC rendered a decision in favor of private respondents ordering petitioner to pay P161,478.41 and P5000.00 as attorney's fees and costs. Possession was restored to private respondents and personal properties of petitioner was levied

ISSUES & ARGUMENTS

- **W/N Petitioners needed to file supersedeas bond to stay execution**

HOLDING & RATIO DECIDENDI

Petition denied

- The damages recoverable in forcible entry or unlawful detainer refer to rent or fair rental value.
- Petitioners admit that adjudged amount by MTC includes unpaid downpayment and installments, clause 12 of contract to sell treats paid installments and downpayment as rentals upon forfeiture.
- Ruling of respondent Court is erroneous in holding that supersedeas bond must cover whole amount, nonetheless filing of a supersedeas bond to cover that portion representing the unpaid downpayments and installments was necessary to stay the execution of judgment, this is a mandatory requirement.

351 Araos et. al. (petitioners) vs. Court of Appeals and Jovan Land, Inc.(respondents)
232 SCRA 770

FACTS:

- Petitioners are lessees of a ten-door apartment building located in Manila, which they have been occupying for some 25 years. The building was originally owned by one Vivien B. Bernardino with whom the petitioners had a written contract of lease which expired on 31 January 1988. Nevertheless, after this period, the petitioners peacefully occupied their respective units and the lessor continued to collect monthly rentals from the petitioners despite the absence of a written contract.
- On 11 July 1991, the apartment was sold to private respondent Jovan Land, Inc. Three days after, or on 15 July 1991, demands to vacate the units the petitioners and other lessees were occupying were made simultaneously by Bernardino and the private respondent. When the demands went unheeded, ten separate cases for unlawful detainer were filed against the petitioners and other lessees by the private respondent.
- The MeTC rendered a joint Judgment holding that the contracts between the lessor and the lessees provided for a lease on a month-to-month basis and, in the light of Article 1687 in relation to Article 1670 of the Civil Code, that the lease period had expired. Accordingly, it ordered the defendants to vacate the premises and to pay respondents.
- This order was later on affirmed by the CA, reversing the decision of the RTC.

ISSUES & ARGUMENTS:

Propriety and validity of the increase in the monthly rates of rentals as decreed by the MeTC and sustained by the Court of Appeals.

HOLDING & RATIO DECIDENDI

The rule is settled that in forcible entry or unlawful detainer cases, the only damage that can be recovered is the fair rental value or the reasonable compensation for the use and occupation of the leased property. The reason for this is that in such cases, the only issue raised in ejectment cases is that of rightful possession; hence, the damages which could be recovered are those which the plaintiff could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property, and not the damages which he may have suffered but which have no direct relation to his loss of material possession.

352 Asuncion vs. Evangelista | Puno
GR 133491, October 13, 1999 |

FACTS

- Evangelista was the owner of empire farms. In order to raise capital for the operations of the farms, he entered personally into several loan agreements with various institutions. Due to his defaulting in the payments of these loans, they ballooned amounting to 6 million pesos
- As a result of this, Asuncion and Evangelista entered into a Memorandum of Agreement where Asuncion agrees to assume all the liabilities of Evangelista and in turn Evangelista is to cede to him his share on Empire Farms its lands which were mortgaged to secure the loans.
- Although Asuncion had already paid some P3000000 of his obligation in the MOA, Evangelista still had not transferred the properties. Later on, Asuncion stopped making payments for the loans which caused the foreclosure of the properties. Asuncion filed for Recission of the contract.
- Trial Court and CA ruled that Asuncion was guilty because the contract was actually a contract of sale and so Asuncion first had to make good his obligaton before Evangelista would transfer the properties

ISSUES & ARGUMENTS

- **W/N the MOA was a contract of sale?**
- **W/N Asuncion first reneged on the obligation?**
- **W/N Evangelista is entitled to damages? Asuncion?**

HOLDING & RATIO DECIDENDI

No

- The MOA was in the nature of a reciprocal obligaton in that both parties both had certain obligations to fulfill regarding the rehabilitation of Empire Farms. It was not a simple isolated sale of the properties of Evangelista.

No

- Asuncion had already paid several amounts in fulfillment of his obligations in the MOA and yet Evangelista still failed to transfer the property. Evangelista's insistence that Asuncion execute an assumption of mortgage before making the deed of sale of the properties is untenable as the mortgage will follow the property notwithstanding the absence of the assumption of mortgage. Also, Evangelista's claim that Asuncion was the one who breached for his failure to assume the loans cannot be given credence as he had already substantially complied with the obligation when he stopped making payments because of Evangelista's failure to comply with his obligations.

No

- The claim for compensatory damages in favor of Evnagelista cannot be given as it is based solely on amounts as specified in a schedule given by Evangelista who was not even present during the transactions in the schedule. Such exhibit was self serving and hearsay
- Also, claim for compensatory damages based on the value of the property foreclosed is not allowed as it runs contrary to the nature of recission. If he seeks to rescind the contract, he can no longer claim the amount Asuncion was supposed to pay. The effect of granting damages for the foreclosure would be that you are still requiring Asuncion to pay his obligation but Evangelista will no longer transfer the property as it has already been foreclosed.
- Asuncion may also not claim for damages for the amounts he had already paid as recission seeks mutual restitution. This however has been rendered impossible as Evangelista can no longer be restored to the management and conrol of empire farms considering that its holdings had already been foreclosed.

353 Woodchild Holdings v. Roxas Electric & Construction | Callejo, Sr.
G.R. 140667 | August 12, 2004

FACTS

- Respondent owned 2 parcels of land both covered by TCTs. A portion of Lot 1 abutted Lot 2 and was a dirt road accessing Sumulong highway. At a special meeting, the Board of Directors of respondent authorized the corporation through its president, Roberto Roxas, to SELL Lot 2.
- Petitioner wanted to buy Lot 2 where it wanted to build a warehouse, and a portion of Lot 1 to allow its 45-foot container van to readily enter and leave its property. Its president, Jonathan Dy, wrote a letter to Roxas offering to buy Lot 2. The offer was accepted.
- On Sept. 5, 1991, a Deed of Absolute Sale was executed and receipt of P5,000,000 was acknowledged by Roxas. Petitioner was given a right of way from the highway to the property, and that in the event that the same be insufficient, the vendor agrees to sell more. The vendor undertook to eject the squatters within 2 weeks from the signing of the Deed.
- On Sept. 10, 1991, Wimbeco Builders Inc. (WBI) offered to construct the warehouse for P8,649,000, with construction commencing Oct. 1, 1991 and turnover of the warehouse on Feb. 29, 1992. The offer was accepted by petitioner but construction was not commenced until April 1992 after a renegotiation in the light of the expiration of the period contemplated. The construction commenced without a building permit.
- On Sept. 16, 1991, Ponderosa Leather Goods Co. confirmed its lease of the warehouse to be constructed. Ponderosa emphasized the need for the warehouse to be ready for occupancy before April 1, 1992.

ISSUES & ARGUMENTS

W/N respondents are liable for (a) the delay in the construction of the warehouse, and (b) for unearned income from the lease agreement with Ponderosa.

HOLDING & RATIO DECIDENDI

(a) Yes. Petitioner could not be expected to file its application for a building permit before April 1992 because the squatters were still occupying the property. Because of the respondent's failure to cause their eviction as agreed upon, the petitioner's contractor failed to commence the construction of the warehouse in October 1991 for the agreed price of P8,649,000. In the meantime, costs of construction materials spiraled. Under the construction contract entered into between the petitioner and the contractor, the petitioner was obliged to pay P11,804,160, including the additional work costing P1,441,500, or a net increase of P1,712,980. The respondent is liable for the difference between the original cost of construction and the increase thereon, conformably to Article 1170 of the New Civil Code.

(b) Yes. Petitioner lost the amount of P3,900,000 by way of unearned income from the lease of the property to the Ponderosa Leather Goods Company. The respondent is liable to the petitioner for the said amount, under Articles 2200 and 2201 of the New Civil Code:

> Art. 2200. Indemnification for damages shall comprehend *not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain*.
>
> Art. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the *natural and probable consequences* of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.
>
> In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

AYEN QUA

354 GSIS v. CA | Romero
G.R. No. 117572 January 29, 1998 | 285 SCRA 430

FACTS

- Rosa Balais worked for the NHA since 1952. On December 1989 she was diagnosed to be suffering from Subarachnoid Hmorrhage Secondary to Ruptured Aneurysm.
- After undergoing craniotomy, she was finally discharged from the hospital January 20, 1990. Despite her operation, Rosa could not perform her duties as efficiently as she had done prior to her illness. This forced her to retire early from the government service on March 1, 1990 at the age of sixty-two (62) years.
- In the same month, she claimed from GSIS benefits. She was granted such under Temporary Total Disability (TTD) and was subsequently converted to Permanent Partial Diability (PPD)
- Rosa again applied for conversion of her classification to Permanent Total Disability (PTD). She was denied of this because the results of her physical examination conducted on June 5, 1990 did not satisfy the criteria for permanent total disability.

ISSUE & ARGUMENTS

W/N Rosa is entitled to conversion of benefits.

HOLDING & RATIO DECIDENDI

- It is true that the degree of Rosa's physical condition at the time of her retirement was not considered as permanent total disability, yet, it cannot be denied that her condition subsequently worsened after her head operation and consequent retirement. In fact, she suffered afterwards from some ailments like headaches, dizziness, weakness, inability to properly sleep, inability to walk without support and failure to regain her memory. All these circumstances ineluctably demonstrate the seriousness of her condition, contrary to the claim of petitioner. More than that, it was also undisputed that private respondent was made to take her medication for life.
- A person's disability may not manifest fully at one precise moment in time but rather over a period of time. It is possible that an injury which at first was considered to be temporary may later on become permanent or one who suffers a partial disability becomes totally and permanently disabled from the same cause.
- This Court has ruled that "disability should not be understood more on its medical significance but on the loss of earning capacity." Rosa's persistent illness indeed forced her to retire early which, in turn, resulted in her unemployment, and loss of earning capacity.
- Jurisprudence shows that disability is intimately related to one's earning capacity., "permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of a similar nature that she was trained for or accustomed to perform, or any kind of work which a person of her mentality attainment could do." "It does not mean state of absolute helplessness, but inability to do substantially all material acts necessary to prosecution of an occupation for remuneration or profit in substantially customary and usual manner."
- The Court has construed permanent total disability as the "lack of ability to follow continuously some substantially gainful occupation without serious discomfort or pain and without material injury or danger to life." 16 It is, therefore, clear from established jurisprudence that the loss of one's earning capacity determines the disability compensation one is entitled to.
- It is also important to note that Rosa was constrained to retire the age of 62 years because of her impaired physical condition. This is another indication that her disability is permanent and total. As held by this Court, "the fact of an employee's disability is placed beyond question with the approval of the employee's optional retirement, for such is authorized only when the employee is physically incapable to render sound and efficient service' . . . ."
- Rosa has been employed with the NHA for 38 years with an unblemished record and who was compelled to retire on account of her worsening condition. Denying that conversion would indeed subvert the salutary intentions the law in favor of the worker

355 PNB vs. Pujol | Bellosillo
G.R. No. 126152 September 28, 1999

FACTS

- Lily S. Pujol opened with petitioner Philippine National Bank an account denominated as "Combo Account," a combination of Savings Account and Current Account in private respondent's business name "Pujol Trading," under which checks drawn against private respondent's checking account could be charged against her Savings Account should the funds in her Current Account be insufficient to cover the value of her checks. Hence, private respondent was issued by petitioner a passbook on the front cover of which was typewritten the words "Combo Deposit Plan."
- On 23 October 1990, private respondent issued a check in the amount of P30,000.00 in favor of her daughter-in-law, Dr. Charisse M. Pujol. When issued and presented for payment, private respondent had sufficient funds in her Savings Account. However, petitioner dishonored her check allegedly for insufficiency of funds and debited her account with P250.00 as penalty charge.On 24 October 1990 private respondent issued another check in the amount of P30,000.00 in favor of her daughter, Ms. Venus P. De Ocampo. When issued and presented for payment petitioner had sufficient funds in her Savings Account. But, this notwithstanding, petitioner dishonored her check for insufficiency of funds and debited her account with P250.00 as penalty charge. On 4 November 1990, after realizing its mistake, petitioner accepted and honored the second check for P30,000.00 and re-credited to private respondent's account the P250.00 previously debited as penalty
- Private respondent Lily S. Pujol filed with the Regional Trial Court of Pasig City a complaint for moral and exemplary damages against petitioner for dishonoring her checks despite sufficiency of her funds in the bank.
- On 27 September 1994 the trial court rendered a decision ordering petitioner to pay private respondent Pujol moral damages of P100,000.00 and attorney's fees of P20,000.00. It found that private respondent suffered mental anguish and besmirched reputation as a result of the dishonor of her checks, and that being a former member of the judiciary who was expected to be the embodiment of integrity and good behavior, she was subjected to embarrassment due to the erroneous dishonor of her checks by petitioner.The Court of Appeals affirmed in toto the decision of the trial court.

ISSUES AND ARGUMENTS:

W/N: PNB IS LIABLE FOR DAMAGES TO THE PETITIONER

HOLDING & RATION DECIDENDI

- Petitioner does not dispute the fact that private respondent Pujol maintained a Savings Account as well as a Current Account with its Mandaluyong Branch and that private respondent applied for a "Combination Deposit Plan" where checks issued against the Current Account of the drawer shall be charged automatically against the latter's Savings Account if her funds in the Current Account be insufficient to cover her checks. There was also no question that the Savings Account passbook of respondent Pujol contained the printed words "Combo Deposit Plan" without qualification or condition that it would take effect only after submission of certain requirements. Although petitioner presented evidence before the trial court to prove that the arrangement was not yet operational at the time respondent Pujol issued the two (2) checks, it failed to prove that she had actual knowledge that it was not yet operational at the time she issued the checks considering that the passbook in her Savings Account already indicated the words "Combo Deposit Plan." Hence, respondent Pujol had justifiable reason to believe, based on the description in her passbook, that her accounts were effectively covered by the arrangement during the issuance of the checks. Either by its own deliberate act, or its negligence in causing the "Combo Deposit Plan" to be placed in the passbook, petitioner is considered estopped to deny the existence of and perfection of the combination deposit agreement with respondent Pujol. Estoppel *in pais* or equitable estoppel arises when one, by his acts, representations or admissions, or by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief so that he will be prejudiced if the former is permitted to deny the existence of such facts.
- This Court has ruled that a bank is under obligation to treat the accounts of its depositors with meticulous care whether such account consists only of a few hundred pesos or of millions of pesos. Responsibility arising from negligence in the performance of every kind of obligation is demandable. While petitioner's negligence in this case may not have been attended with malice and bad faith, nevertheless, it caused serious anxiety, embarrassment and humiliation to private respondent Lily S. Pujol for which she is entitled to recover reasonable moral damages. [7] In the case of *Leopoldo Araneta v. Bank of America* [8] we held that it can hardly be possible that a customer's check can be wrongfully refused payment without some impeachment of his credit which must in fact be an actual injury, although he cannot, from the nature of the case, furnish independent and distinct proof thereof.
- Damages are not intended to enrich the complainant at the expense of the defendant, and there is no hard-and-fast rule in the determination of what would be a fair amount of moral damages since each case must be governed by its own peculiar facts. The yardstick should be that it is not palpably and scandalously excessive. In this case, the award of P100,000.00 is reasonable considering the reputation and social standing of private respondent Pujol and applying our rulings in similar cases involving banks negligence with regard to the accounts of their depositors. The award of attorney's fees in the amount of P20,000.00 is proper for respondent Pujol was compelled to litigate to protect her interest.

- WHEREFORE, the petition is DENIED and the Decision of the Court of Appeals which affirmed the award by the Regional Trial Court of Pasig City of moral damages of P100,000.00 and attorney's fees of P20,000.00 in favor of private respondent Lily S. Pujol is AFFIRMED. Costs against petitioner.

356 FORTUNE EXPRESS, INC vs COURT OF APPEALS, PAULIE U.CAORONG, and minor childrenYASSER KING CAORONG, ROSE HEINNI and PRINCE ALEXANDER, all surnamed CAORONG, and represented by their mother PAULIE U. CAORONG | G.R. No. 119756 March 18, 1999 | MENDOZA, J.: |

FACTS

- Petitioner is a bus company in northern Mindanao. The private respondent are the widow of Atty. Caorong and their children.

- A bus of petitioner figured in an accident with a jeepney, resulting in the death of several passengers of such jeepney, including two Maranaos. It was later discovered in an investigation that the owner of the jeepney was also a Maranao, who was also planning to take revenge on the petitioner by burning some of its buses.

- Subsequently, On a certain date, three armed Maranaos pretended to be passengers and seized a bus of a petitioner. Among the passengers was Atty. Caorong. The leader of the Maranaos then ordered the driver to stop the bus, and ordered the passengers to get off the bus.

- Atty. Caorong also got off, but he then returned to retrieve something from the bus, as the armed Maranaos were putting gasoline on the bus. Caorong was then shot, as he was pleading to spare the life of the driver. The bus then burned, and although some of the passengers were able to get Atty. Caorong out of the bus, he still died while undergoing operation.

- The private respondents then brought this suit for breach of contract of carriage.

ISSUES & ARGUMENTS

Is the petitioner liable for damages? If yes, up to what extent?

HOLDING & RATIO DECIDENDI

Petitioner is liable for damages.

- Art. 1763 of the Civil Code provides that a common carrier is responsible for injuries suffered by a passenger on account of wilfull acts of other passengers, if the employees of the common carrier could have prevented the act through the exercise of the diligence of a good father of a family. In the present case, it is clear that because of the negligence of petitioner's employees, the seizure of the bus by Mananggolo and his men was made possible.
- Despite warning by the Philippine Constabulary at Cagayan de Oro that the Maranaos were planning to take revenge on the petitioner by burning some of its buses and the assurance of petitioner's operation manager, Diosdado Bravo, that the necessary precautions would be taken, petitioner did nothing to protect the safety of its passengers.

- Simple precautionary measures to protect the safety of passengers, such as frisking passengers and inspecting their baggages, preferably with non-intrusive gadgets such as metal detectors, before allowing them on board could have been employed without violating the passenger's constitutional rights.

- As for the amount of damages: Art. 1764 of the Civil Code, in relation to Art. 2206 thereof, provides for the payment of indemnity for the death of passengers caused by the breach of contract of carriage by a common carrier. Initially fixed in Art. 2206 at P3,000.00, the amount of the said indemnity for death has through the years been gradually increased in view of the declining value of the peso. It is presently fixed at P50,000.00. Private respondents are entitled to this amount.
- Actual Damages. The trial court found that the private respondents spent P30,000.00 for the wake and burial of Atty. Caorong. Since petitioner does not question this finding of the trial court, it is liable to private respondent in the said amount as actual damages.
- Moral Damages. The trial court found that private respondent suffered pain from the death of her husband and worry on how to provide support for their minor children. The petitioner likewise does not question this finding of the trial court. Thus, in accordance with recent decisions of this Court, it was held that the petitioner is liable to the private respondents in the amount of P100,000.00 as moral damages for the death of Atty. Caorong.
- Exemplary Damages. Despite warning that the Maranaos were planning to take revenge against the petitioner by burning some of its buses, and contary to the assurance made by its operations manager that the necessary precautions would be take, the petitioner and its employees did nothing to protect the safety of passengers. Under the circumtances, it was deemed it reasonable to award private respondents exemplary damages in the amount of P100,000.00.
- Attorney's Fees. Pursuant to Art. 2208, attorney's fees may be recovered when, as in the instant case, exemplary damages are awarded. The private respondents are entitled to attorney's fees in that amount of 50,000.
- Compensation for Loss of Earning Capacity. Art. 1764 of the Civil Code, in relation to Art. 2206 thereof, provides that in addition to the indemnity for death arising from the breach of contrtact of carriage by a common carrier, 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." The petitioner is liable to the private respondents in the said amount as a compensation for loss of earning capacity.

JR RUIZ

357 People v. Balgos| PER CURIAM
No. 126115 , 26 January 2000

FACTS

- On 8 October 1995, at around 2:00 o'clock in the afternoon, Crisselle Fuentes went to the house of the accused-appellant (Alfonso Balgos) to play with Michelle and Waday, both surnamed Balgos and nieces of the Alfonso Balgos.Since the house of the Balgos abuts a river, the three girls played near the window so they could watch the small crabs wallowing in the said river. While they were playing, Balgos went up to Michelle and asked her to go outside and buy cheese curls. When Michelle left the house, Balgos directed her attention towards Crisselle. He opened the zipper of his pants.He then took Crisselle by the right forearm and made her hold his penis for a short time. When Michelle came back, Balgos asked her and Waday to go outside and buy more cheese curls. The two girls acceded and left Crisselle with Balgos. Whereupon, he closed the door and locked the same. He then removed Crisselle's shorts and underwear, took off his own pants and brief and laid her down on a mat.[5] Balgos next went on top of Crisselle and used his hand to direct his penis towards the opening of her vagina. He made a push and pull movement with his penis into Crisselle's vagina which caused her to feel pain. However, Balgos ould not penetrate Crisselle's vagina and was only able to push his penis against the opening of the same. Because of this, he re-positioned his penis and tried again to penetrate Crisselle's organ.[9] Despite this effort, he still failed. Balgos stopped his bestial act when he noticed through the window that Michelle and Waday were returning and were about to unlock the door. He then put on his pants, covered Crisselle with a blanket and had her put on her underwear. When Michelle and Waday entered the house, Crisselle was still covered with a blanket
- Criselle did not tell anybody about the incident. It was her older brother who told her parents and was later on confirmed by Michelle, Waday, and Criselle.
- Balgos claims that he merely put his finger into the victim's vagina and that he did not insert his penis.
- Trial Court: Convicted Baldos and imposed upon him the penalty of death. He is likewise ordered to indemnify Criselle Fuentes P50,000 as civil damages.

ISSUES & ARGUMENTS

W/N the trial court was correct in convicting Balgos and in awarding civil damages to the complainant Criselle Fuentes

HOLDING & RATIO DECIDENDI

YES.

The trial court is correct in giving credence to Crisselle's testimony over that of the accused-appellant. Crisselle's testimony was simple, concise and cohesive. The trial court is correct in observing that the victim recounted her ordeal in a "straightforward, clear and convincing" manner. Her testimony is very typical of an innocent child whose virtue has been violated.

In any case, even if his organ merely touched the "hole" of Crisselle's vagina, this already constitutes rape since the complete penetration of the penis into the female organ is not necessary.The mere introduction of the penis into the aperture of the female organ, thereby touching the labia of the pudendum, already consummates the crime of rape. Since the labia is the outer lip of the genital organ,accused-appellant's act of repeatedly placing his organ in the "hole" of Crisselle's vagina was rape.

The trial is court correct in imposing the supreme penalty of death on the accused-appellant. Under Article 335 of the Revised Penal Code as amended by Section 11 of Republic Act No. 7659,the penalty of death shall be imposed if the crime of rape is committed against a child below seven (7) years of age. In the present case, there is no dispute that the victim was six (6) years of age when the accused-appellant had carnal knowledge with her. The victim's age was duly established by the prosecution, through the testimony of the victim's mother, Criselda Fuentes, and further corroborated by Crisselle's Certificate of Live Birth.

With respect to the award of damages, we have recently held that if the commission of rape is effectively qualified by any of the circumstances under which the penalty of death may be imposed,the civil indemnity for the victim shall not be less than Seventy-Five Thousand Pesos (P75,000.00).Based on the foregoing judicial prescription, the trial court's award of Fifty Thousand Pesos (P50,000.00) as civil indemnity should be increased to Seventy-Five Thousand Pesos (P75,000.00). Moreover, the victim is entitled to moral damages under Article 2219 of the Civil Code, without the necessity for pleading or proof of the basis thereof. In line with current jurisprudence, accused appellant's victim is entitled to moral damages in the amount of Fifty Thousand Pesos (P50,000.00).

DIKKI SIAN

358 People vs. Quilatan |
G.R. No. 132725. September 28, 2000|

FACTS

- ARMANDO QUILATAN was charged with incestuous rape and found guilty by the trial court. He was sentenced to death. He is now before the SC on automatic review.
- The trial court found him guilty of rape and sentenced him to death. **He was also ordered to pay Oliva Quilatan P200,000.00 for moral and exemplary damages.** Oliva is his daughter, then 13 years old. She was earlier raped by Quilatan on her 11th birthday.
- In both instances of rape, Quilatan threatened to kill her and her siblings if she would tell anyone what he was doing to her.
- Elenita (the wife) narrated that there was another incident when she found the accused no longer beside her. To her surprise she saw him lying beside their daughter Oliva. When she asked Armando the reason for his action he just kept silent. Offended by what she saw she dashed out of the house. The accused followed her and promised not to abuse Oliva again. Elenita then asked her daughter about her father's abuses and Oliva revealed her painful and harrowing experiences, with her father. Elenita and Oliva went to the police station and filed their sworn statements charging Armando Quilatan with rape.
- Dr. Vergara of the PNP Crime Laboratory at Camp Crame conducted a medical examination of Oliva and found her hymen with shallow healed lacerations at 3 o'clock and 6 o'clock positions, as well as a deep healed laceration at 9 o'clock position.
- The accused interposed denial for his defense. He alleged that when he was still working abroad he learned from a neighbor, whose name he could not recall, that his wife Elenita had a paramour. He confronted her sometime in March 1993 about the P9,000.00 he was sending her every month. When she could not answer him he slapped her. Immediately after, his wife together with all their children left him. But two (2) months later they all returned to their house.
- Prosecution presented Oliva's sister as eyewitness to the rape, she was then 8 years old.

ISSUES & ARGUMENTS

- **W/N damages awarded are enough**

HOLDING & RATIO DECIDENDI

NO. There should be an additional fixed penalty of P75,000

- **The Court finds that the accused was correctly meted the supreme penalty of death, pursuant, to Art. 335 of the Revised Penal Code, as amended by RA 7659 and RA 8353, providing that the death penalty shall be imposed upon the perpetrator if the crime of rape is committed with any of the following aggravating/ qualifying circumstances: x x x x when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the parent of the victim.**
- This Court observes that the trial court did not award any indemnity to Oliva for the physical abuse she suffered although it granted her P200,000.00 by way of moral and exemplary damages.
- In *People v. Prades* we reiterated that civil indemnity is mandatory upon the finding of the fact of rape; it is distinct from and should not be denominated as moral damages which is based on different jural foundations and assessed by the court in the exercise of sound discretion.
- **If the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law, the indemnity for the victim shall be P75,000.00.**
- Moral damages may additionally be awarded to the victim in the criminal proceeding, in such amount as the court may deem just, without the need for pleading or proof of the basis thereof as has heretofore been the practice. With regard to exemplary damages, the same may be awarded in criminal cases committed with one or more aggravating circumstances. We find that the award by the trial court of moral and exemplary damages in the amount of P200,000.00 should be split into P150,000.00 for moral damages and P50,000.00 for exemplary damages, the total amount of P200,000.00 for moral and exemplary damages not being disputed by the accused-appellant and is a factual matter binding on this Court.

WHEREFORE, the Decision of the Regional Trial Court of Pasig City finding the accused ARMANDO QUILATAN guilty of Incestuous Rape and imposing on him the DEATH penalty is AFFIRMED, with the modification that the accused is ordered to pay his victim Oliva Quilatan the amounts of P75,000.00 for civil indemnity and P200,000.00 for moral and exemplary damages.

FRANK TAMARGO

359 People v Willy Marquez | Ynares-Santiago
G.R. Nos. 137408-10. December 8, 2000 |

FACTS

- Willy Marquez (accused-appellant) is accused of raping 5-year-old girl, Maria Christina Agustin, in the month of October 1997 in the banana plantation located at the back of the latter's house in Bacayao, Guimba, Nueva Ecija.
- It was only on January 8, 1998 when Maria Cristina confided to her mother in detail what appellant did to her. Upon the advice of the police, Maria Cristina was brought by her parents to the Cabanatuan Provincial Hospital for medical examination.
- Dr. Cora Lacurom, who examined Maria Cristina, found an old healed hymenal laceration at 6:00 o'clock position, which could have been inflicted through forced sexual intercourse committed in or about October 1997.
- Denying he had anything to do with the offenses charged, Marquez testified that during daytime for the whole month of October 1997 he was at his place of work hauling palay hay for Honofre Arenas at Barangay Bacayao, Guimba, Nueva Ecija. He further claimed that he worked from Monday to Sunday from 6:00 a.m. to 5:30 p.m. and had a break time which lasted from 12:00 noon to 2:00 p.m. Aside from hauling *palay* hay, accused-appellant's work included pasturing the cows and cleaning their wastes. During break time, accused would hang out at the workshop (talyer) of his employer's brother-in-law which was just in front of his workplace. After his dismissal from work, he would proceed to the workshop of the brother-in-law in order to learn. He alleged that said place of his work is 250 meters away from the house of the victim and that the road is of muddy condition.
- RTC held the Marquez guilty beyond reasonable doubt and meted to him the penalty of death and likewise ordering him to pay offended party the amount of P150,000 as moral damages.

ISSUES & ARGUMENTS

- **W/N RTC erred in holding Marquez guilty of rape?**
  - **Accused-appellant: the prosecution failed to state in the informations the precise date of the commission of the alleged rapes.**

HOLDING & RATIO DECIDENDI

NO. The exact date of the commission of the crime is not an essential element of the crime.

- In any event, even if the information failed to allege with certainty the time of the commission of the rapes, the defect, if any, was cured by the evidence presented during trial and any objection based on this ground must be deemed waived as a result of accused-appellant's failure to object before arraignment. His remedy was to move either for a bill of particulars or for the quashal of the information on the ground that it does not conform substantially to the prescribed form.
- **In order to justify the imposition of death, there must be independent evidence proving the age of the victim, other than the testimonies of prosecution witnesses and the absence of denial by the accused. A duly certified certificate of live birth accurately showing the complainant's age, or some other official document or record such as a school record, has been recognized as competent evidence.** In the case at bar, while the informations sufficiently allege the minority of Maria Cristina, the **prosecution did not present proof to substantiate the age of the victim**, such as her birth certificate. This becomes crucial considering that the prosecution must establish with moral certainty that the victim was below seven (7) years old at the time of the rape, to justify the imposition of the death penalty. Accordingly, the **penalty imposed on accused-appellant must be reduced to reclusion perpetua**.

ON DAMAGES:

- The Court finally observes that while the trial court awarded moral damages, it did not award any indemnity ex delicto. **A civil indemnity of P50,000.00 is automatically given to the offended party without need of further evidence other than the fact of rape.** Consistent, therefore, with present case law which treats the imposition of civil indemnity as being mandatory upon the finding of rape, accused-appellant should likewise be ordered to pay the amount of P50,000.00 for each count of rape. This civil indemnity is distinct from and awarded in addition to moral damages, the two being based on different jural foundations and assessed by the court in the exercise of sound discretion.
- **To curb the disturbing trend of a child being snatched from the cradle of innocence by some beast to sate its deviant sexual appetite, accused-appellant should likewise be made to pay exemplary damages, which, in line with prevailing jurisprudence, is pegged at P25,000.00, for each count of rape.**
- All in all, Marquez was paid to pay: **P150,000 civil indemnity, P150,000 moral damages and P75,000 exemplary damages**.

360 Pedro Davila vs PAL|
49 SCRA 497 28 February 1973|

FACTS

- On November 23, 1960 Pedro Davila Jr. boarded Philippine Airlines flight from Manduriao, Iloilo to Manila.
- The plane had 33 passengers and it did not reach its destination. It crashed at Mt. Baco, Mindoro 1 Hour and 15 minutes after take-off.
- The parents were bothered by the conflicting news reports not until they received, on December 19, a letter from PAL's president informing them that their son died in the crash. It was only on December 29 that his body was recovered and taken back to Iloilo.
- The findings of the investigation conducted by the Civil Aeronautics Administration showed that the prescribed Iloilo-Romblon-Manila Route was not followed as it being a straight line from Iloilo to Manila.
- The plane reported its position after take-off and again when it was abeam the Roxas homer. However, the pilot did not intercept airway Amber I as it was supposed to. The pilot also did not report its position then although Romblon was a compulsory checking point.
- This led to the conclusion that the plane deviated from the prescribed route by 32 miles to the west when it crashed at Mt. Baco. The reading of the altimeter when it crashed was 6,800 ft from the assigned 6,000 ft required elevation.
- Due to this accident the Court of First Instance ruled in favor of Pedro Davila Jr. and ordered PAL to pay the plaintiffs various sums of money: Php 6,000 for Jr's death; Php 60,000 for loss of earning capacity (Php 12,000 per annum times 5 years), Moral damages, Exemplary damages, Actual Damages and Attorney's Fees.

ISSUES & ARGUMENTS

Whether or not the damages awarded to Davila was proper?

HOLDING & RATIO DECIDENDI

1. The Indemnity for Jr's death.

   Yes this must be increased. The CFI fixed the indemnity for his death in the amount of Php 6,000. Pursuant to the current jurisprudence on the point it should be increased to Php 12,000.

2. For the loss of earning capacity.

   Yes. Jr. was getting his income from 3 different sources: (1) Php 8,400/year as manager of a radio station; Php 3,600/year as a lawyer and junior partner in his father's law firm and Php 3,000/year from farming. Art 2206 provides that the defendant shall be liable for the loss of earning capacity of the deceased and indemnity shall be paid to the heirs of the latter. This article is expressly made applicable to Art 1764 to the death of the passenger caused by the breach of contract by a common carrier, as in this case.

   In computing a deceased's life expectancy, the formula is: (2/3) x (80-age at the time of death). In this case Jr was single at 30 years of age when he died. Using the formula, his normal life expectancy is 33 and 1/3 years. However, his life expectancy must be reduced to 25 years since his medical history shows that he had complained of and had been treated for backaches, chest pains and occasional feeling of tiredness.

   In this case, taking into consideration JR's income from all 3 sources together with his living expenses, a yearly living income of Php 7,800 is left. This amount multiplied by 25 years (Php 195,000) is the amount which should be awarded to Jr's parents.

361 People vs. Quilatan |
G.R. No. 132725. September 28, 2000|

FACTS

- ARMANDO QUILATAN was charged with incestuous rape and found guilty by the trial court. He was sentenced to death. He is now before the SC on automatic review.
- The trial court found him guilty of rape and sentenced him to death. **He was also ordered to pay Oliva Quilatan P200,000.00 for moral and exemplary damages.** Oliva is his daughter, then 13 years old. She was earlier raped by Quilatan on her 11th birthday.
- In both instances of rape, Quilatan threatened to kill her and her siblings if she would tell anyone what he was doing to her.
- Elenita (the wife) narrated that there was another incident when she found the accused no longer beside her. To her surprise she saw him lying beside their daughter Oliva. When she asked Armando the reason for his action he just kept silent. Offended by what she saw she dashed out of the house. The accused followed her and promised not to abuse Oliva again. Elenita then asked her daughter about her father's abuses and Oliva revealed her painful and harrowing experiences, with her father. Elenita and Oliva went to the police station and filed their sworn statements charging Armando Quilatan with rape.
- Dr. Vergara of the PNP Crime Laboratory at Camp Crame conducted a medical examination of Oliva and found her hymen with shallow healed lacerations at 3 o'clock and 6 o'clock positions, as well as a deep healed laceration at 9 o'clock position.
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- Prosecution presented Oliva's sister as eyewitness to the rape, she was then 8 years old.

ISSUES & ARGUMENTS

- **W/N damages awarded are enough**

HOLDING & RATIO DECIDENDI

NO. There should be an additional fixed penalty of P75,000

- **The Court finds that the accused was correctly meted the supreme penalty of death, pursuant, to Art. 335 of the Revised Penal Code, as amended by RA 7659 and RA 8353, providing that the death penalty shall be imposed upon the perpetrator if the crime of rape is committed with any of the following aggravating/ qualifying circumstances: x x x x when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree or the common-law spouse of the parent of the victim.**
- This Court observes that the trial court did not award any indemnity to Oliva for the physical abuse she suffered although it granted her P200,000.00 by way of moral and exemplary damages.
- In *People v. Prades* we reiterated that civil indemnity is mandatory upon the finding of the fact of rape; it is distinct from and should not be denominated as moral damages which is based on different jural foundations and assessed by the court in the exercise of sound discretion.
- **If the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by law, the indemnity for the victim shall be P75,000.00.**
- Moral damages may additionally be awarded to the victim in the criminal proceeding, in such amount as the court may deem just, without the need for pleading or proof of the basis thereof as has heretofore been the practice. With regard to exemplary damages, the same may be awarded in criminal cases committed with one or more aggravating circumstances. We find that the award by the trial court of moral and exemplary damages in the amount of P200,000.00 should be split into P150,000.00 for moral damages and P50,000.00 for exemplary damages, the total amount of P200,000.00 for moral and exemplary damages not being disputed by the accused-appellant and is a factual matter binding on this Court.

WHEREFORE, the Decision of the Regional Trial Court of Pasig City finding the accused ARMANDO QUILATAN guilty of Incestuous Rape and imposing on him the DEATH penalty is AFFIRMED, with the modification that the accused is ordered to pay his victim Oliva Quilatan the amounts of P75,000.00 for civil indemnity and P200,000.00 for moral and exemplary damages.

FRANK TAMARGO

362 PEOPLE vs. JEREZ

FACTS

Efren Jerez together with some companions went their way to look for carabao buyers in Camarines Sur. They were able to obtain information from a tricycle driver of the wherabouts of a prospective buyer in the name of Reynaldo Ochoa (49 years old). Subsequently, the latter together with another buyer by the name Joselito Balbastro (35 years old) went with Jerez and company in order to check the status of the carabaos. However, the two buyers by then, were stabbed to death by Jerez and company as they were divested of certain possessions including a sum of money amounting to PhP 37,000.00. Jerez, et. al. were consequently charged and convicted of the crime of robbery and double homicide. They were then ordered to pay the heirs of the victims PhP 100,000.00 (each of the victim), as cost of loss of earning capacity.

ISSUES & ARGUMENTS

Whether the order of payment was proper?

HOLDING & RATIO DECIDENDI

No. The lower court made a wrong computation. They must have rendered the order using:

NET EARNING CAPACITY = Life Expectancy X (Gross Annual Income
Less: Necessary Life Expenses)
Where: Life Expectancy = 2/3 (80 – age at time of death)
Hence:
Jose = PhP 1,080,000.00
Reynaldo = PhP 756,000.00

363 Rosales vs. CA and MMTC| Quisumbing
G.R. No. 126395, November 16, 1998|

FACTS

- Metro Manila Transit Corporation (MMTC) is the operator of a fleet of passenger buses within the Metro Manila area. Musa was its driver assigned to MMTC Bus No. 27. The spouses Rosales were parents of Liza Rosalie, a third-year high school student at the University of the Philippines Integrated School.
- At around a quarter past one in the afternoon of August 9, 1986, MMTC Bus No. 27, which was driven by Musa at 25 kilometers per hour, hit Liza Rosalie who was then crossing Katipunan Avenue in Quezon City. An eye witness said the girl was already near the center of the street when the bus, then bound for the south, hit her. She fell to the ground upon impact, rolled between the two front wheels of the bus, and was run over by the left rear tires thereof. Her body was dragged several meters away from the point of impact. Liza Rosalie was taken to the Philippine Heart Center, but efforts to revive her proved futile.
- Pedro Musa was found guilty of reckless imprudence resulting in homicide and sentenced to imprisonment by the RTC of Quezon City.
- The spouses Rosales filed an independent civil action for damages against MMTC, Musa, MMTC Acting General Manager Conrado Tolentino, and the Government Service Insurance System (GSIS).
- On August 5, 1994, the Court of Appeals affirmed the decision of the trial court with the following modification of deleting the award of P150,000.00 as actual damages and awarding in lieu thereof the amount of P30,000.00 as death indemnity.
- The spouses Rosales filed a motion for reconsideration, which the appellate court, in a resolution, dated September 12, 1996, partly granted by increasing the indemnity for the death of Liza Rosalie from P30,000.00 to P50,000.00.

ISSUES & ARGUMENTS

W/N COMPENSATION FOR LOSS OF EARNING CAPACITY SHOULD BE AWARDED TO LISA ROSALIE'S HEIRS?

HOLDING & RATIO DECIDENDI

YES, COMPENSATION FOR LOSS OF EARNING CAPACITY SHOULD BE AWARDED

- **Art. 2206 of the Civil Code provides that in addition to the indemnity for death caused by a crime or *quasi delict*, 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; . . ."** 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.
- In sharp contrast with the situation obtaining in People v. Teehankee, where the prosecution merely presented evidence to show the fact of the victim's graduation from high school and the fact of his enrollment in a flying school, spouses Rosales did not content themselves with simply establishing Liza Rosalie's enrollment at UP Integrated School. They presented evidence to show that Liza Rosalie was a good student, promising artist, and obedient child. She consistently performed well in her studies since grade school. A survey taken in 1984 when Liza Rosalie was twelve years old showed that she had good study habits and attitudes.
- **Considering her good academic record, extra-curricular activities, and varied interests, it is reasonable to assume that Liza Rosalie would have enjoyed a successful professional career had it not been for her untimely death. Hence, it is proper that compensation for loss of earning capacity should be awarded to her heirs** in accordance with the formula established in decided cases for computing net earning capacity, to wit:

  Net Earning Capacity = Life Expectancy x [Gross Annual Income – Necessary Living Expenses]

- Life expectancy is equivalent to two thirds (2/3) multiplied by the difference of eighty (80) and the age of the deceased. Since Liza Rosalie was 16 at the time of her death, her life expectancy was 44 more years. Her projected gross annual income, computed based on the minimum wage for workers in the non-agricultural sector in effect at the time of her death, then fixed at P37.00, is P14,630.46. Allowing for necessary living expenses of fifty percent (50%) of her projected gross annual income, her total net earning capacity amounts to P321,870.12.

BON ARCILLA

364 People vs. Mendoza | Puno
GR. No.134004, December 15, 2000 | 348 SCRA 318

FACTS

- While celebrating his bestfriend's (Christoper Huidem) birthday, Antonio Antholyn Laggui II met his death. At age 25, he was still at the prime of his life (contractual worker at Coca-Cola earning P180.00 per day) and less than one year into his marriage. The accused SPO3 Antonio Mendoza was behind his namesake's untimely demise.
- During the birthday *inuman*, Christopher and his brother Jonathan got into an argument. To cool off, Christoper went to his aunt's store, a few houses away. Antonio then followed him.
- While Christopher and Antonio were talking with a neighbor named Andres Rodriguez, the accused Mendoza approached them and lighted their faces with a flashlight. Mendoza wore a bonnet, which left his *singkit* eyes and *medyo matangos* nose exposed. Mendoza asked Antonio if he was a barangay tanod and whether he was drunk. Antonio answered no and was shot thrice. (First was when he answered no; second when he was on the ground; and third the accused came back for a final shot.)
- Trial court convicted Mendoza of Murder and sentenced him to Reclusion Perpetua.

ISSUES & ARGUMENTS

- **What is the proper award for damages due to lost earnings?**

HOLDING & RATIO DECIDENDI

[Main issue is review of the conviction, which was affirmed by the Supreme Court. In fact, actual, moral and exemplary damages were awarded.]

THE ACCUSED MENDOZA SHALL ALSO COMPENSATE THE HEIRS OF ANTONIO FOR THE LATTER'S LOSS OF EARNING CAPACITY.

- The following factors should be considered in determining the compensable amount of lost earnings: (1) the number of years for which the victim would have otherwise lived; and (2) the rate of loss sustained by the heirs of the deceased. Jurisprudence provides that the first factor, or life expectancy, is computed by applying the formula (2/3 x [80 - age at death]) adopted in the American Expectancy Table of Mortality of the Actuarial Combined Experience Table of Mortality. On the other hand, the second factor is arrived at by multiplying the life expectancy by the net earnings of the deceased (i.e. the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses). The net earning is ordinarily pegged at 50% of the gross earnings.
- 1. Life Expectancy= 2/3 x (80-25) = 36.67
  2. Gross Annual Salary= P180 x 261 days (working)= P46,980
  3. Net earnings= P46, 980 x .50= P23,490
  4. Lost Earnings= 36.67 x P23,490= P861,378.30.

Petition DENIED. s

DANI BOLONG

365 People vs. Dubria | Gonzaga-Reyes
G.R. No. 138887, September 26, 2000 |

FACTS

- This is an appeal from the decision of the RTC of Iloilo City, , finding accused Dubria guilty beyond reasonable doubt of murder and sentencing him to suffer the penalty of *reclusion perpetua*
- The information against Dubria alleged …the above-named accused, armed with a long homemade firearm and a sharp instrument with treachery and evident premeditation, with deliberate intent and decided purpose to kill, did then and there willfully, unlawfully, and feloniously attack, assault, shoot and hack one Patricio Calambro, Jr. with said weapons he was then provided, hitting and inflicting upon the latter, wounds on the different parts of his body which caused his death thereafter.
- The RTC believed the testimony of three witnesses of the prosecution.
- Upon appeal, the SC affirmed the conviction.
- NOTE: Damages was NOT really an issue raised by the parties upon appeal, but the SC itself noted that the RTC FORGOT to award said damages (loss of earning capacity)

ISSUES & ARGUMENTS

- **W/N damages for loss of earning capacity must be awarded**

HOLDING & RATIO DECIDENDI

YEZZZIR!!! using the AETM [American Expectancy Table of Mortality]

- We note however that the trial court failed to award damages for the loss of earning capacity of the victim to the heirs of the deceased Patricio Calambro, Jr. The fact that the prosecution did not present documentary evidence to support its claim for damages for loss of earning capacity of the deceased does not preclude recovery of said damages.
- The testimony of the mother of the victim, Norma Calambro, as to the earning capacity of her husband sufficiently establishes the basis for making such an award. It was established that Patricio Calambro, Jr. was 23 years old at the time of his death in 1996. His average monthly income was ₱3,000.00. Hence, in accordance with the **American Expectancy Table of Mortality** that has been consistently adopted by the Courtthe loss of his earning capacity is to be calculated as follows:

Award for = 2/3 [80-age at time of death]x[gross annual income-80%(GAI)]
Lost earnings
= 2/3 [80-23] x [₱36,000.00 - 80%(₱36,000.00)]
= (38) x (₱7,200.00)
=₱273,600.00
As such, accused-appellant should likewise be made to pay the amount of ₱273,600.00 representing the loss of earning capacity of the deceased.

366. Reformina vs. Tomol| Cuevas
G.R. No. L-59096 October 11, 1985 |SCRA

FACTS

- In an action for Recovery of Damages for injury to Person and Loss of Property, judgment was rendered by the CFI of Cebu ordering defendants **Shell and Michael** to pay jointly and severally **Pacita F. Reformina and Francisco Reformina** for the losses and damages suffered by them with legal interest.
- Upon execution, the **Reforminas** claim that the "legal interest" should be at the rate of twelve (12%) percent per annum, invoking in support of their aforesaid submission, Central Bank of the Philippines Circular No. 416[23]. **Shell and Michael** insist that said legal interest should be at the rate of six (6%) percent per annum only, pursuant to and by authority of Article 2209 of the New Civil Code in relation to Articles 2210 and 2211 thereof.

ISSUES & ARGUMENTS

W/N, by way of legal interest, a judgment debtor should pay a judgment creditor twelve (12%) percent per annum.

Reforminas: Central Bank Circular No. 416 includes the judgment sought to be executed in this case, because it is covered by the second phrase "the rate allowed in judgments in the absence of express contract as to such rate of interest ... "

HOLDING & RATIO DECIDENDI

No. By way of legal interest, a judgment debtor should pay a judgment creditor only six (6%) percent per annum.

- Central Bank Circular No. 416 was issued and promulgated by the Monetary Board pursuant to the authority granted to the Central Bank by P.D. No. 116, which amended Act No. 2655, otherwise known as the Usury Law.
  - Acting pursuant to this grant of authority, the Monetary Board increased the rate of legal interest from that of six (6%) percent per annum originally allowed under Section I of Act No. 2655 to twelve (12%) percent per annum.
  - It will be noted that Act No. 2655 deals with interest on (1) loans; (2) forbearances of any money, goods, or credits; and (3) rate allowed in judgments.
- **WHAT KIND OF JUDGMENT IS REFERRED TO UNDER THE SAID LAW?**
  - **The judgments spoken of and referred to are Judgments in litigations involving loans or forbearance of any 'money, goods or credits. Any other kind of monetary judgment which has nothing to do with, nor involving loans or forbearance of any money, goods or credits does not fall within the coverage of the said law for it is not within the ambit of the authority granted to the Central Bank.**
  - A word or phrase in a statute is always used in association with other words or phrases and its meaning may thus be modified or restricted by the latter.
  - Another formidable argument against the tenability of the Reforminas' stand are the whereases of PD No. 116[24] which brought about the grant of authority to the Central Bank. The decision herein sought to be executed is one rendered in an Action for Damages for injury to persons and loss of property and does not involve any loan, much less forbearances of any money, goods or credits

The law applicable to the said case is Article 2209 of the New Civil Code[25]. The above provision remains untouched despite the grant of authority to the Central Bank by Act No. 2655, as amended. To make Central Bank Circular No. 416 applicable to any case other than those specifically provided for by the Usury Law will make the same of doubtful constitutionality since the Monetary Board will be exercising legislative functions which was beyond the intendment of P.D. No. 116.

Separate Opinion

[23] By virtue of the authority granted to it under Section 1 of Act 2655, as amended, otherwise known as the "Usury Law" the Monetary Board in its Resolution No. 1622 dated July 29, 1974, has prescribed that the rate of interest for the *loan or forbearance of a*ny money, goods, or credits and the rate allowed *in judgments,* in the absence of express contract as to such rate of interest, shall be twelve (12%) per cent per annum. This Circular shall take effect immediately. (Italics supplied)

[24] WHEREAS, the interest rate, together with other monetary and credit policy instruments, performs a vital role in mobilizing domestic savings and attracting capital resources into preferred areas of investments;

WHEREAS, the monetary authorities have recognized the need to amend the present Usury. Law to allow for more flexible interest rate ceilings that would be more responsive to the requirements of changing economic conditions;

WHEREAS, the availability of adequate capital resources is, among other factors, a decisive element in the achievement of the declared objective of accelerating the growth of the national economy

[25] Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of interest agreed upon, and in the absence of stipulation, the legal interest which is six percent per annum.

PLANA, *J.,* concurring and dissenting:

- The Central Bank authority here in question is not premised on Section 1-a of Act No. 2655 (Usury Law). Sec. 1-a cannot include a provision on *interest to be allowed in judgments,* which is not the subject of contractual stipulations and therefore cannot logically be made subject to interest (ceiling), which is all that Sec. 1-a covers.
- Sec. 1 of the Usury Law is different from Sec. 1-a. The role of Section 1 is to fix the specific rate of interest or legal interest (6%) to be charged. It also impliedly delegates to the Central Bank the power to modify the said interest rate. Thus, the interest rate shall be 6% per annum or "such rate as may be prescribed by the Monetary Board of the Central Bank ..."
- **The authority to change the legal interest that has been delegated to the Central Bank under the quoted Section 1 is absolute and unqualified. The determination of what the applicable interest rate shall be, as distinguished from interest rate *ceiling,* is completely left to the judgment of the Central Bank. In short, there is a total abdication of legislative power, which renders the delegation void.** Thus, it is unnecessary to make a distinction between judgments in litigations involving loans and judgments in litigations that have nothing to do with loans.
- The Central Bank authority to change the legal rate of interest allowed in judgments is constitutionally defective; and incidentally, this vice also affects its authority to change the legal interest of 6% per annum as to loans and forbearance of money, goods or credits, as envisaged in Section 1 of the Usury Law.

367. Easter Shipping vs. CA and Mercantile Insurance
GR 97412, July 12, 1994/ Vitug

FACTS

- Two fiber drums of Vitamin B were shipped from Japan on SS Eastern Comet owned by petitioners
- Upon inspection in Manila, it was found out that one of the drums spilled, the rest of the shipment contents were fake. Defendant then sued petitioner in the RTc which ruled in their favor
- The award include a stipulation asking them to pay 12 percent interest.

ISSUES & ARGUMENTS

W/N the interest on the claim should commence from the date of the filing of the complaint at the rate of 12% contra from the date of decision only at a rate of 6%

HOLDING & RATIO DECIDENDI

6% from the decision

- When an obligation regardless of its source is breached, the contravenor can be held liable for damages.
- The provisions under the civil code regarding "Damages" govern the measure of recoverable damages.
- But, with regard to interest in the concept of actual and compensatory damages, the rate of interest is imposed as follows:
    - When the obligation is breached and it consists of the payment of a sum of money like a loan or forbearance of money, the interest due is what it was written in the stipulation. This interest shall ITSELF earn legal interest from the time it is judicially demanded. In absence of such stipulation, it is 12%
    - When an obligation NOT in breach of a loan or forbearance of money, an interest of said damages may be given at the discretion of the court, at 6% per annum. There will be no interest though until the claims are liquidated except when the demand can be proven with reasonable certainty, and this interest shall run from the time judicially or extrajudicially. But if there is no certainty, it will be counted from the date of the judgment id made
- When the judgment reaches FINALLITY, there shall be a interest rate of 12% until it is satisfied. This is equivalent to a forbearance

368. Atlantic Gulf and Pacific Co. of Manila, Inc. vs. CA, Carlito Castillo and Heirs of Castillo | Regalado
G.R. No. 114841-42, October 20, 1995 |

FACTS

- Sometime in 1982, petitioner company commenced the construction of a steel fabrication plant in the Municipality of Bauan, Batangas, necessitating dredging operations at the Batangas Bay in an area adjacent to the real property of private respondents.
- Private respondents alleged that during the on-going construction of its steel and fabrication yard, petitioner's personnel and heavy equipment trespassed into the adjacent parcels of land belonging to private respondents without their consent. These heavy equipment damaged big portions of private respondents' property which were further used by petitioner as a depot or parking lots without paying any rent therefor, nor does it appear from the records that such use of their land was with the former's conformity.
- Respondents further alleged that as a result of the dredging operation of petitioner company, the sea silt and water overflowed and were deposited upon their land. Consequently, the said property which used to be agricultural lands principally devoted to rice production and each averaging an annual net harvest of 75 cavans, could no longer be planted with palay as the soil became infertile, salty, unproductive and unsuitable for agriculture.
- Petitioner now moves for the reconsideration of the judgment promulgated in this case on August 23, 1995 contending that private respondents are permitted thereunder to recover damages twice for the same act of omission contrary to Article 2177 of the Civil Code.

ISSUES & ARGUMENTS

- **W/N RESPONDENTS WERE PERMITTED TO RECOVER DAMAGES TWICE FOR THE SAME ACT?**
  Petitioner: Affirmance of the judgment of the trial court granting damages for both the "damage proper to the land" and "rentals for the same property" runs afoul of the proscription in Article 2177.

HOLDING & RATIO DECIDENDI

NO, THERE WAS NO RECOVERY OF DAMAGES TWICE FOR THE SAME ACT

- Petitioner overlooks the fact that private respondents specifically alleged that as a result of petitioner's dredging operations the soil of the former's property "became infertile, salty, unproductive and unsuitable for agriculture." They further averred that petitioner's heavy equipment "used to utilize respondents' land as a depot or parking lot of these equipment without paying any rent therefor."
- **It is therefore clearly apparent that petitioner was guilty of two culpable transgressions on the property rights of respondents, that is:**
  - **1. For the ruination of the agricultural fertility or utility of the soil of their property**
  - **2. For the unauthorized use of said property as a dump rile or depot for petitioner's heavy equipment and trucks**
- Consequently, both courts correctly awarded damages both for the destruction of the land and for the unpaid rentals, or more correctly denominated, for the reasonable value of its use and occupation of the premises.

BON ARCILLA

369. Medel vs. CA | **PARDO**, J
G.R. No. 131622, November 27, 1998 | 299 SCRA 481

FACTS

- Servando Franco and Leticia Medel obtained a loan from Veronica R. Gonzales who was engaged in the money lending business under the name "Gonzales Credit Enterprises", in the amount of P50,000.00, payable in two months.
- Veronica gave only the amount of P47,000.00, to the borrowers, as she retained P3,000.00, as advance interest for one month at 6% per month. Then Servando and Leticia executed a promissory note for P50,000.00, to evidence the loan, payable on January 7, 1986.
- Servando and Liticia obtained from Veronica another loan in the amount of P90,000.00. They received only P84,000.00, out of the proceeds of the loan.
- Servando and Leticia secured from Veronica still another loan in the amount of P300,000.00, maturing in one month, secured by a real estate mortgage over a property belonging to Leticia Makalintal Yaptinchay, who issued a special power of attorney in favor of Leticia Medel, authorizing her to execute the mortgage.
- Like the previous loans, Servando and Medel failed to pay the third loan on maturity.
- Servando and Leticia with the latter's husband, Dr. Rafael Medel, consolidated all their previous unpaid loans totaling P440,000.00, and sought from Veronica another loan in the amount of P60,000.00, bringing their indebtedness to a total of P500,000.00, payable on August 23, 1986.
- Then they executed a promissory note which provides that indebtedness of P500,000 shall bear an interest *at the rate of 5.5 PER CENT per month plus 2% service charge per annum*
- Said promissory note likewise provides that should they fail to pay any amortization or any portion thereof, all the other installments together with all interest accrued shall immediately be due and payable plus an *additional amount equivalent to one per cent (1%) per month of the amount due and demandable as penalty charges in the form of liquidated damages* until fully paid;
- Plus there shall be a further *sum of TWENTY FIVE PER CENT (25%) thereof in full,* without deductions *as Attorney's Fee* whether actually incurred or not, of the total amount due and demandable, exclusive of costs and judicial or extra judicial expenses
- Since the borrowers failed to pay, Veronica R. Gonzales, joined by her husband Danilo G. Gonzales filed, a complaint for collection of the full amount of the loan including interests and other charges.
- Defendants Leticia and Rafael Medel alleged that the loan was the transaction of Leticia Yaptinchay, who executed a mortgage in favor of the plaintiffs over a parcel of real estate situated in San Juan, Batangas
- They also averred that the interest rate is excessive at 5.5% per month with additional service charge of 2% per annum, and penalty charge of 1% per month; that the stipulation for attorney's fees of 25% of the amount due is unconscionable, illegal and excessive, and that substantial payments made were applied to interest, penalties and other charges.
- the lower court declared that the due execution and genuineness of the four promissory notes had been duly proved, and ruled that although the Usury Law had been repealed, the interest charged by the plaintiffs on the loans was unconscionable. Hence, the trial court applied "the provision of the New Civil Code" that the "legal rate of interest for loan or forbearance of money, goods or credit is 12% per annum."

ISSUES & ARGUMENTS

W/N the stipulated rate of interest at 5.5% per month on the loan in the sum of P500,000.00, that plaintiffs extended to the defendants is usurious.

HOLDING & RATIO DECIDENDI

No, it is not usurious. However it is unconscionable which makes the stipulation void.

SC agreed with petitioners that the stipulated rate of interest at 5.5% per month on the P500,000.00 loan is excessive, iniquitous, unconscionable and exorbitant.

However, SC can not consider the rate "usurious" because this Court has consistently held that Circular No. 905 of the Central Bank, adopted on December 22, 1982, has expressly removed the interest ceilings prescribed by the Usury Law and that the Usury Law is now "legally inexistent

The interest at 5.5% per month, or 66% per annum, stipulated upon by the parties in the promissory note iniquitous or unconscionable, and, hence, contrary to morals ("contra bonos mores"), if not against the law.
The stipulation is void. The courts shall reduce equitably liquidated damages, whether intended as an indemnity or a penalty if they are iniquitous or unconscionable.
The Court of Appeals erred in upholding the stipulation of the parties. Rather, SC agreed with the trial court that, under the circumstances, interest at 12% per annum, and an additional 1% a month penalty charge as liquidated damages may be more reasonable.

370. David vs. Court of Appeals | Quisumbing, J.
G.R. No. 115821, October 13, 1999 | 316 SCRA 710

FACTS

- The parties do not dispute the facts in this case. The dispute concerns only the execution of the Decision of the Regional Trial Court of Manila, Branch 27, in Civil Case No. 94781, dated October 31, 1979, as amended by an Order dated June 20, 1980.
- The Regional Trial Court of Manila, Branch 27, with Judge Ricardo Diaz, then presiding, issued a writ of attachment over real properties covered by TCT Nos. 80718 and 10289 of private respondents. In his Decision dated October 31, 1979, Judge Diaz ordered private respondent Afable to pay petitioner P66,500.00 plus interest from July 24, 1974, until fully paid, plus P5,000.00 as attorney's fees, and to pay the costs of suit.
- On June 20, 1980, however, Judge Diaz issued an Order amending said Decision, so that the legal rate of interest should be computed from January 4, 1966, instead of from July 24, 1974.
- Respondent Afable appealed to the Court of Appeals and then to the Supreme Court. In both instances, the decision of the lower court was affirmed. Entries of judgment were made and the record of the case was remanded to Branch 27, presided at that time by respondent Judge Edgardo P. Cruz, for the final execution of the Decision dated October 31, 1979, as amended by the Order dated June 20, 1980.
- Upon petitioner's motion, respondent Judge issued an *Alias* Writ of Execution by virtue of which respondent Sheriff Melchor P. Peña conducted a public auction. Sheriff Peña informed the petitioner that the total amount of the judgment is P270,940.52. The amount included a computation of simple interest. Petitioner, however, claimed that the judgment award should be P3,027,238.50, because the amount due ought to be based on compounded interest.
- Although the auctioned properties were sold to the petitioner, Sheriff Peña did not issue the Certificate of Sale because there was an excess in the bid price in the amount of P2,941,524.47, which the petitioner failed to pay despite notice. This excess was computed by the Sheriff on the basis of petitioner's bid price of P3,027,238.50 minus the amount of P270,940.52 computed in the judgment award.
- On May 18, 1993, petitioner filed a Motion praying that respondent Judge Cruz issue an order directing respondent Sheriff Peña to prepare and execute a certificate of sale in favor of the petitioner, placing therein the amount of the judgment as P3,027,238.50, the amount he bid during the auction which he won. His reason is that compound interest, which is allowed by Article 2212 of the Civil Code, should apply in this case.
- On July 5, 1993, respondent Judge issued an Order denying petitioner's Motion dated May 18, 1993,
- On August 11, 1993, petitioner moved for reconsideration of the Order dated July 5, 1993, reiterating his Motion dated May 18, 1993.
- On November 17, 1993, respondent Judge issued his Order denying the petitioner's motion for reconsideration.
- Petitioner elevated said Orders to the Court of Appeals in a petition for *certiorari*, prohibition and *mandamus*. However, respondent appellate court dismissed the petition in a Decision dated May 30, 1994.

ISSUES & ARGUMENTS

W/N respondent appellate court erred in affirming respondent Judge's order for the payment of simple interest only rather than compounded interest.

HOLDING & RATIO DECIDENDI

However, this Court has already interpreted Article 2212, and defined standards for its application in *Philippine American Accident Insurance vs. Flores*, 97 SCRA 811. As therein held, Article 2212 contemplates the presence of stipulated or conventional interest which has accrued when demand was judicially made. In cases where no interest had been stipulated by the parties, as in the case of Philippine American Accident Insurance, no accrued conventional interest could further earn interest upon judicial demand. [5]

- In the said case, we further held that when the judgment sought to be executed ordered the payment of simple "legal interest" only and said nothing about payment of compound interest, but the respondent judge orders payment of compound interest, then, he goes beyond the confines of a judgment which had become final.
- Note that in the case now before us, the Court of Appeals made the finding that ". . . no interest was stipulated by the parties. In the promissory note denominated as "Compromise Agreement" signed by the private respondent which was duly accepted by petitioner no interest was mentioned. In his complaint, petitioner merely prayed that defendant be ordered to pay plaintiff the sum of P66,500.00 with interest thereon at the legal rate from the date of the filing of the complaint until fully paid. [6] Clearly here the Philippine American Accident Insurance ruling applies.

371. Ruiz vs. Court of Appeals | Puno
G.R. No. 146942, April 22, 2003 | 401 SCRA 410

FACTS

- Petitioner Corazon Ruiz is engaged in the business of buying and selling jewelry. She obtained loans from private respondent Consuelo Torres on different occasions.
- These loans were consolidated under one promissory note and were secured by a real estate mortgage. The promissory note provided for a monthly interest rate of 3%, a surcharge of 1%, and 10% compounded monthly interest on remaining balance as of the maturity date.
- Petitioner obtained three more loans from private respondent and was secured by P571,000 worth of jewelry.
- Petitioner was unable to make interest payments as she had difficulties collecting from her clients in her jewelry business.
- Due to petitioner's failure to pay the principal loan, as well as the interest payment, private respondent demanded payment. When petitioner failed to pay, private respondent sought the extrajudicial foreclosure of the real estate mortgage.
- Petitioner filed a complaint, with a prayer for the issuance of TRO to enjoin the sheriff from proceeding with the foreclosure sale and to fix her indebtedness to P706,000.

ISSUES & ARGUMENTS

W/N the rates of interests and surcharges on the obligation of petitioner to private respondent are valid?

HOLDING & RATIO DECIDENDI

NO. INTEREST RATES ARE INVALID.

- SC affirmed the CA ruling, striking down as invalid the 10% compounded monthly interest, the 10% surcharge per month stipulated in the promissory notes, and the 1% compounded monthly interest stipulated in another promissory note.
- The legal rate of interest of 12% per annum shall apply after the maturity dates of the notes until full payment of the entire amount due.
- The only permissible rate of surcharge is 1% per month, without compounding.
- SC upheld the award of CA of attorney's fees, reasonably reducing the stipulated 25% to 10% of the entire amount due.
- SC also equitably reduced the 3% per month or 36% per annum interest present in all four promissory notes to 1% per month or 12% per annum interest.
- SC based its decision on the *Medel, Garcia, Bautista*, and *Spouses Solangon* cases.
- An interest of 12% per annum is deemed fair and reasonable.
- The 1% surcharge on the principal loan for every month of default is valid. This surcharge or penalty stipulated in a loan agreement in case of default partakes of the nature of liquidated damages under Art. 2227 of the NCC, and is separated and distinct from interest payment.
- Although the courts may not at liberty ignore the freedom of the parties to agree on such terms and conditions as they see fit that contravene neither law nor morals, good customs, public order or public policy, a stipulated penalty, nevertheless, may be equitably reduced if it is iniquitous or unconscionable.

FRANCIS ESPIRITU

372. Cuaton v. Salud | Ynares-Santiago
G.R. No. 158382 January 27, 2004| 421 SCRA 278

FACTS

- Petitioner Cuaton loaned P1M from Respondent Salud, which was secured by a REM. After petitioner's default, respondent, joined by her husband, instituted foreclosure proceedings for a REM against petitioner and his mother.
- The RTC rendered a decision that the REM was void because it was executed by the petitioner without expressly stating that he was merely acting as a representative of his mother, in whose name the mortgaged lot was titled. Nevertheless, the RTC ordered petitioner to pay the P1M loan plus interest amounting to P610K, representing interests of 10% and 8% per month for the period of Feb-Aug 1992.
- CA affirmed the RTC decision. Petitioner then filed a motion for partial reconsideration with respect to the award of interest worth P610K, arguing that the same was iniquitous and exorbitant. Motion denied.

ISSUES & ARGUMENTS

W/N the 8% and 10% MONTHLY interest rates imposed on the P1M loan obligation of petitioner to respondent are valid.

HOLDING & RATIO DECIDENDI

NO. SUCH RATES ARE INIQUITOUS AND EXORBITANT. INTEREST RATE REDUCED TO 12% PER ANNUM.

- Although the Usury Law is suspended, lenders have no authority to raise interest rates to levels which will either enslave their borrowers or lead to a haemorrhaging of their assets. The stipulated interest rates are illegal if they are unconscionable.
- Stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. Under Art.1409 of the Civil Code, these contracts are inexistent and void from the beginning. They cannot be ratified nor the right to set up their illegality as a defense be waived.
- The SC has already declared unconscionable interest rates of 5.5% per month and 6% per month in previous cases for being excessive, iniquitous, unconscionable, and exorbitant. In both cases, the interest rates were reduced to 12% per annum. In the present case, the present 8% and 10% interest rates are even higher than those previously invalidated by the Court. Accordingly, the reduction of the said rates to 12% per annum is fair and reasonable.
- The case of *Eastern Shipping Lines, Inc. v. Court of Appeals*, laid down the following guidelines on the imposition of interest, to wit: 1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 23 of the Civil Code. x x x 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.
- Applying the foregoing rules, the interest of 12% per annum imposed by the Court (in lieu of the invalidated 10% and 8% per month interest rates) on the P1M loan should be computed from the date of the execution of the loan on October 31, 1991 until finality of this decision. After the judgment becomes final and executory until the obligation is satisfied, the amount due shall further earn interest at 12% per year.

373. Commonwealth Insurance Corp vs. CA| Austria-Martinez
G.R. No. 130886. January 29, 2004|

FACTS

- RCBC granted 2 loans to Jigs Manufacturing (JIGS), 2.5M and Elba Industries (ELBA), 1M.
- The loans were evidenced by promissory notes and secured by surety bonds executed by Commonwealth Insurance Corp (CIC). The surety bonds totalled P4,464,128.00
- JAGS and ELBA defaulted in their payment.
- RCBC made a written demand to CIC which in turn CIC made several payments, 2M in total.
- RCBC made a final demand on the balance but CIC ignored.
- RCBC filed a complaint against CIC. Trial Court ruled in favor of RCBC and ordered CIC to pay the balance. The judgment made no pronouncement as to interest.
- RCBC appealed to CA praying that CIC be made liable to pay interest.
- CA granted and added a 12% legal interest on the award.

ISSUES & ARGUMENTS

W/N CIC should be held liable to pay interest over and above its principal obligation under the surety bonds issued by it?

HOLDING & RATIO DECIDENDI

YES. CIC is made to pay interest not on the basis of the surety bonds it issued but on basis of it's default in paying its obligation.

- It has been held that if a surety upon demand fails to pay, he can be held liable for interest, even if in thus paying, its liability becomes more than the principal obligation. The increased liability is not because of the contract but because of the default and the necessity of judicial collection.
- As a general rule, a suretyshould not be made to pay more than its assumed obligation under the surety bonds. However, CIC's liability for the payment of interest is not by reason of the suretyship agreement itself but because of the delay in the payment of its obligation under the said agreement.
- CIC offered no valid excuse for not paying the balance of its principal obligation when demanded by RCBC. Its failure to pay is unreasonable.
- The appellate court is correct in imposing 12% interest.
- When an obligation is breached, and it consists in the payment of a sum of money, the interest due should be that which may have been stipulated in writing. Absence of stipulation, the reate of interest shall be 12%.
- CIC's obligation consists of a loan or forbearance of money. No interest has been agreed upon in writing between CIC and RCBC. Rate of interest is 12% to be computed from the time the extrajudicial demand was made.

374. DBP V. PEREZ
G.R. No. 148541

FACTS

- On April 28, 1978, petitioner Development Bank of the Philippines (DBP) sent a letter to respondent Bonita Perez, informing the latter of the approval of an industrial loan amounting to ₱214,000.00 for the acquisition of machinery and equipment and for working capital, and an additional industrial loan amounting to ₱21,000.00 to cover unforeseen price escalation.
- On May 18, 1978, the respondents were made to sign four promissory notes covering the total amount of the loan, ₱235,000.00. Three promissory notes for ₱24,000.00, ₱48,000.00, and ₱142,000.00, respectively, were executed, totaling ₱214,000.00. These promissory notes were all due on August 31, 1988. A fourth promissory note due on September 19, 1988 was, likewise, executed to cover the additional loan of ₱21,000.00. The promissory notes were to be paid in equal quarterly amortizations and were secured by a mortgage contract covering real and personal properties.
- On September 6, 1978, the petitioner sent a letter to the respondents informing them of the terms for the payment of the ₱214,000.00 industrial loan. On November 8, 1978, the petitioner sent another letter to the respondents informing them about the terms and conditions of their additional ₱21,000.00 industrial loan.
- Due to the respondents' failure to comply with their amortization payments, the petitioner decided to foreclose the mortgages that secured the obligation. However, in a Letter dated October 7, 1981, Mrs. Perez requested for a restructuring of their account due to difficulties they were encountering in collecting receivables.
- On April 1, 1982, the petitioner informed the respondents that it had approved the restructuring of their accounts. The loan was restructured, and on May 6, 1982, the respondents signed another promissory note in the amount of ₱231,000.00 at eighteen percent (18%) interest per annum, payable quarterly at ₱12,553.27, over a period of ten years.
- The first amortization was due on August 7, 1982, and the succeeding amortizations, every quarter thereafter. However, the respondents made their first payment amounting to ₱15,000.00 only on April 20, 1983 or after the lapse of three quarters. Their second payment, which should have been paid on November 7, 1982, was made on December 2, 1983 and only in the amount of ₱5,000.00. The third payment was then made at the time when the ninth quarterly amortization should have been paid. After this, the respondents completely stopped paying. The total payments they made after the restructure of the loan amounted to ₱35,000.00 only.
- This failure to meet the quarterly amortization of the loan prompted the petitioner to institute foreclosure proceedings on the mortgages. The sale of the properties covered by the mortgage contract was scheduled on October 30, 1985

ISSUES & ARGUMENTS

Whether the interest rate agreed upon by the parties in the new promissory note is usurious?

HELD

YES.The CA held that under CB Circular No. 817, if the loan is secured by a registered real estate, the interest of eighteen percent (18%) is usurious. The petitioner, however, argues that usury has become legally inexistent with the promulgation of CB Circular No. 905. It contends that the interest rate should be eighteen percent (18%), the interest rate they agreed upon. For their part, the respondents argue that the Central Bank engaged in self-legislation in enacting CB Circular No. 905.

We agree with the ruling of the CA. It is elementary that the laws in force at the time the contract was made generally govern the effectivity of its provision. We note that the new promissory note was executed on May 6, 1982, prior to the effectivity of CB Circular No. 905 on January 1, 1983. At that time, The Usury Law, Act No. 2655, as amended by Presidential Decree No. 116, was still in force and effect.

Under the Usury Law, no person shall receive a rate of interest, including commissions, premiums, fines and penalties, higher than twelve percent (12%) per annum or the maximum rate prescribed by the Monetary Board for a loan secured by a mortgage upon real estate the title to which is duly registered.

In this case, by specific provision in the new promissory note, the restructured loan continued to be secured by the same mortgage contract executed on May 18, 1978 which covered real and personal properties of the respondents. We, therefore, find the eighteen percent (18%) interest rate plus the additional interest and penalty charges of eighteen percent (18%) and eight percent (8%), respectively, to be highly usurious.

In usurious loans, the entire obligation does not become void because of an agreement for usurious interest; the unpaid principal debt still stands and remains valid, but the stipulation as to the usurious interest is void. Consequently, the debt is to be considered without stipulation as to the interest. In the absence of an express stipulation as to the rate of interest, the legal rate at twelve percent (12%) per annum shall be imposed.

IN LIGHT OF THE FOREGOING, the assailed Decision dated February 28, 2001 of the Court of Appeals and Order dated June 11, 1993 of the Regional Trial Court, Makati City, Branch 145, are AFFIRMED WITH MODIFICATION. The case is hereby REMANDED to the trial court for determination of the total amount of the respondents' obligation according to the reduced interest rate of twelve percent (12%) per annum.

375. Landl & Company vs. Metrobank| Ynarez-Santiago
G.R. No. 159622. July 30, 2004

FACTS

- Metrobank filed a complaint for sum of money against Landl and Company (Phil.) Inc. (Landl) and its directors. Metrobank alleged that Landl is engaged in the business of selling imported welding rods and alloys. On June 17, 1983, it opened Commercial Letter of Credit with the bank, in the amount of US$19,606.77, which was equivalent to P218,733.92 in Philippine currency at the time the transaction was consummated. The letter of credit was opened to purchase various welding rods and electrodes. Landl put up a marginal deposit of P50,414.00 from the proceeds of a separate clean loan.
- As an additional security, and as a condition for the approval of Landl's application for the opening of the commercial letter of credit, Metrobank required Landl's Directors Llaban and Lucente to execute a Continuing Suretyship Agreement to the extent of P400,000.00, excluding interest, in favor of the bank. Lucente also executed a Deed of Assignment in the amount of P35,000.00 in favor of the bank to cover the amount of Landl's obligation to the bank. Upon compliance with these requisites, Metrobank opened an irrevocable letter of credit for the corporation.
- To secure the indebtedness of Landl, Metrobank required the execution of a Trust Receipt in an amount equivalent to the letter of credit, on the condition that petitioner corporation would hold the goods in trust for Metrobank, with the right to sell the goods and the obligation to turn over to the bank the proceeds of the sale, if any. If the goods remained unsold, Landl had the further obligation to return them to respondent bank on or before November 23, 1983. Upon arrival of the goods in the Philippines, Landl took possession and custody thereof.
- Upon the maturity date of the trust receipt, Landl defaulted in the payment of its obligation to Metrobank and failed to turn over the goods to the latter. On July 24, 1984, the bank demanded that Landl, as entrustees, turn over the goods subject of the trust receipt. On September 24, 1984, Landl turned over the subject goods to the respondent bank.
- On July 31, 1985, in the presence of representatives of Landl and Metrobank, the goods were sold at public auction. The goods were sold for P30,000.00 to Metrobank as the highest bidder.
- The proceeds of the auction sale were insufficient to completely satisfy petitioners' outstanding obligation to Metrobank, notwithstanding the application of the time deposit account of Lucente (Director of Landl). Accordingly, Metrobank demanded that Landl and the Directors pay the remaining balance of their obligation. After they failed to do so, the bank instituted the instant case to collect the said deficiency.
- **RTC: In favor of Metrobank; Landl to pay the outstanding balance PLUS the interest at the rate of 19% per annum; service charge at the rate of 2% per annum starting; 10% per annum of the total amount due collectible by way of Attorney's Fees; Litigation Expenses of P3,000.00 and to pay the cost of the suit; and (6) to pay penalty charge of 12% per annum. CA affirmed.**

ISSUES & ARGUMENTS

W/N the RTC/CA erred in computing or imposing interests, attorney's fees and penalties against Landl.

HOLDING & RATIO DECIDENDI

No, except the Service Charges and Attorney's fees.

The first issue involves the amount of indebtedness prior to the imposition of interest and penalty charges. The initial amount of the trust receipt of P218,733.92, was reduced to P192,265.92 as of June 14, 1984, as per respondent's Statement of Past Due Trust Receipt dated December 1, 1993. This amount presumably includes the application of P35,000.00, the amount of petitioner Lucente's Deed of Assignment, which amount was applied by respondent bank to petitioners' obligation. No showing was made, however, that the P30,000.00 proceeds of the auction sale on July 31, 1985 was ever applied to the loan. Neither was the amount of P50,414.00, representing the marginal deposit made by petitioner corporation, deducted from the loan.

The net amount of the obligation, represented by Metrobank to be P292,172.23 as of April 17, 1986, would thus be P211,758.23.

To this principal amount must be imposed the following charges: (1) 19% interest per annum, in keeping with the terms of the trust receipt;[16] and (2) 12% penalty per annum, collected based on the outstanding principal obligation plus unpaid interest, again in keeping with the wording of the trust receipt.[17] It appearing that petitioners have paid the interest and penalty charges until April 17, 1986, the reckoning date for the computation of the foregoing charges must be April 18, 1986.

A perusal of the records reveals that the trial court and the Court of Appeals erred in imposing service charges upon the petitioners. No such stipulation is found in the trust receipt. Moreover, the trial court and the Court of Appeals erred in computing attorney's fees equivalent to 10% per annum, rather than 10% of the total amount due. There is no basis for compounding the interest annually, as the trial court and Court of Appeals have done. This amount would be unconscionable.

Doctrine:

If an obligation consists in the payment of a sum of money, the indemnity for damages shall be the amount stipulated by the parties as liquidated damages. If no liquidated damages had been stipulated by the parties, then the indemnity for damages shall consist in the payment of the interest agreed upon and if there is no stipulation as to interest the indemnity shall be the payment of interest at six per cent (6%) per annum (Art. 2209).

JON LINA

376. CRISMINA GARMENTS, INC., petitioner, vs. COURT OF APPEAL AND NORMA SIAPNO, respondents. | Panganiban
G.R. No. 128721. March 9, 1999 |

FACTS

- Crismina Garments entered into a contract for a piece of work for 20,762 girl's denim pants with D' Wilmar Garments, through its sole proprietress Norma Siapno (PR). The contract amounted to Php76,410.
- From Feb 1979- May 1979, PR sent 13 various deliveries to comply with the Petitioner's orders. The delivery receipts are accepted and acknowledged to be in good order condition.
- Later, Crismina informed PR of the defective pants delivered. PR offered to take delivery of the defective pants, however Crismina's rep said the goods were good and PR just have to send back her check for P76,410.
- Because PR was actually then unpaid, PR sent a demand letter for the P76,410 and payment within 10 days from receipt of such notice. Crismina countered that PR was liable for the value of the 6,164 damaged pants amounting to P49,925.51.
- PR filed a collection suit against Crismina.
- RTC favored PR. CA affirmed RTC order but deleted the Atty's fees.

ISSUES & ARGUMENTS

W/N it is proper to impose interest at the rate of twelve percent (12%) per annum for an obligation that does not involve a loan or forbearance of money in the absence of stipulation of the parties?

HOLDING & RATIO DECIDENDI

INTEREST RATE for obligation not involving a loan or forbearance of money **is 6%.**

- *Guidelines for the application of the proper interest rates*:

  I. When an **obligation**, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is **breached**, the contravenor can be held **liable for damages**. The provisions under Title XVIII on 'Damages' of the Civil Code govern in determining the measure of recoverable damages.

  II. With regard particularly to an **award of interes**t in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
  1. When the **obligation is breached**, and it consists in the **payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing.** Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. **In the absence of stipulation, the rate of interest shall be 12% per annum (pa) to be computed from default**, i.e., **from judicial or extrajudicial demand** under and subject to the provisions of Article 1169 of the Civil Code.

  2. When an **obligation, not constituting a loan or forbearance of money, is breached**, an **interest on the amount of damages** awarded **MAY be imposed at the discretion of the court** at the **rate of 6% per annum**. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be xxx the amount finally adjudged.

  3. When the **judgment of the court awarding a sum of money becomes final and executory**, the rate of **legal interest**, whether the case falls under paragraph 1 or paragraph 2, above, **shall be 12% per annum from such finality until its satisfaction**, this interim period being deemed to be by then an equivalent to a forbearance of credit.

- Because **the amount due in this case arose from a contract for a piece of work, not from a loan or forbearance of money**, **the legal interest of six percent (6%)** per annum should be applied. Furthermore, since the amount of the demand could be established with certainty when the Complaint was filed, the six percent (6%) interest should be computed from the filing of the said Complaint. But **after the judgment becomes final and executory until the obligation is satisfied, the interest should be reckoned at twelve percent (12%) per year.**

CA decision modified. 6% interest (pa) from filing of complaint and 12% legal interest (pa) after the judgment has become final and executory until satisified.

DIANE LIPANA

377. Manzanares v. Moreta | Torres
G.R. No. L-12306, October 22, 1918| 38 PHIL 823

FACTS

- A male child, 8 or 9 years of age, was killed through the negligence of the defendant in driving his [Moreta] automobile.
- The mother of the dead boy is a widow, a poor washerwoman. She brings action against the defendant to recover damages for her loss in the amount of P5,000. Without there having been tendered any special proof of the amount of damages suffered, the trial court found the defendant responsible and condemned him to pay to plaintiff the sum of P1,000.
- The decision of this Court handed down by Justice Torres, affirms the judgment of the Court of First Instance.

ISSUES & ARGUMENTS

W/N Moreta is liable for Damages?

HOLDING & RATIO DECIDENDI

YES. MORETA SHOULD PAY DAMAGES AMOUNTING P1000 ACCORDING TO THE TRIAL COURTS DECISION

- If it were true that the Moreta was coming from the southern part of Solana Street, and had to stop his car before crossing Real Street, because he had met vehicles which were going along the latter street or were coming from the opposite direction along Solana street, he should have adjusted the speed of the auto which he was operating until he had fully crossed Real Street and had completely reached a clear way on Solana Street. [Solona and Real streets are perpendicular]
- But, as the child was run over by the auto precisely at the entrance of Solana Street, this accident could not have occurred, if the auto had been running at a slow speed, aside form the fact that the defendant, at the moment of crossing Real Street and entering Solana Street, in a northward direction, could have seen the child in the act of crossing the latter street from the sidewalk on the right to that on the left
- Moreta should have slowed down and honked his horn. If these precautions were taken, the boy could have survived.

SEPARATE OPINION

MALCOLM; Compensation for Human Life:

MORETA SHOULD NOT PAY P5000 BUT ONLY P1000 BECAUSE THE PLAINTIFF COULD NOT SHOW ENOUGH EVIDENCE THAT THE DEATH OF HER SON AMOUNTS TO P5000.

- "Damage" has been defined by Escriche as the detriment, injury, or loss which are occasioned by reason of fault of another in the property or person." Of whatsoever nature the damage be, and from whatsoever cause it may proceed, the person who has done the injury ought to repair it by an indemnity proportionate to his fault and to the loss caused thereby. *Damnum* (*daño* or a loss) must be shown to sustain an action for damages.
- In order to give rise to the obligation imposed by this article of the Civil Code, the coincidence of two distinct requisites is necessary, vis: (1) That there exist an injury or damage not originating in acts or omissions of the prejudiced person demanding indemnification therefore; (2) that said injury or damage be caused by the fault or negligence of a person other than the sufferer. (12 Manresa, *Comentarios al Codigo Civil*, p. 604.)
- The customary elements of damages must be shown. But in certain cases, the law presumes a loss because of the impossibility of exact proof and computation in respect to the amount of the loss sustained. In other words, the loss can be proved either by evidence or by presumption.
- The right of action for death and the presumption in favor of compensation begin admitted, the difficulty of estimating in money the worth of a life should not keep a court from judicially compensating the injured party as nearly as may be possible for the wrong. True, man is incapable of measuring exactly in the delicate scales of justice the value of a human life. True, the feelings of a mother on seeing her little son torn and mangled — expiring — dead — could never be assuaged with money. True, all the treasure in nature's vaults could not being to compensate a parent for the loss of a beloved child. Nevertheless, within the bounds of human powers, the negligent should make reparation for the loss.
- The damages which would give the plaintiff in this case a right to recovery against the defendant are only the loss of support, or contributions thereto, which the son was accustomed to make to his mother from his earnings and of which she may have been deprived by his death. But does the evidence introduced by the plaintiff support her claim to recover such damages? We are of the opinion that it does not, because she has not proven that her son was really earning the amount alleged in the complaint, nor any other sum whatever, no alleged in the complaint, nor any other sum whatever, nor alleged in the complaint, nor any other sum whatever, no how much money he was earning by his work either in Arecibo or in San Juan during the days immediately preceding his death or at any time. And we are of the opinion that this is a necessary requisite, because, as the Civil Code declares that recovery may be had for the damage caused, the damages accruing to the plaintiff must be shown so that the trial judge may have data on which to base his decision.

378. Hugo Borromeo vs. MERALCO. | Avanceña
G.R. No. L-18345, December 5, 1922|44 Phil. 165

FACTS

- On the evening of April 10, 1920, electric car No. 203 of Manila Electric was running along M. H. del Pilar Street of the city of Manila, and on arriving at the intersection of that street and Isaac Peral it stopped to receive passengers
- At that moment, Borromeo approached the car with his two children, 12 and 16 years old, and putting his two children on board the car first, he proceeded to follow, but in attempting to board he fell off and was dragged some distance by the car, one of the rear wheels passing over his left foot
- As a result of this accident, Borromeo's left foot was amputated, making it necessary for him to use an artificial foot in order to be able to walk
- Borromeo then brought an action to recover from Manila Electric damages for the injury sustained by him by reason of the accident
- The trial court sentenced Manila Electric to pay the sum of P5,400 with legal interest and did not provide for anything due to the loss of his left foot, which incapacitated him from following his profession
- On appeal, the appellate court dismissed the same

ISSUES & ARGUMENTS

W/N the damages for the loss of Borromeo's left foot should be awarded?

HOLDING & RATIO DECIDENDI

YES, IT IS AN ERROR FOR THE TRIAL COURT NOT TO ALLOW ANYTHING FOR THE LOSS OF THE LEFT FOOT, WHICH INCAPACITATED BORROMEO FROM FOLLOWING HIS PROFESSION

- The Court accepts the finding of the trial court that Manila Electric is liable, and that Borromeo's fall was due entirely to the car having been suddenly set in motion at the moment that he was about to board it, but without having gained a sure footing on the running board, and that the subsequent loss of his left foot was due to the carelessness and negligence of Manila Electric's employees in charge of car No. 203 as supported by the evidence
- The sum of P5,400 awarded by the trial court as damages is made up to the expense incurred for hospital, medicine, and physician's fees on account of this accident. Although Borromeo asks for more on this account, the Court believes, after an examination of the evidence, that this amount is really all that he is entitled to on this account
- However, the trial court has not allowed Borromeo anything for the loss of his left foot, which has incapacitated him from following his profession and the Court believes that this is an error. The obligation to indemnify for injury caused by negligence under article 1902 of the Civil Code, includes the two kinds of damages specified in article 1106 of the same Code; to wit, damages for the loss actually sustained and for the profit which the injured party may have failed to realized
- It appears that at the time of the accident, Borromeo was chief engineer of the merchant steamer San Nicolas with a monthly salary of P375, and that having lost his left foot, thereby necessitating the use of an artificial foot in order to be able to walk, he can no longer be employed as a marine engineer on any vessel, and, as a matter of fact, the Collector of Customs has refused to grant him a license to follow his profession as marine engineer. It also appears that he, who is 45 years old, has been engaged in this profession for sixteen years (since 1904), and that he knows no other profession whereby he can earn his living. It is evident that this damage must also be indemnified
- Borromeo's incapacity to continue in the practice of his profession as marine engineer has put an end to one of his activities and has certainly destroyed a source — the principal source — of his professional earnings in the future. Taking into account the age of Borromeo and the salary he derived from this profession from the exercise of which he has been deprived, the Court fix this future damage at P2,000

Judgment MODIFIED.

KATH MATIBAG

379. Villa Rey Transit, Inc v. CA| Concepcion, J.
G.R. No. L-25499 February 18, 1970
Death and Permanent Incapacity

FACTS

- An Izuzu First Class passenger bus owned and operated by the defendant, driven by Laureano Casim, left Lingayen, Pangasinan, for Manila. Among its paying passengers was the deceased, Policronio Quintos, Jr. who sat on the first seat, second row, right side of the bus.
- At about 4:55 o'clock a.m. when the vehicle was nearing the northern approach of the Sadsaran Bridge, it frontally hit the rear side of a bullcart filled with hay. As a result the end of a bamboo pole placed on top of the hayload and tied to the cart to hold it in place, hit the right side of the windshield of the bus. The protruding end of the bamboo pole, about 8 feet long from the rear of the bullcart, penetrated through the glass windshield and landed on the face of Policronio Quintos, Jr. who, because of the impact, fell from his seat and was sprawled on the floor. The pole landed on his left eye and the bone of the left side of his face was fractured.
- Notwithstanding medical assistance, Policronio Quintos, Jr. died due to traumatic shock due to cerebral injuries.
- The private respondents are the sisters and only surviving heirs of Quintos Jr., who died single, leaving no descendants nor ascendants. Said respondents herein brought this action against petitioner, for breach of the contract of carriage between said petitioner and the deceased Quintos, to recover the aggregate sum of P63,750.00 as damages, including attorney's fees.
- Petitioner contended that the mishap was due to a fortuitous event, but this pretense was rejected by the trial court and the Court of Appeals, both of which found that the accident and the death of Policronio had been due to the negligence of the bus driver, for whom petitioner was liable under its contract of carriage with the deceased.
- The Trial Court based the number of years by which the damages shall be computed on the life expectancy of Quintos, which was placed at 33-1/3 years — he being over 29 years of age (or around 30 years for purposes of computation) at the time of his demise — by applying the formula (2/3 x [80-301 = life expectancy) adopted in the American Expectancy Table of Mortality or the actuarial of Combined Experience Table of Mortality.
- Petitioner maintains that the lower courts had erred in adopting said formula and in not acting in accordance with *Alcantara v. Surro* in which the damages were computed on a four year basis, despite the fact that the victim therein was 39 years old, at the time of his death, and had a life expectancy of 28.90 years.

ISSUES & ARGUMENTS

W/N the amount of damages awarded is proper?

HOLDING & RATIO DECIDENDI

YES, it is proper.

In the case of Alcantara v. Surro, none of the parties had questioned the propriety of the four-year basis adopted by the trial court in making its award of damages. Both parties appealed, but only as regards the *amount* thereof. The plaintiffs assailed the non-inclusion, in its computation, In fact in that case the Court held that: The determination of the indemnity to be awarded to the heirs of a deceased person has therefore *no fixed basis. Much is left to the discretion of the court considering the moral and material damages involved*, and so it has been said that *"(t)here can be no exact or uniform rule for measuring the value of a human life and the measure of damages cannot be arrived at by precise mathematical calculation, but the amount recoverable depends on the particular facts and circumstances of each case.* The life expectancy of the deceased or of the beneficiary, whichever is shorter, is an important factor. Other factors that are usually considered are: (1) pecuniary loss to plaintiff or beneficiary; (2) loss of support ; (3) loss of service; (4) loss of society; (5) mental suffering of beneficiaries ; and (6) medical and funeral expenses.

Life expectancy is, not only relevant, but, also, an *important* element in fixing the amount recoverable by private respondents herein. The Court of Appeals has not erred in basing the computation of petitioner's liability upon the life expectancy of Policronio Quintos, Jr.

It has been consistently held that earning capacity, as an element of damages to one's estate for his death by wrongful act is necessarily his net earning capacity or his capacity to acquire money, "*less the necessary expense for his own living.* Stated otherwise, the amount recoverable is not loss of the entire earning, but rather the loss of that *portion* of the earnings which the beneficiary would have received. In other words, only net earnings, not gross earning, are to be considered that is, the total of the earnings *less* expenses necessary in the creation of such earnings or income and less living and other incidental expenses.

NINA MEIJA

380. Salvador vs. People of the Philippines | Nachura
G.R. No. 164266, July 23, 2008 |

Decision MODIFIED. CA affirmed.

FACTS

- Spouses Zuniga had three daughters: Marianne, Mary Ann, and Arlene. Mary Ann was married to petitioner Salvador.
- The Zuniga family lived in one house. One bedroom for the spouses Zuniga, one for Salvador and Mary Ann, and one for Marianne and Arlene.
- One day, the spouses Zuniga and Marianne went to Bulacan to attend the wake of Ernesto's mother. Arlene, Mary Ann, and her baby were left in the house. Meanwhile, petitioner asked permission to attend a birthday party.
- At 4:30 in the morning, the spouses and Marianne arrived home. They found Arlene dead with 21 stab wounds. Salvador acted strangely – he stayed in the sala and cried, and later embraced Mary Ann telling her he was innocent.
- Among other circumstantial evidence, the court found Salvador guilty of homicide his clothes were stained with Arlene's blood, there was no forcible entry into the house, and he was known to carry a balisong. Hence, he was sentenced to an imprisonment and to indemnify the spouses Zuniga the amount of P50,000.00 for the death of Arlene, and another P50,000.00 for moral damages.
- The CA affirmed. Hence, the present petition.

ISSUES & ARGUMENTS

W/N the award of damages if proper in this case.

HOLDING & RATIO DECIDENDI

NO ACTUAL DAMAGE. HOWEVER, THE AWARD OF MORAL AND TEMPERATE DAMAGES IS IN ORDER.

- We affirm the award of P50,000.00 by way of indemnity *ex delicto* to the Zuniga spouses. **When death occurs as a result of a crime, the heirs of the deceased are entitled to such amount as indemnity for death without need of any evidence or proof of damages**.
- The court likewise correctly awarded P50,000.00 as moral damages because of their mental anguish and moral suffering caused by Arlene's death.
- The trial and appellate courts did not award actual damages, obviously because the victim's heirs failed to present proof of the expenses they incurred. However, it has been repeatedly held by this Court that **where the amount of actual damages cannot be determined because of the absence of receipts to prove the same, temperate damages may be fixed at P25,000.00**.

CHRISSIE MORAL

381. Lopez vs PANAM | Bengzon
G.R. No. L-22415, March 30, 1966| 16 SCRA 431

FACTS

- The Lopez family booked for first class accommodations with Pan American World Ways (PAN-AM) through "Your Travel Guide" Agency for a flight from Tokyo to San Francisco. PAN-AM's San Francisco head office confirmed the reservations.
- Upon arriving in Tokyo, first class accommodations were not granted to them by PAN-AM stating there were no reservations for them and that they have to take the tourist class. Due to urgent business to be attended by the Lopez spouses in the US (Lopez being a senator at that time), they were constrained to take the tourist class under protest.
- As it turns out, another family (the Rufinos) booked first class accommodations with PAN-AM together with the Lopez party but thereafter the Rufinos cancelled. An agent (Herranz) of "Your Travel Guide" Agency sent a telex message to PAN-AM's head office in San Francisco. In said message, however, Herranz mistakenly cancelled all the seats that had been reserved, that is, including those of Senator Lopez and party.
- Upon realizing the mistake, the said agent telexed the San Francisco office but the latter could no longer reinstate the seats of the Lopezes. Herranz forgot about the matter and was not able to inform the Lopezes of the same.

ISSUES & ARGUMENTS

W/N the petitioners can recover moral damages from PAN-AM? If so, how to compute for the same?
HOLDING & RATIO DECIDENDI

PAN-AM liable for moral damages. (also exemplary and attorney's fees)

- Moral damages are recoverable in breach of contracts where the defendant acted fraudulently or in bad faith. In addition to moral damages, exemplary or corrective damages may be imposed by way of example or correction for the public good, in breach of contract where the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Lastly, a written contract for an attorney's services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.
- As a proximate result of defendant's breach in bad faith of its contracts with plaintiffs, the latter suffered social humiliation, wounded feelings, serious anxiety and mental anguish. For plaintiffs were travelling with first class tickets issued by defendant and yet they were given only the tourist class. At stop-overs, they were expected to be among the first-class passengers by those awaiting to welcome them, only to be found among the tourist passengers. It may not be humiliating to travel as tourist passengers; it is humiliating *to be compelled* to travel as such, contrary to what is rightfully to be expected from the contractual undertaking. Senator Lopez was then Senate President *Pro Tempore*. International carriers like defendant know the prestige of such an office. For the Senate is not only the Upper Chamber of the Philippine Congress, but the nation's treaty-ratifying body.
- Mrs. Maria J. Lopez, as wife of Senator Lopez, shared his prestige and therefore his humiliation. In addition she suffered physical discomfort during the 13-hour trip. Apparently, Mrs. Lopez was severely sick with flu 2 months before the flight and the condition in the tourist class (e.g. seating spaces in the tourist class are quite narrower than in first class, there being six seats to a row in the former as against four to a row in the latter, and that in tourist class there is very little space for reclining in view of the closer distance between rows) caused her much discomfort and anxiety. Added to this, of course, was the painful thought that she was deprived by defendant — after having paid for and expected the same — of the most suitable, place for her, the first class, where evidently the best of everything would have been given her, the best seat, service, food and treatment. Such difference in comfort between first class and tourist class is too obvious to be recounted, is in fact the reason for the former's existence, and is recognized by the airline in charging a higher fare for it and by the passengers in paying said higher rate Accordingly, considering the totality of her suffering and humiliation, an award to Mrs. Maria J. Lopez of P50,000.00 for moral damages will be reasonable.
- Mr. and Mrs. Alfredo Montelibano, Jr., were travelling as immediate members of the family of Senator Lopez. They formed part of the Senator's party as shown also by the reservation cards of PAN-AM. As such they likewise shared his prestige and humiliation. Although defendant contends that a few weeks before the flight they had asked their reservations to be charged from first class to tourist class — which did not materialize due to alleged full booking in the tourist class — the same does not mean they suffered no shared in having to take tourist class during the flight. For by that time they had already been made to pay for first class seats and therefore to expect first class accommodations. As stated, it is one thing to take the tourist class by free choice; a far different thing to be compelled to take it notwithstanding having paid for first class seats. Plaintiffs-appellants now ask P37,500.00 each for the two but we note that in their motion for reconsideration filed in the court *a quo*, they were satisfied with P25,000.00 each for said persons. (Record on Appeal, p. 102). For their social humiliation, therefore, the award to them of P25,000.00 each is reasonable.

MAUI MORALES

382. Zamboanga Transportaion Company. et al. vs. CA |BARREDO, J.:
G.R. No. L-25292 November 29, 1969

FACTS

- The Spouses Ramon and Josefina Dagamanuel boarded a bus to attend a benefit dance at an elementary School, where Josefina was a public school teacher. After the dance, the couple boarded the same bus. At around 1 o'clock in the early morning, the bus driven by Valeriano Marcos, fell off the road and pinned to death the said spouses and several other passengers.
- The plaintiff, the only child of the deceased spouses, through his maternal grandmother, as guardian ad-litem, instituted this action against the defendants Zamboanga Transportation Co., Inc. and the Zamboanga Rapids Co., Inc. (hereinafter referred to as Zamtranco and Zambraco, respectively) for breach of contract of carriage.
- The lower court, held Zamtranco, the operator, jointly and severally liable with the registered owner, Zamtranco

ISSUES & ARGUMENTS

W/N the CA erred, as a matter of law and applicable decisions of the SC, in awarding excessive damages for the death of the parents of respondent; excessive compensatory damages; and excessive moral damages to respondent, without the latter appealing the decision of the TC.

HOLDING & RATIO DECIDENDI

YES, PARTLY.

- It may be recalled that the trial court's judgment regarding the matter of damages was as follows:1) P8,000.00 for the death of Ramon Dagamanuel; 2) P8,000.00 for the death of Josefina Punzalan; 3) P4,000.00 as exemplary damages; 4) P2,000.00 as attorney's fees; and 5) Costs.
- The respondent did not appeal any portion of the decision of the lower Court, thus indicating that he is fully satisfied with the same. On the other hand, the driver of the ill-fated bus failed to perfect his appeal and consequently, as against him, the decision of the lower Court is already final.
- The lower Court rendered a decision against the driver of the bus and the two petitioners herein for the death of the parents of the respondent in the sum of P16,000.00 together with P4,000.00 exemplary damages. But notwithstanding the automatic exclusion of the driver from the effects of the appealed decision, the Court of Appeals, while reducing the death award to P12,000.00 increased the exemplary damages to P5,000.00 adding thereto P11,520.00 compensatory damages and P5,000.00 moral damages.
- The Court humbly contends that to award damages when none was allowed by the lower Court, and to increase damages when the successful party did not appeal, is simply improper and amounts to pure abuse of discretion on the part of the respondent appellate Court,
- True it is, the awards of P8,000 each for the death of the parents of respondent Jose Mario Dagamanuel may not be increased anymore, but We cannot say that they should be reduced.
- The Court furthermore didn't approve of the award of the CA of moral damages, considering the tender age of the above-named respondent child, and the Court would have upheld the same had private respondent appealed from the decision of the trial court. Indeed, the Court of Appeals properly interpreted the P16,000 awarded by the trial court as including not only damages for the deceased couple but also the other items of recoverable damages, like compensatory or actual, etc. Thus viewed, the amounts awarded by the trial court cannot be considered excessive.

MAGIC MOVIDO

383. Asia Pacific Chartering vs. Farolan | Carpio-Morales, J.:
G.R. No. 151370, December 4, 2002 | 393 SCRA 454

FACTS

- Maria Linda Farolan was hired as Sales Manager of Asia Pacific Chartering for its passenger and cargo GSA (*general sales agent)* operations for Scandinavian Airline System via a 'letter-offer of employment'
- Upon her acceptance and assumption of her post, she participated in a number of meetings/seminars geared towards improving her marketing and sales skills including:
  - Customer service seminar in Bangkok, Thailand
  - Regional Sales Meeting on the technical aspects of airline commercial operations
  - Course on the highly technical airline computer reservations system (Amadeus)
- There were several letters indicating the APC's happiness and congratulations for Farolan's good performance
- Farolan moved for the lower fare of seamen to be competititve with other agents, which eventually resulted to a marked decline in SAS' sales revenues
- APC directed Zozobrado, a high ranking officer, to conduct investigation to identify the problems and implement possible solutions
  - Zozobrado informally took over some of Farolan's marketing and sales responsibilities but the latter retained her title and continued to receive her salary as such
  - The investigation divulge that Farolan did not adopt any sales strategy nor conduct any sales meeting or develop other sources of revenue for SAS
- In another letter, APC urged Farolan to file her letter of resignation for she failed to meet the former's expectations of a Sales Manager
  - Farolan refused and APC sent a letter of termination on the ground of 'loss of confidence'
- Farolan contested her termination and filed a case for illegal dismissal which the court adjudged in her favor, awarding moral and exemplary damages at the same time
- On appeal to the NLRC, the latter reversed the ruling on the ground of 'management prerogative' but the same was reversed on appeal to the CA, which reinstated the lower court's ruling
- Hence, the present petition for review on certiorari

ISSUES & ARGUMENTS

W/N Farolan was illegally dismissed and entitled to damages

HOLDING & RATIO DECIDENDI

YES.

- A valid dismissal of an employee requires that:
  - The employee must be afforded due process (opportunity to be heard and to defend himself)
  - Dismissal must be for a valid cause (Art. 282 of the Labor Code)
- The employer bears the *onus* of proving that the dismissal is for just cause failing which the dismissal is not justified and the employee is entitled to reinstatement
- Recent decisions of the Court distinguished the treatment of managerial employees from that of rank and file personnel insofar as the application of the doctrine of loss of trust and confidence is concerned
  - *Rank and file* – loss of trust and confidence requires proof of involvement in the alleged events in question and that mere uncorroborated assertions and accusations by the employer will not be sufficient
  - *Managerial* – the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal
- Things to consider to be deemed as a 'managerial employee'
  - Their primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof
  - They customarily and regularly direct the work of two or more employees therein
  - They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight
- Loss of trust and confidence to be a valid ground for an employee's dismissal must be based on a willful breach and founded on clearly established facts
  - A breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly, or inadvertently
- To warrant award of moral damages, it must be shown that the dismissal of the employee was attended to by bad faith, or constituted an act opposite to labor, or was done in a manner contrary to morals, good customs, or public policy.
  - Award of moral and exemplary damages for an illegally dismissed employee is proper where the employee had been harassed and arbitrarily terminated by the employer

	Initial order	Final order
Moral Damages	P1,500,000	P500,000
Exemplary Damages	P750,000	P250,000

CEO OCAMPO

384. Samson, Jr. vs. BPI | Panganiban
G.R. No. 150487, July 10, 2003 | 405 SCRA 607

FACTS

- Samson, Jr. filed an action for damages against BPI. As a client/depositor of the bank, he deposited a Prudential Bank check into his savings account worth P3,500.00. Later, he asked his daughter to withdraw P2,000, but declined due to insufficient funds. As a result, he suffered embarrassment as he could not produce the required cash to fulfill an obligation towards a creditor who had waited at his residence.
- Subsequently, Samson deposited P5,500.00. Here, he discovered that hi balance remained P342.38, and that the earlier deposit of P3,500.00 had not been credited.
- When Samson asked about the discrepancy, BPI confirmed the deposited check but could not account for the same. Upon investigation, it was found out that their security guard had encashed the check and that, despite knowledge of the irregularity, BPI had not informed Samson. Moreover, manager Cayanga allegedly displayed arrogance, indifference, and discourtesy towards Samson.
- The trial court rendered a decision in favor of Samson. CA affirmed by reducing the amount of damages from P200,000.00 to P50,000.00. Hence this petition.

ISSUES & ARGUMENTS

W/N the reduction of moral damages by the trial court was proper.

HOLDING & RATIO DECIDENDI

PETITION IS PARTLY MERITORIOUS.

- Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused.
- Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted. Moral damages are not punitive in nature and were never intended to enrich the claimant at the expense of the defendant.
- No hard-and-fast rule in determining moral damages; each case must be governed by its own peculiar facts. Trial courts are given discretion in determining the amount, with the limitation that it "should not be palpably and scandalously excessive."
- Moral damages are awarded to achieve a "spiritual *status quo*", i.e. to enable the injured party to obtain means, diversions, amusements that will serve to alleviate the moral suffering undergone.
- The social standing of the aggrieved party is essential to the determination of the proper amount of the ward. Otherwise, the goal of enabling him restore the spiritual status quo may not be achieved.
- Award should be increased to P100,000.00 since a) petitioner is a businessman and the highest lay person in the United Methodist Church; b) was regarded with arrogance and a condescending manner, and c) BPI successfully postponed compensating him for more than a decade. His alleged delay in reporting the matter did not at all contribute to his injury.

Petition partly granted. Decision modified. Award increased to P100,000.00

CHRISSIE MORAL

385. Erlinda Francisco v. Ricardo Ferrer, Jr., et al. | Pardo
G.R. No. 142029, February 28, 2001 | 353 SCRA 261

FACTS

- Mrs. Rebecca Lo and her daughter Annette Ferrer ordered a 3-layered cake from Fountainhead Bakeshop. It was agreed that the wedding cake shall be delivered at 5:00 in the afternoon on December 14, 1992 at the Cebu Country Club, Cebu City.
- Plaintiffs made their full payment.
- At 7:00 in the evening, the wedding cake has not arrived. Plaintiffs made a follow-up call and were informed that it was probably late because of the traffic.
- At 8:00, plaintiffs were informed that no wedding cake will be delivered because the order slip got lost. They were then compelled to buy the only available cake at the Cebu Country Club which was a sans rival.
- At 10:00, a 2-layered wedding cake arrived. Plaintiffs declined to accept it.
- Defendant Erlinda Francisco sent a letter of apology accompanied with a P5,000.00 check which was declined by plaintiffs. 2 weeks after the wedding, Francisco called Mrs. Lo and apologized.
- Plaintiffs filed an action for breach of contract with damages.
- TC decided in favor of plaintiffs, directing defendant to pay the cost of the wedding cake, MORAL DAMAGES, attorney's fees and the cost of litigation.
- CA modified the award by increasing the MORAL DAMAGES to P250,000.00 and awarding EXEMPLARY DAMAGES of P100,000.00.

ISSUES & ARGUMENTS

W/N the CA erred in affirming the TC's award of MORAL DAMAGES and increasing the amount from P30,000.00 to P250,000.00.

W/N the CA was justified in awarding in addition to moral damages, EXEMPLARY DAMAGES of P100,000.00.

Petitioner- CA and TC erred in awarding moral damages because moral damages are recoverable in breach of contract cases only where the breach was palpably wanton, reckless, malicious, in bad faith, oppressive or abusive.

HOLDING & RATIO DECIDENDI

YES. CA erred in awarding MORAL DAMAGES.

- Article 2219 of the Civil Code provides: "To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive or abusive."
- In culpa contractual or breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of his contractual obligation and, exceptionally, when the act of breach of contract itself is constitutive of tort resulting in physical injuries.
- Bad faith does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud.
- Moral damages are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer.
- The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Mere allegations of besmirched reputation, embarrassment and sleepless nights are insufficient to warrant an award for moral damages.
- An award of moral damages would require certain conditions to be met, to wit: (1) first, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) second, there must be culpable act or omission factually established; (3) third, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) fourth, the award of damages is predicated on any of the cases stated in Article 2219" of the Civil Code.
- When awarded, moral damages must not be palpably and scandalously excessive as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court judge or appellate court justices.
- In this case, we find no such fraud or bad faith.

CA also erred in awarding EXEMPLARY DAMAGES.

- To warrant the award of exemplary damages, [t]he wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner.
- The requirements of an award of exemplary damages are: (1) they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established; (2) that they can not be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner.

NOMINAL DAMAGES awarded.

- The facts show that when confronted with their failure to deliver on the wedding day, petitioners gave the lame excuse that delivery was probably delayed because of the traffic, when in truth, no cake could be delivered because the order slip got lost. For such prevarication, petitioners must be held liable for nominal damages for insensitivity, inadvertence or inattention to their customer's anxiety and need of the hour.
- Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.

- Nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered.

Petition granted. CA reversed. Petitioner order to pay the cost of the wedding cake, nominal damages of P10,000.00, attorney's fees and the costs of litigation.

386. Zalamea vs. Court of Appeals | Nocon
G.R. No. 104235, November 18, 1993 | 228 SCRA 23

FACTS

- Spouses Zalamea, and their daughter, Liana Zalamea, purchased three (3) airline tickets from the Manila agent of respondent TransWorld Airlines, Inc. for a flight to New York to Los Angeles on June 6, 1984. The tickets of petitioners-spouses were purchased at a discount of 75% while that of their daughter was a full fare ticket. All three tickets represented confirmed reservations.
- While in New York, on June 4, 1984, petitioners received notice of the reconfirmation of their reservations for said flight. On the appointed date, however, petitioners checked in at 10:00 a.m., an hour earlier than the scheduled flight at 11:00 a.m. but were placed on the wait-list because the number of passengers who had checked in before them had already taken all the seats available on the flight. Liana Zalamea appeared as the No. 13 on the wait-list while the two other Zalameas were listed as "No. 34, showing a party of two." Out of the 42 names on the wait list, the first 22 names were eventually allowed to board the flight to Los Angeles, including petitioner Cesar Zalamea. The two others, on the other hand, at No. 34, being ranked lower than 22, were not able to fly. As it were, those holding full-fare tickets were given first priority among the wait-listed passengers. Mr. Zalamea, who was holding the full-fare ticket of his daughter, was allowed to board the plane; while his wife and daughter, who presented the discounted tickets were denied boarding. According to Mr. Zalamea, it was only later when he discovered the he was holding his daughter's full-fare ticket.
- Even in the next TWA flight to Los Angeles Mrs. Zalamea and her daughter, could not be accommodated because it was also fully booked. Thus, they were constrained to book in another flight and purchased two tickets from American Airlines at a cost of Nine Hundred Eighteen ($918.00) Dollars.
- Petitioners filed an action for damages based on breach of contract of air carriage before the Regional Trial Court of Makati and ruled in favor of petitioners.
- On appeal, the respondent Court of Appeals held that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage *only* where there is fraud or bad faith. Since it is a matter of record that overbooking of flights is a common and accepted practice of airlines in the United States and is specifically allowed under the Code of Federal Regulations by the Civil Aeronautics Board, no fraud nor bad faith could be imputed on respondent TransWorld Airlines.

ISSUES & ARGUMENTS

W/N TWA is guilty of bad faith?

HOLDING & RATIO DECIDENDI

YES.
Existing jurisprudence explicitly states that overbooking amounts to bad faith, entitling the passengers concerned to an award of moral damages. In *Alitalia Airways v. Court of Appeals*, where passengers with confirmed bookings were refused carriage on the last minute, this Court held that when an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage. Where an airline had deliberately overbooked, it took the risk of having to deprive some passengers of their seats in case all of them would show up for the check in. For the indignity and inconvenience of being refused a confirmed seat on the last minute, said passenger is entitled to an award of moral damages.
A contract to transport passengers is quite different in kind and degree from any other contractual relation. So ruled this Court in *Zulueta v. Pan American World Airways, Inc.* This is so, for a contract of carriage generates a relation attended with public duty — a duty to provide public service and convenience to its passengers which must be paramount to self-interest or enrichment. Thus, it was also held that the switch of planes from Lockheed 1011 to a smaller Boeing 707 because there were only 138 confirmed economy class passengers who could very well be accommodated in the smaller planes, thereby sacrificing the comfort of its first class passengers for the sake of economy, amounts to bad faith. Such inattention and lack of care for the interest of its passengers who are entitled to its utmost consideration entitles the passenger to an award of moral damages.
Even on the assumption that overbooking is allowed, respondent TWA is still guilty of bad faith in not informing its passengers beforehand that it could breach the contract of carriage even if they have confirmed tickets if there was overbooking. Respondent TWA should have incorporated stipulations on overbooking on the tickets issued or to properly inform its passengers about these policies so that the latter would be prepared for such eventuality or would have the choice to ride with another airline.
Moreover, respondent TWA was also guilty of not informing its passengers of its alleged policy of giving less priority to discounted tickets. While the petitioners had checked in at the same time, and held confirmed tickets, yet, only one of them was allowed to board the plane ten minutes before departure time because the full-fare ticket he was holding was given priority over discounted tickets. The other two petitioners were left behind.
The purchase of the American Airlines tickets by petitioners Suthira and Liana was the consequence of respondent TWA's unjustifiable breach of its contracts of carriage with petitioners. In accordance with Article 2201, New Civil Code, respondent TWA should, therefore, be responsible for all damages which may be reasonably attributed to the non-performance of its obligation. In the previously cited case of *Alitalia Airways v. Court of Appeals*, [15] this Court explicitly held that a passenger is entitled to be reimbursed for the

cost of the tickets he had to buy for a flight to another airline. Thus, instead of simply being refunded for the cost of the unused TWA tickets, petitioners should be awarded the actual cost of their flight from New York to Los Angeles. On this score, we differ from the trial court's ruling which ordered not only the reimbursement of the American Airlines tickets but also the refund of the unused TWA tickets. To require both prestations would have enabled petitioners to fly from New York to Los Angeles without any fare being paid.

The award to petitioners of attorney's fees is also justified under Article 2208(2) of the Civil Code which allows recovery when the defendant's act or omission has compelled plaintiff to litigate or to incur expenses to protect his interest. However, the award for moral damages and exemplary damages by the trial court is excessive in the light of the fact that only Suthira and Liana Zalamea were actually "bumped off." An award of P50,000.00 moral damages and another P50,000.00 exemplary damages would suffice under the circumstances obtaining in the instant case.

387. People vs. Senen Prades | En Banc
G.R. No. 127569, July 30, 1998

FACTS

- Senen Prades, armed with a handgun, entered the dwelling of Emmie Rosales, a seventeen year old girl, and by means of force and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously had sexual intercourse with her against her will.
- Rosales and the physician who conducted the medical examination testified in court.
- Prades subsequently absconded and the trial continued in absentia.
- The guilt of the accused was proved beyond reasonable doubt from the testimony that moonlit seeped through the spaces in the sawali door, enabling the victim to identify Prades who was the husband of her grandmother's goddaughter. Prades also sent Rosales two letters asking for forgiveness, and willingness to leave his wife, which the Court interpreted as an admission of guilt.
- Due to the aggravating circumstance of the crime being committed in the dwelling of the offended party, Prades was sentenced the higher penalty of death. The RTC also awarded P50,000.00 moral damages.

ISSUES & ARGUMENTS

W/N the grant of moral damages was proper

HOLDING & RATIO DECIDENDI

No, the lower court erred in classifying the award of P50,000 as moral damages

- It is well established in jurisprudence that the award authorized by the criminal law as civil indemnity *ex delicto* for the offended party is itself equivalent to actual or compensatory damages in civil law.
- The civil indemnity provided by the RPC for the crime of rape is in the nature of restitution, reparation, and indemnification. What the lower court awarded was a mandatory civil indemnity upon the finding of the fact of rape. It is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion.
- The recent judicial prescription is that the indemnification of the victim shall be in the increased amount of P75,000.00 if the crime of rape is committed or effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws.

Held: *P50,000 moral damages changed to P75,000 compensatory damages*

MARICE PACHECO

388. Expertravel vs. CA | Vitug
G.R. No. 130030 June 25, 2009 |

FACTS

- Expertravel & Tours Inc. issued to private respondent Ricardo Lo four round trip plane tickets to Hong Kong, together with hotel accommodations and transfers, for a total cost of 39, 677.20.
- Alleging that Lo had failed to pay the amount due, Expertravel caused several demands to be made. Since the demands were ignored by Lo, Expertravel filed a court complaint for recovery of amount due plus damages.
- In his answer, Lo explained that he had already paid such amount to expertravel. It was remmited to the Chairperson of Expertravel, Ms. De Vega. This was evidenced by Monte de Pieda check with the amount of 50,000 pesos.
- The trial court, affirmed by the appellate court, ruled that payment to Ms. De Vega is valid and binding to Expertravel and awarded moral damages, attorney's fees and cost of suit in favor of Lo.

ISSUES & ARGUMENTS

W/N the appellate court was correct in awarding moral damages in favor of Lo.

HOLDING & RATIO DECIDENDI

The Appellate Court was not correct in awarding moral damages in favor of Lo

Moral damages are not punitive in nature but are designed to compensate and alleviate in some way the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feeling, moral shock, social humiliation, and similar injury unjustly caused to a person. Such damages must be the proximate result of a wrongful act or omission the factual basis for which is satisfactorily established by the aggrieved party.

An award of moral damages would require certain conditions to be met; to wit

1. there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant.
2. there must be a culpable act or omission factually established
3. the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant
4. the award of damages is predicated on any of the cases stated in article 2219, death of a passenger under breach of carriage, when the defendant is guilty of intentional tort, culpa criminal, analogous cases, or malicious prosecution

Although the institution of a clearly unfounded civil suit can at times be a legal justification for award of attorney's fees, such filing is however, has almost been invariably been held not a ground for award of moral damages. The rationale for this rule is that the law could have not meant to impose a penalty on the right to litigate. The anguish suffered by a person for having been a defendant in a civil suit would be no different from the usual worry and anxiety suffered by anyone who is haled to court, a situation that cannot by itself be a cogent reason for award of moral damage if the rule were otherwise, then moral damages must every time be awarded in favor of the prevailing defendant against an unsuccessful plaintiff.

VP PADILLA

389. Air France, *petitioner* vs. Carascoso and CA, *respondents*
G.R. No. L-21438 September 28, 1966

Facts

- On March 28, 1958, the defendant, Air France, through its authorized agent, Philippine Air Lines, Inc., issued to plaintiff a "first class" round trip airplane ticket from Manila to Rome. From Manila to Bangkok, plaintiff travelled in "first class", but at Bangkok, the Manager of the defendant airline forced plaintiff to vacate the "first class" seat that he was occupying because, in the words of the witness Ernesto G. Cuento, there was a "white man", who, the Manager alleged, had a "better right" to the seat. When asked to vacate his "first class" seat, the plaintiff, as was to be expected, refused, and told defendant's Manager that his seat would be taken over his dead body; a commotion ensued, and, according to said Ernesto G. Cuento, "many of the Filipino passengers got nervous in the tourist class; when they found out that Mr. Carrascoso was having a hot discussion with the white man [manager], they came all across to Mr. Carrascoso and pacified Mr. Carrascoso to give his seat to the white man" and plaintiff reluctantly gave his "first class" seat in the plane.

ISSUES & ARGUMENTS

Was Carrascoso entitled to the first class seat he claims and therefore entitles to damages?

Held

- Yes. It is conceded in all quarters that on March 28, 1958 he paid to and received from petitioner a first class ticket. But petitioner asserts that said ticket did not represent the true and complete intent and agreement of the parties; that said respondent knew that he did not have confirmed reservations for first class on any specific flight, although he had tourist class protection; that, accordingly, the issuance of a first class ticket was no guarantee that he would have a first class ride, but that such would depend upon the availability of first class seats.

- If, as petitioner underscores, a first-class-ticket holder is not entitled to a first class seat, notwithstanding the fact that seat availability in specific flights is therein confirmed, then an air passenger is placed in the hollow of the hands of an airline. What security then can a passenger have? It will always be an easy matter for an airline aided by its employees, to strike out the very stipulations in the ticket, and say that there was a verbal agreement to the contrary. What if the passenger had a schedule to fulfill? We have long learned that, as a rule, a written document speaks a uniform language; that spoken word could be notoriously unreliable. If only to achieve stability in the relations between passenger and air carrier, adherence to the ticket so issued is desirable. Such is the case here. The lower courts refused to believe the oral evidence intended to defeat the covenants in the ticket.

- Why, then, was he allowed to take a first class seat in the plane at Bangkok, if he had no seat or, if another had a better right to the seat?

- To authorize an award for moral damages there must be an averment of fraud or bad faith. It is true that there is no specific mention of the term *bad faith* in the complaint. But, the inference of bad faith is there, it may be drawn from the facts and circumstances set forth therein. The contract was averred to establish the relation between the parties. But the stress of the action is put on wrongful expulsion. It is, therefore, unnecessary to inquire as to whether or not there is sufficient averment in the complaint to justify an award for moral damages. Deficiency in the complaint, if any, was cured by the evidence. An amendment thereof to conform to the evidence is not even required.

- Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is that any rule or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier.

J.C. LERIT

390. Tiongson v Fernandez | Reyes JBL.
G.R. No. L-26403, October 20, 1970 |

FACTS

- Defendants were granted water appropriation rights over Taguan River and Noynoyin Creek in Tiaong and Candelaria in Quezon Province
- In 1918 defendants were granted the said rights by Department of Commerce and Communications. In 1940 they built a dam that impeded the flow of water from Taguan into the Aguirra, this dam was named the Del-Valle Dam. In 1952 defendants increased the height of the dam fully blocking the flow of the river.
- Plaintiffs are owners of a parcel of land around 20 hectares situated in Candelaria. They claim that since 1955 they have been farming the land and have irrigated it from all the water overflowing the dam situated on Noynoyin creek built by a Nicolas Maralit. Thus they claim that they have acquired by prescription all the water that overflows from the dam to the exclusion of all the others.
- Defendants and intervenors allege that with the construction of the Del Valle dam there is no more water flowing from the Noynoyin. It is admitted that before the construction that there is an arrangement between defendants and plaintiffs and predecessors in interest that the defendants used to take water from the river that is stopped by the dam
- Defendants and intervenors ask plaintiffs to pay total of P165,000 in moral damages and P66,000 exemplary damages.
- Lower court ruled that defendant Hernandez had no right to dig canal connecting Noynoyin to Aguirra and enjoined him from reducing water in the Del Valle dam. LC dismissed claim for damages and charged defendant P500 for costs.

ISSUES & ARGUMENTS

W/N There is prescription?

Award of Damages proper?

HOLDING & RATIO DECIDENDI

NO PRESCRIPTION. AWARD OF DAMAGES PROPER. PLAINTIFFS MUST DEMOLISH THE DAM.

- Court finds no clear evidence of prescription for 20 years or more
- Del Valle was not content with reducing the water flow to defendants Hernandez and in fact increased height of dam in 1952 blocking it totally. Hernandez et al entitled to Moral damages P2000 each. Entitlement based on Art. 2220 of Civil Code.
- Equity and Justice dictate that Hernandez et al can recover attorney's fees in amount of P5000 according to Art. 2208 Civil Code.

391. Zalamea vs. Court of Appeals | Nocon
G.R. No. 104235, November 18, 1993 | 228 SCRA 23

FACTS

- Spouses Zalamea, and their daughter, Liana Zalamea, purchased three (3) airline tickets from the Manila agent of respondent TransWorld Airlines, Inc. for a flight to New York to Los Angeles on June 6, 1984. The tickets of petitioners-spouses were purchased at a discount of 75% while that of their daughter was a full fare ticket. All three tickets represented confirmed reservations.
- While in New York, on June 4, 1984, petitioners received notice of the reconfirmation of their reservations for said flight. On the appointed date, however, petitioners checked in at 10:00 a.m., an hour earlier than the scheduled flight at 11:00 a.m. but were placed on the wait-list because the number of passengers who had checked in before them had already taken all the seats available on the flight. Liana Zalamea appeared as the No. 13 on the wait-list while the two other Zalameas were listed as "No. 34, showing a party of two." Out of the 42 names on the wait list, the first 22 names were eventually allowed to board the flight to Los Angeles, including petitioner Cesar Zalamea. The two others, on the other hand, at No. 34, being ranked lower than 22, were not able to fly. As it were, those holding full-fare tickets were given first priority among the wait-listed passengers. Mr. Zalamea, who was holding the full-fare ticket of his daughter, was allowed to board the plane; while his wife and daughter, who presented the discounted tickets were denied boarding. According to Mr. Zalamea, it was only later when he discovered the he was holding his daughter's full-fare ticket.
- Even in the next TWA flight to Los Angeles Mrs. Zalamea and her daughter, could not be accommodated because it was also fully booked. Thus, they were constrained to book in another flight and purchased two tickets from American Airlines at a cost of Nine Hundred Eighteen ($918.00) Dollars.
- Petitioners filed an action for damages based on breach of contract of air carriage before the Regional Trial Court of Makati and ruled in favor of petitioners.
- On appeal, the respondent Court of Appeals held that moral damages are recoverable in a damage suit predicated upon a breach of contract of carriage *only* where there is fraud or bad faith. Since it is a matter of record that overbooking of flights is a common and accepted practice of airlines in the United States and is specifically allowed under the Code of Federal Regulations by the Civil Aeronautics Board, no fraud nor bad faith could be imputed on respondent TransWorld Airlines.

ISSUES & ARGUMENTS

W/N TWA is guilty of bad faith?

HOLDING & RATIO DECIDENDI

YES.

Existing jurisprudence explicitly states that overbooking amounts to bad faith, entitling the passengers concerned to an award of moral damages. In *Alitalia Airways v. Court of Appeals*, where passengers with confirmed bookings were refused carriage on the last minute, this Court held that when an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage. Where an airline had deliberately overbooked, it took the risk of having to deprive some passengers of their seats in case all of them would show up for the check in. For the indignity and inconvenience of being refused a confirmed seat on the last minute, said passenger is entitled to an award of moral damages.

A contract to transport passengers is quite different in kind and degree from any other contractual relation. So ruled this Court in *Zulueta v. Pan American World Airways, Inc.* This is so, for a contract of carriage generates a relation attended with public duty — a duty to provide public service and convenience to its passengers which must be paramount to self-interest or enrichment. Thus, it was also held that the switch of planes from Lockheed 1011 to a smaller Boeing 707 because there were only 138 confirmed economy class passengers who could very well be accommodated in the smaller planes, thereby sacrificing the comfort of its first class passengers for the sake of economy, amounts to bad faith. Such inattention and lack of care for the interest of its passengers who are entitled to its utmost consideration entitles the passenger to an award of moral damages.

Even on the assumption that overbooking is allowed, respondent TWA is still guilty of bad faith in not informing its passengers beforehand that it could breach the contract of carriage even if they have confirmed tickets if there was overbooking. Respondent TWA should have incorporated stipulations on overbooking on the tickets issued or to properly inform its passengers about these policies so that the latter would be prepared for such eventuality or would have the choice to ride with another airline.

Moreover, respondent TWA was also guilty of not informing its passengers of its alleged policy of giving less priority to discounted tickets. While the petitioners had checked in at the same time, and held confirmed tickets, yet, only one of them was allowed to board the plane ten minutes before departure time because the full-fare ticket he was holding was given priority over discounted tickets. The other two petitioners were left behind. The purchase of the American Airlines tickets by petitioners Suthira and Liana was the consequence of respondent TWA's unjustifiable breach of its contracts of carriage with petitioners. In accordance with Article 2201, New Civil Code, respondent TWA should, therefore, be responsible for all damages which may be reasonably attributed to the non-performance of its obligation. In the previously cited case of *Alitalia Airways v. Court of Appeals*, [15] this Court explicitly held that a passenger is entitled to be reimbursed for the cost of the tickets he had to buy for a flight to another airline. Thus, instead of simply being refunded for the cost of the unused TWA tickets, petitioners should be awarded the actual cost of their flight from New York to Los Angeles. On this score, we differ from the trial court's ruling which ordered not only the reimbursement of the American Airlines tickets but also the refund of the unused TWA tickets. To require both prestations would have enabled petitioners to fly from New York to Los Angeles without any fare being paid.

The award to petitioners of attorney's fees is also justified under Article 2208(2) of the Civil Code which allows recovery when the defendant's act or omission has compelled plaintiff to litigate or to incur expenses to protect his interest. However, the award for moral damages and exemplary damages by the trial court is excessive in the light of the fact that only Suthira and Liana Zalamea were actually "bumped off." An award of P50,000.00 moral damages and another P50,000.00 exemplary damages would suffice under the circumstances obtaining in the instant case.

392. PAL vs. CA and Sps. Miranda (private respondents),
257 SCRA 33 (1996)

FACTS

- Dr. Josefino Miranda and his wife, Luisa, who were residents of Surigao City, went to the United States of America on a regular flight of PAL. On June 19, 1988, after a stay of over a month there, they obtained confirmed bookings from PAL's San Francisco Office for PAL Flight PR 101 from San Francisco to Manila via Honolulu on June 21, 1988; PAL flight PR 851 from Manila to Cebu on June 24, 1988; and PAL Flight PR 905 from Cebu to Surigao also on June 24, 1988.

- On June 21, 1988, private respondents boarded PAL Flight PR 101 in San Francisco with five (5) pieces of baggage. After a stopover at Honolulu, and upon arrival in Manila on June 23, 1988, they were told by the PAL personnel that their baggage consisting of two balikbayan boxes, two pieces of luggage and one fishing rod case were off-loaded at Honolulu, Hawaii due to weight limitations. Consequently, private respondents missed their connecting flight from Manila to Cebu City, as originally scheduled, since they had to wait for their baggage which arrived the following day, June 24, 1988, after their pre-scheduled connecting flight had left. They consequently also missed their other scheduled connecting flight from Cebu City to Surigao City.

- On June 25, 1988, they departed for Cebu City and therefrom private respondents had to transfer to PAL Flight 471 for Surigao City. On the way to Surigao City, the pilot announced that they had to return to Mactan Airport due to some mechanical problem. While at Mactan Airport, the passengers were provided by PAL with lunch and were booked for the afternoon flight to Surigao City. However, said flight was also canceled.

- Since there were no more lights for Surigao City that day, private respondents asked to be billeted at the Cebu Plaza Hotel where they usually stay whenever they happen to be in Cebu City. They were, however, told by the PAL employees that they could not be accommodated at said hotel supposedly because it was fully booked. Contrarily, when Dr. Miranda called the hotel, he was informed that he and his wife could be accommodated there. Although reluctant at first, PAL eventually agreed to private respondents' overnight stay at said hotel. Oscar Jereza, PAL duty manager, approved the corresponding hotel authority with standard meals. It was only after private respondents' insistence that their meals be ordered a la carte that they were allowed to do so by PAL provided that they sign for their orders.

- Inasmuch as the shuttle bus had already left by the time private respondents were ready to go to the hotel, PAL offered them P150.00 to include the fare for the return trip to the airport. Dr. Miranda asked for P150.00 more as he and his wife, along with all of their baggage, could not be accommodated in just one taxi, aside from the need for tipping money for hotel boys. Upon refusal of this simple request, Dr. Miranda then declared that he would forego the amenities offered by PAL. Thus, the voucher for P150.00 and the authority for the hotel accommodations prepared by PAL were voided due to private respondents' decision not to avail themselves thereof.

- To aggravate the muddled situation, when private respondents tried to retrieve their baggage, they were told this time that the same were loaded on another earlier PAL flight to Surigao City. Thus, private respondents proceeded to the hotel sans their baggage and of which they were deprived for the remainder of their trip. Private respondents were finally able to leave on board the first PAL flight to Surigao City only on June 26, 1988. Thereafter, they instituted an action for damages which, after trial as well as on appeal, was decided in their favor.

ISSUE & ARGUMENTS

Whether or not there was bad faith on the part of PAL so as to entitle the Sps. Miranda to moral damages?

HOLDING & RATIO DECIDENDI

YES.

- Crucial to the determination of the propriety of the award of damages in this case is the lower court's findings on the matter of bad faith: found that the situation was aggravated by the following incidents: the poor treatment of the Mirandas by the PAL employees during the stopover at Mactan Airport in Cebu; the cavalier and dubious response of petitioner's personnel to the Miranda spouses' request to be billeted at the Cebu Plaza Hotel by denying the same allegedly because it was fully booked, which claim was belied by the fact that Dr. Miranda was easily able to arrange for accommodations thereat; and, the PAL employees' negligent, almost malicious, act of sending off the baggage of private respondents to Surigao City, while they were still in Cebu, without any explanation for this gross oversight.

- The Court has time and again ruled, and it cannot be over-emphasized, that a contract of air carriage generates a relation attended with a public duty and any discourteous conduct on the part of a carrier's employee toward a passenger gives the latter an action for damages and, more so, where there is bad faith.

- *It is settled that bad faith must be duly proved and not merely presumed. The existence of bad faith, being a factual question, and the Supreme Court not being a trier of facts, the findings thereon of the trial court as well as of the Court of Appeals shall not be disturbed on appeal and are entitled to great weight and respect.

• *It is now firmly settled that moral damages are recoverable in suits predicated on breach of a contract of carriage where it is proved that the carrier was guilty of fraud or bad faith. Inattention to and lack of care for the interests of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith which entitles the passenger to an award of moral damages. What the law considers as bad faith which may furnish the ground for an award of moral damages would be bad faith in securing the contract and in the execution thereof, as well as in the enforcement of its terms, or any other kind of deceit. Such unprofessional and proscribed conduct is attributable to petitioner airline in the case at bar and the adverse doctrinal rule is accordingly applicable to it.

• It must, of course, be borne in mind that moral damages are not awarded to penalize the defendant but to compensate the plaintiff for the injuries he may have suffered in a contractual or quasi-contractual relationship, exemplary damages, on the other hand, may be awarded only if the defendant had acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Attorney's fees in the concept of damages may be awarded where there is a finding of bad faith. The evidence on record amply sustains, and we correspondingly find, that the awards assessed against petitioner on the aforestated items of damages are justified and reasonable.

• It may also be pointed out that it is PAL's duty to provide assistance to private respondents and, for that matter, any other passenger similarly inconvenienced due to delay in the completion of the transport and the receipt of their baggage. Therefore, its unilateral and voluntary act of providing cash assistance is deemed part of its obligation as an air carrier, and is hardly anything to rave about. Likewise, arrangements for and verification of requested hotel accommodations for private respondents could and should have been done by PAL employees themselves, and not by Dr. Miranda. It was rather patronizing of PAL to make much of the fact that they allowed Dr. Miranda to use its office telephone in order to get a hotel room.

• While it may be true that there was no direct evidence on record of blatant rudeness on the part of PAL employees towards the Mirandas, the fact that private respondents were practically compelled to haggle for accommodations, a situation unbefitting persons of their stature, is rather demeaning and it partakes of discourtesy magnified by PAL's condescending attitude. Moreover, it cannot be denied that the PAL employees herein concerned were definitely less than candid, to put it mildly, when they withheld information from private respondents that they could actually be accommodated in a hotel of their choice.

• Indeed, the flamboyant testimony of Oscar Jereza, as PAL's duty manager, merely pays lip-service to, without putting into reality, the avowed company policy of invariably making available and always granting the requests for the kind and standard of accommodations demanded by and appropriate for its passengers. Certainly, a more efficient service, and not a lackadaisical and disorganized system, is expected of the nation's flag carrier, especially on an international flight.

393. Antonino vs. Valencia |
G.R. No. l26526 May 27, 1974 |

FACTS

- Lorenzo Sarmiento of the Liberal Party lost to Vicente Duterte of the Nacionalista Party in the election for governor in Davao.
- Subsequently, Senator Antonino issued a statement that the loss was caused by the support given by Valencia, the Secretary of Public Works, to the independent LP candidate Maglana which caused a division in LP votes. Antonino was quoted in various newspapers that had Valencia not "Sabotaged" and "double-crossed" them, the LP would have won.
- Antonino then proceeded to file requests to have Valencia investigated by the Senate Blue Ribbon Committee on alleged anomalous acquisitions of public works supplies and equipment. Valencia retaliated by issuing a press release that he will also file charges with the Blue Ribbon Committee regarding anomalous acts of the Senator. This release was published in newspapers
- Antonino filed this case of damages. Valencia filed a counter-claim. Lower court ruled in favor of Antonino. Valencia appealed. Antonino died and was substituted by Senator Antonino (Wife)

ISSUES & ARGUMENTS

1. **W/N the Press Release was issued by Valencia**
2. **W/N the Press Release is libelous**

HOLDING & RATIO DECIDENDI

YES.

The fact that Valencia caused the release and publication of the press release is seen in the following facts:

1. The newspapers reproduced the specific charges filed by Antonino.
2. On the press release there was marked "For release" under the date.
3. It was indicated on the press release the answers made by Valencia to the charges of Antonino in the same numerical order.
4. The press release indicated that it came from Valencia
5. The press release quoted Valencia and he admitted making the statement in his office in the presence of the press
6. The first page of the press release consisted of quoted statements by Valencia and reports and information he received about Antonino
7. The press release mentioned specific figures which only Valencia could know given the time constraint
8. Valencia did not make any correction or denial of the published statement.

YES.

The statements issued were defamatory and libelous in nature as they imputed upon him certain corrupt practices. **Also, because the statement was not issued privately or officially, malice is presumed and such presumption was not overcome as Valencia did not prove the truth of his statements or that they were published with good intentions and with a justifiable motive or that they were made in the exercise of the right of fair comment on the character, good faith, ability and sincerity of public officials.**

The court said that had Valencia not been motivated with malice he would have filed charges against Antonino with the Senate seeing as Antonino was not a candidate for election and that his term as senator was no yet to expire.

Also, Valencia cannot claim that his actions were justified in that Antonino was first in making libelous statements. The anomalous transactions charge was duly filed with the Blue Ribbon. Also, the statement on sabotage and double crossing cannot be considered libelous as contemporary politics shows that no stigma of disgrace or disrepute befalls one who changes political parties.

JAN PORTER

394. Spouses Eng v. PanAm | Puno
G.R 123560 | March 16, 2000

FACTS

- Plaintiff Yu Eng Cho is the owner of Young Hardware Co. and Achilles Marketing. On July 10, 1976, plaintiffs bought ticket from defendant Claudia Tagunicar who made flight arrangements for Tourist World Services Inc. (TWSI). The destinations are Hong Kong, Tokyo, and San Francisco. The purpose of the trip was to go to NJ, USA to purchase 2 lines of infrared heating systems from which Yu Eng Cho expected to earn P300,000 in profits.
- As of July 10, the only the Mla.-HK and HK-Tokyo flights were confirmed. Tokyo-San Francisco legs was noted as "RQ" or "on request." A few days after, plaintiffs returned to Tagunicar to confirm to Tokyo-SF flight. After calling up defendant Julieta Canilao of TWSI, Tagunicar told plaintiffs that their flight is now confirmed all the way and attached the confirmation stickers on the plane tickets.
- A few days before the scheduled flight of plaintiffs, their son, Adrian Yu, called the Pan Am office to verify the status of the flight. According to said Adrian Yu, a personnel of defendant Pan Am told him over the phone that plaintiffs' booking[s] are confirmed.
- Plaintiffs left for HK and stayed there for 5 days. Upon arrival in Tokyo, they called up the PanAm office to reconfirm their booking. However, they were informed that their names were not in the passengers list. They could not stay in Japan for more than 72 hours, thus they paid tickets for Taipei. Upon reaching Taipei, there were no flights available, thus, they were forced to head back to Manila. In view of the failure to reach NJ, the seller of the infrared heating system cancelled plaintiff's option to buy.
- Canilao and TWSI denied the confirmation of the Tokyo-SF flight since the flights then were really tight in view of NWA's strike. Tagunicar claims that she only signed the affidavit saying that she's TWSI's agent upon the assurance of plaintiff's lawyer that she will not be involved in the case. PanAm denies that plaintiffs were bumped off their flights since they were not even included in the flight manifest.

ISSUES & ARGUMENTS

1. **W/N Tagunicar is PanAm's agent, making the latter liable for the acts of the former.**
2. **W/N PanAm is liable for its refusal to admit plaintiffs in its flight.**

HOLDING & RATIO DECIDENDI

1. No. Affidavits, being taken *ex parte*, are almost always incomplete and often inaccurate, sometimes from partial suggestion, or for want of suggestion and inquiries. The circumstances under which said affidavit was prepared put in doubt petitioners' claim that it was executed voluntarily by respondent Tagunicar. Tagunicar categorically denied in open court that she is a duly authorized agent of TWSI, and declared that she is an independent travel agent.

2. No. It is against human experience that petitioners did not insist that they be allowed to board, considering that it was then doubly difficult to get seats because of the ongoing Northwest Airlines strike. It is also perplexing that petitioners readily accepted whatever the Tokyo office had to offer as an alternative. Inexplicably too, no demand letter was sent to respondents TWSI and Canilao.

It is not sufficient to prove that Pan Am did not allow petitioners to board to justify petitioners' claim for damages. *Mere refusal to accede to the passenger's wishes does not necessarily translate into damages in the absence of bad faith.* The settled rule is that the law presumes good faith such that any person who seeks to be awarded damages due to acts of another has the burden of proving that the latter acted in bad faith or with ill motive. In the case at bar, we find the evidence presented by petitioners insufficient to overcome the presumption of good faith. They have failed to show any *wanton, malevolent or reckless misconduct imputable to respondent Pan Am in its refusal to accommodate petitioners in its Tokyo-San Francisco flight. Pan Am could not have acted in bad faith because petitioners did not have confirmed tickets and more importantly, they were not in the passenger manifest.*

They were not confirmed passengers and their names were not listed in the passenger manifest. In other words, *this is not a case where Pan Am bound itself to transport petitioners and thereafter reneged on its obligation.* The persistent calls made by respondent Tagunicar to Canilao, and those made by petitioners at the Manila, Hongkong and Tokyo offices in Pan Am, are eloquent indications that petitioners knew that their tickets have not been confirmed. For, as correctly observed by Pan Am, why would one continually try to have one's ticket confirmed if it had already been confirmed?

AYEN QUA

395. Erlinda Francisco v. Ricardo Ferrer, Jr., et al. | Pardo
G.R. No. 142029, February 28, 2001 | 353 SCRA 261

FACTS

- Mrs. Rebecca Lo and her daughter Annette Ferrer ordered a 3-layered cake from Fountainhead Bakeshop. It was agreed that the wedding cake shall be delivered at 5:00 in the afternoon on December 14, 1992 at the Cebu Country Club, Cebu City.
- Plaintiffs made their full payment.
- At 7:00 in the evening, the wedding cake has not arrived. Plaintiffs made a follow-up call and were informed that it was probably late because of the traffic.
- At 8:00, plaintiffs were informed that no wedding cake will be delivered because the order slip got lost. They were then compelled to buy the only available cake at the Cebu Country Club which was a sans rival.
- At 10:00, a 2-layered wedding cake arrived. Plaintiffs declined to accept it.
- Defendant Erlinda Francisco sent a letter of apology accompanied with a P5,000.00 check which was declined by plaintiffs. 2 weeks after the wedding, Francisco called Mrs. Lo and apologized.
- Plaintiffs filed an action for breach of contract with damages.
- TC decided in favor of plaintiffs, directing defendant to pay the cost of the wedding cake, MORAL DAMAGES, attorney's fees and the cost of litigation.
- CA modified the award by increasing the MORAL DAMAGES to P250,000.00 and awarding EXEMPLARY DAMAGES of P100,000.00.

ISSUES & ARGUMENTS

1. **W/N the CA erred in affirming the TC's award of MORAL DAMAGES and increasing the amount from P30,000.00 to P250,000.00.**
2. **W/N the CA was justified in awarding in addition to moral damages, EXEMPLARY DAMAGES of P100,000.00.**

   Petitioner- CA and TC erred in awarding moral damages because moral damages are recoverable in breach of contract cases only where the breach was palpably wanton, reckless, malicious, in bad faith, oppressive or abusive.

HOLDING & RATIO DECIDENDI

YES. CA ERRED IN AWARDING MORAL DAMAGES.

- Article 2219 of the Civil Code provides: "To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive or abusive."
- In culpa contractual or breach of contract, moral damages may be recovered when the defendant acted in bad faith or was guilty of gross negligence (amounting to bad faith) or in wanton disregard of his contractual obligation and, exceptionally, when the act of breach of contract itself is constitutive of tort resulting in physical injuries.
- Bad faith does not simply connote bad judgment or negligence, it imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of known duty through some motive or interest or ill will that partakes of the nature of fraud.
- Moral damages are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty on the wrongdoer.
- The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Mere allegations of besmirched reputation, embarrassment and sleepless nights are insufficient to warrant an award for moral damages. An award of moral damages would require certain conditions to be met, to wit: (1) first, there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) second, there must be culpable act or omission factually established; (3) third, the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) fourth, the award of damages is predicated on any of the cases stated in Article 2219" of the Civil Code.
- When awarded, moral damages must not be palpably and scandalously excessive as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court judge or appellate court justices.
- In this case, we find no such fraud or bad faith.

CA ALSO ERRED IN AWARDING EXEMPLARY DAMAGES.

- To warrant the award of exemplary damages, [t]he wrongful act must be accompanied by bad faith, and an award of damages would be allowed only if the guilty party acted in a wanton, fraudulent, reckless or malevolent manner.
- The requirements of an award of exemplary damages are: (1) they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established; (2) that they can not be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner.

NOMINAL DAMAGES awarded.

- The facts show that when confronted with their failure to deliver on the wedding day, petitioners gave the lame excuse that delivery was probably delayed because of the traffic, when in truth, no cake could be delivered because the order slip got lost. For such prevarication, petitioners must be held liable for nominal damages for insensitivity, inadvertence or inattention to their customer's anxiety and need of the hour.
- Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.

- Nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered.

Petition granted. CA reversed. Petitioner order to pay the cost of the wedding cake, nominal damages of P10,000.00, attorney's fees and the costs of litigation.

396. Prudential Bank v. CA | Quisumbing
G.R. No. 125536, March 16, 2000| 328 SCRA 264

FACTS

- Leticia Tupasi-Valenzuela had a current account with Prudential Bank, the balance of which on 21 June 1988 was about P36K.
- She issued a post-dated check (20 June 1997) for P11,500, drawn upon her account in Prudential Bank, in favor of Legaspi for payment of jewelry.
- The check was indorsed to Philip Lhuiller. Lhullier subsequently deposited the check but it was dishonored for having insufficient funds.
- Leticia went to Prudential Bank to clarify the matter because it was her belief that she had the sufficient funds to cover the amount of the check since she deposited into her account a check for P35K on 1 June 1988.
- She presented her passbook to the bank officer as evidence, but the same was set aside because according to the officer the best evidence of sufficiency of funds was the ledger furnished by the bank which did, in fact, show an insufficiency.
- Leticia found out that the check she deposited on 1 June had been cleared only on 24 June, 23 days after the deposit. The P11,500.00 check was redeposited by Lhuillier on June 24, 1988, and properly cleared on June 27, 1988.

ISSUES & ARGUMENTS

1. **W/N Leticia is entitled to Moral Damages amounting to P`100,000.**
    - **Petitioner's Argument:** Bank acted in good faith and that is was an honest mistake, therefore moral damages cannot be asked of them.
    - **Respondent's Argument:** while it may be true that the bank's negligence in dishonoring the properly funded check of Leticia might not have been attended with malice and bad faith, it is the result of lack of due care and caution expected of an employee of a firm engaged in so sensitive and accurately demanding task as banking
2. **W/N Leticia is entitled to Exemplary Damages amounting to P 50,000.**
    - **Petitioner's Argument:** Bank acted with due diligence.
    - **Respondent's Argument:** The Bank did not practice due diligence and the public relies on the banks' sworn profession of diligence and meticulousness in giving irreproachable service.

HOLDING & RATIO DECIDENDI

LETICIA IS ENTITLED TO P100,000 as MORAL DAMAGES

- The bank's negligence was the result of lack of due care and caution required of managers and employees of a firm engaged in so sensitive and demanding business as banking. Accordingly, the award of moral damages by the respondent Court of Appeals could not be said to be in error nor in grave abuse of its discretion

LETICIA IS ONLY ENTITLED TO P20,000 (NOT P50,000)

- The law allows the grant of exemplary damages by way of example for the public good.
- The level of meticulousness must be maintained at all times by the banking sector. Hence, the Court of Appeals did not err in awarding exemplary damages. In our view, however, the reduced amount of P20,000.00 is more appropriate.

397 Cathay Pacific Airways v. Spouses Vasquez | Davide
G.R. No. 150843 March 14, 2003

FACTS

- The Spouses Vasquez went to HongKong via Cathay Pacific Airlines. Included in the trip was their maid who rode in the tourist class, and 2 friends who rode with them in the business class cabin.
- On the way back to Manila, the spouses presented their boarding passes to the attendant. The attendant informed them that their seats have been upgraded to first class because they were Marco Polo Club Members (frequent flyer club) and they had such the privilege of a free upgrade in seating accommodations when such is available.
- The spouses did not want to change their seats because they felt that they should be seated with their friends with whom they had traveled and Dr. Vasquez had business matters he wanted to discuss with them.
- The attendant, however, insisted that they take the seats because the flight has been overbooked and the only way for them to get in this flight was to take the first class upgrade. They took in reluctantly for want to be with their friends.
- When they returned back to Manila, they demanded from Cathay Pacific damages of up to P1M, including Moral Damages.

ISSUES & ARGUMENTS

W/N Spouses Vasquez are entitled to MORAL DAMAGES, if not should they be indemnified in another manner.

HOLDING & RATIO DECIDENDI

NO. SPOUSES ARE NOT ENTITLED TO MORAL DAMAGES AS THERE WAS NO BAD FAITH ON THE PART OF CATHAY PACIFIC OR ITS ATTENDANTS.

- The spouses knew that they were members of the Marco Polo Club and that they had such privileged. But privileges, as known to us, can be waived. The flight attendant whould have consulted the spouses if they wanted to avail of that privilege before their business class seats were given to someone else and not surprise them, as like what happened in this case.
- The spouses clearly waived such privilege, therefore Cathay Pacific breached the contract of carriage.
- It is essential, however, that there exists bad faith or malice when in breach of the contract of carriage. The attendants changed the seat accommodations without such malice. Bad faith imports a dishonest purpose or some moral obliquity which was not present in this case.

SPOUSES MAY ENTITLED ONLY TO NOMINAL DAMAGES

- The court did not award them even nominal damages, they just made mention that Nominal Damages is the most the spouses may claim: According to article 2221:
    - Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

CHESKA RESPICIO

398. Lao vs. CA | Grino-Aquino
G.R. No. 82808, July 11, 1991 | 199 SCRA 58

FACTS

- Dennis Lao was an employee of New St. Joseph Lumber owned by Chan Tong
- St. Joseph filed a collection suit and an Estafa case against Benjamin Espiritu, a customer for unpaid purchases of construction supplies
- Lao was ordered by Tong to sign an affidavit prepared by Atty. Querubin
- Espiritu filed a case of malicious persecution against Lao and St. Joseph
- The trial court rendered judgment against Lao and St. Joseph who were ordered to pay Espiritu jointly and severally P100,00 as moral damages, P5,000 as Attorney' s fees and costs
- Espiritu levied on petitioner's car because no more assets could be seized

ISSUES & ARGUMENTS

W/N Lao can be held liable for damages and such sums may be satisfied by execution against employee's property because St. Joseph is closed

HOLDING & RATIO DECIDENDI

NO. LAO SHOULD NOT BE HELD LIABLE AS HE HAD A VALID DEFENSE. HIS EMPLOYER FORCED HIM TO SIGN THE COMPLAINT.

- Elements to maintain action for damages based on malicious prosecution:
- The fact of prosecution and the further fact that plaintiff himself was the prosecutor and the action was finally terminated with an acquittal
- That in bringing the action, the prosecutor acted without probable cause
- The prosecutor was actuated or impelled by legal malice
- Lao was only witness and not prosecutor in the Estafa case.Lao made the affidavit as an employee who had personal knowledge of the transaction. The prosecution for Estafa did not prosper but the unsuccessful prosecution may be labeled as libelous. Hence, the judgment against Lao is a nullity and should be set aside.

399. Rosario Lao and George Felipe Jr., vs. CA, and Frank Duena | Kapunan

FACTS

- Antonio was bumped by a speeding jeep while he and his family were walking on a sidewalk. This jeep was driven by Felipe. The latter got out of the jeep and threatened Antonio, then ran towards his house located near the area of the accident.
- Unable to walk as his legs were hit by the jeep, Antonio then sought the help of the barangay councilman Deuna. Deuna then brought policemen ot the scene of the incident. The policemen then seized the jeep since Felipe was nowhere to be found, and then informed Felipe's about it.
- Felipe and Lao then filed a complaint against the Anti-carnapping Task Force, alleging that Antonio and Frank together with their companions forcibly took the jeep from Felipe's house. This was dismissed by the DOJ for lack of evidence to establish probably cause.
- Thereafter, Antonio and Deuna filed an action for malicious prosecution against Felipe and Lao.

ISSUES & ARGUMENTS

Whether or not Felipe and Lao are liable for malicious prosecution?

HOLDING & RATIO DECIDENDI

Yes, petitioners are liable.

- Indeed, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution, for the law could not have meant to impose a penalty on the right to litigate. To constitute malicious prosecution and hold defendant liable, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person and that the prosecution was initiated with the deliberate knowledge that the charge was false and baseless.
- The elements of malice and absence of probable cause are present in the instant case.
- Lao knew that private respondent, with policemen, had taken the vehicle to the Sangandaan police station after the traffic incident. As pointed out by respondent appellate court, Rosario cannot validly claim that, prior to the filing of the complaint-affidavit for carnapping, she did not know the whereabouts of the vehicle.
- As to the absence of probable cause, it was established that there was clearly no intent to gain on the part of respondents and the police, which is essential for the crime of carnapping. The vehicle was turned over to the police station because it was in connection with the charge of frustrated homicide against Felipe.

400. Lehner V. Martires v. Ricardo Cokieng | Chico-Nazario
G.R. No. 10192, Feb. 17, 2005 |

FACTS

Petitioner Lehner V. Martiresand respondent Ricardo C. Cokieng were contemporaries in Xavier School and in the De La Salle University. Both later built their own respective business pursuits; petitioner with his Durabuilt Company and Ricardo Cokieng with his Phil-Air Conditioning Center, which he jointly owned with his brother and co-respondent Regino Cokieng. Phil-Air Conditioning Center was engaged in the distribution and sale of Carrier air-conditioners and refrigeration units.
Sometime in 1992, petitioner joined Phil-Air Conditioning Center as its agent. For his services, petitioner would receive commission and a fixed monthly salary. This arrangement was done informally, with no written contract governing them. In September 1994, as a result of a verbal tussle between the former classmates, the ties between the duo ended in antipathy, with petitioner resigning from Phil-Air.
Regino Cokieng Filed an Estafa Case against Lehner, the latter was invited for investigation by PNP criminal investigation. The PNPCI recommended to file the action before the proper court. However, Regino did not proceed with the case.
Ricardo on the other hand filed an unjust vexation case against Lehner because the latter took the checking account of the former without authority. Lehner also failed to render the accounting of the business when he was asked by Ricardo.
Lehner was acquitted for the the crime of unjust vexation. He filed a case for damagaes on the ground of malicious prosecution against the Cokiengs. CA dismissed the case.

ISSUES & ARGUMENTS

Whether the court of appeals erred in ruling that Lehner failed to shoe cause of action for damages based on malicious prosecution

HOLDING & RATIO DECIDENDI

There is malicious prosecution when a person directly insinuates or imputes to an innocent person the commission of a crime and the accused is compelled to defend himself in court. While generally associated with unfounded criminal actions, the term has been expanded to include unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of a cause of action or probable cause.[25]
To merit the award of damages in a case of malicious prosecution, the aggrieved party must prove: (1) that he has been denounced or charged falsely of an offense by the defendant, (2) that the latter knows that the charge was false or lacks probable case, (3) that the said defendant acted with malice, and, of course, (4) the damages he has suffered.[26] The elements of want of probable cause and malice must simultaneously exist; otherwise, the presence of probable cause signifies, as a legal consequence, the absence of malice.[27] On these, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person, and that it was initiated deliberately knowing that the charge was false and baseless to entitle the victim to damages.
To the mind of this Court, the twin elements of probable cause and malice are lacking in the case at bar to entitle petitioner to damages he now seeks out. For one, it is an elementary rule in this jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon a party alleging the same.[28] In the case at bar, petitioner has failed to prove bad faith on the part of respondents. For another, there are no factual allegations in the complaint that can support a finding that malice and bad faith motivated the respondents in filing the two informations against petitioner. Allegations of bad faith, malice, and other related words without ultimate facts to support the same are mere conclusions of law. [29] From our reading of the complaint for damages arising from malicious prosecution and from the records of the case, we find no ultimate facts to buttress these conclusions of law.
CA affirmed. Petition dismissed.

DIKKI SIAN

401. Yasoña Vs. De Ramos| Corona
G.R. No. 156339 October 6, 2004| GR 156339

FACTS

- In November 1971, Aurea Yasoña and her son, Saturnino, went to the house of Jovencio de Ramos to ask for financial assistance in paying their loans to PNB, otherwise their residential house and lot would be foreclosed.
- Inasmuch as Aurea was his aunt, Jovencio acceded to the request. They agreed that, upon payment by Jovencio of the loan to PNB, half of Yasoñas' subject property would be sold to him.
- On December 29, 1971, Jovencio paid Aurea's bank loan. As agreed upon, Aurea executed a deed of absolute sale in favor of Jovencio over half of the lot consisting of 123 square meters. Thereafter, the lot was surveyed and separate titles were issued by the Register of Deeds of Sta. Cruz, Laguna in the names of Aurea (TCT No. 73252) and Jovencio (TCT No. 73251).
- 22 years later, in August 1993, Aurea filed an estafa complaint against brothers Jovencio and Rodencio de Ramos on the ground that she was deceived by them when she asked for their assistance in 1971 concerning her mortgaged property.
- In her complaint, Aurea alleged that Rodencio asked her to sign a blank paper on the pretext that it would be used in the redemption of the mortgaged property. Aurea signed the blank paper without further inquiry because she trusted her nephew, Rodencio. Thereafter, they heard nothing from Rodencio and this prompted Nimpha Yasoña Bondoc to confront Rodencio but she was told that the title was still with the Register of Deeds. However, when Nimpha inquired from the Register of Deeds, she was shocked to find out that the lot had been divided into two, pursuant to a deed of sale apparently executed by Aurea in favor of Jovencio. Aurea averred that she never sold any portion of her property to Jovencio and never executed a deed of sale. Aurea was thus forced to seek the advice of Judge Enrique Almario, another relative, who suggested filing a complaint for estafa.
- On February 21, 1994, the prosecutor dismissed the criminal complaint for estafa for lack of evidence. On account of this dismissal, Jovencio and Rodencio filed a complaint for damages on the ground of malicious prosecution with the RTC.
- They alleged that the filing of the estafa complaint against them was done with malice and it caused irreparable injury to their reputation, as Aurea knew fully well that she had already sold half of the property to Jovencio.
- The RTC decided in against petitioner Yasoña, who then filed certiorari under Rule 65

ISSUES & ARGUMENTS

W/N petitioner should be held liable for damages for malicious prosecution

HOLDING & RATIO DECIDENDI

YES, petitioner must be held liable for malicious prosecution.

- In this jurisdiction, the term "malicious prosecution" has been defined as "an action for damages brought by one against whom a criminal prosecution, civil suit, or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein."
- To constitute "malicious prosecution," there must be proof that the prosecution was prompted by a sinister design to vex or humiliate a person, and that it was initiated deliberately by the defendant knowing that his charges were false and groundless.5 Concededly, the mere act of submitting a case to the authorities for prosecution does not make one liable for malicious prosecution.
- In this case, however, there is reason to believe that a malicious intent was behind the filing of the complaint for estafa against respondents. The records show that the sale of the property was evidenced by a deed of sale duly notarized and registered with the local Register of Deeds. After the execution of the deed of sale, the property was surveyed and divided into two portions. Separate titles were then issued in the names of Aurea Yasoña (TCT No. 73252) and Jovencio de Ramos (TCT No. 73251). Since 1973, Jovencio had been paying the realty taxes of the portion registered in his name. In 1974, Aurea even requested Jovencio to use his portion as bond for the temporary release of her son who was charged with malicious mischief. Also, when Aurea borrowed money from the Rural Bank of Lumban in 1973 and the PNB in 1979, only her portion covered by TCT No. 73252 was mortgaged.
- All these pieces of evidence indicate that Aurea had long acknowledged Jovencio's ownership of half of the property. Furthermore, it was only in 1993 when petitioners decided to file the estafa complaint against respondents. If petitioners had honestly believed that they still owned the entire property, it would not have taken them 22 years to question Jovencio's ownership of half of the property. The only conclusion that can be drawn from the circumstances is that Aurea knew all along that she was no longer the owner of Jovencio's portion after having sold it to him way back in 1971. Likewise, other than petitioners' bare allegations, no other evidence was presented by them to substantiate their claim.
- Malicious prosecution, both in criminal and civil cases, requires the elements of (1) malice and (2) absence of probable cause. These two elements are present in the present controversy. Petitioners were completely aware that Jovencio was the rightful owner of the lot covered by TCT No. 73251, clearly signifying that they were impelled by malice and avarice in bringing the unfounded action. That there was no probable cause at all for the filing of the estafa case against respondents led to the dismissal of the charges filed by petitioners with the Provincial Prosecutor's Office in Siniloan, Laguna.

402. Audion Electric Co., Inc. v NLRC | Gonzaga-Reyes
G.R. No. 106648 June 17, 1999 |

FACTS

- Nicolas Madolid was employed by Audion Electric Company on June 30, 1976 as a fabricator and continuously rendered services assigned in different offices or projects as helper electrician, stockman and timekeeper. He has rendered thirteen (13) years of continuous, loyal and dedicated service with a clean record.
- On August 3, Madolid was surprised to receive a letter informing him that he will be considered terminated after the turnover of materials, including respondent's tools and equipments not later than August 15, 1989.
- Madolid claims that he was dismissed without justifiable cause and due process and that his dismissal was done in bad faith which renders the dismissal illegal. He prays for reinstatement with full backwages as well as moral and exemplary damages.
- LA Iniego ruled in favor of Madolid. Upon appeal to NLRC, the latter dismissed the same. Hence this appeal.

ISSUES & ARGUMENTS

W/N the award of moral and exemplary damages in this case was proper?

HOLDING & RATIO DECIDENDI

NO. Such award must be deleted for being devoid of legal basis. Moral and exemplary damages are recoverable only where the dismissal of an employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or were done in a manner contrary to morals, good customs or public policy.

- The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party, which is the basis made by Madolid for claiming moral and exemplary damages in this case.

There was also an issue of **whether or not Madolid should be considered a regular or a project employee**. The Court held that **Madolid's employment status was established by the Certificate of Employment dated April 10, 1989 issued by Audion Electric which certified that Madolida is a bonfide employee of the former from June 30, 1976 up to the time the certification was issued on April 10, 1989**. The same certificate of employment showed that private respondent's exposure was regularly and continuously employed by Audion in various job assignments from 1976 to 1989, for a total of 13 years. The Court reminded the parties of its ruling that **where the employment of project employees is extended long after the supposed project has been finished, the employees are removed from the scope of project employees and considered regular employees**. Further the failure of Audion to submit reports of termination supports the claim of Madolid that he was indeed a regular employee.

TEL VIRTUDEZ

403. NEECO I vs NLRC| Quisumbing
GR No. 116066 January 24, 2000|

FACTS

- Petitioners Reynaldo Fajardo, Ernesto Marin, Ever Guevarra, Petronilo Baguisa, Victorino Carillo, and Erdie Javate were permanent employees of respondent Nueva Ecija I Electric Cooperative (NEECO I).
- They were members of petitioner NEECO I Employees Association, a labor organization established for the mutual aid and protection of its members. Petitioner Rodolfo Jimenez was the president of the association.
- The management of NEECO I is vested on the Board of Directors. Respondent Patricio dela Peña was NEECO's general manager on detail from NEA.
- On February 7, 1987, the Board of Directors adopted Policy No. 3-33, which set the guidelines for NEECO I's retirement benefits. On October 28, 1987, all regular employees were ordered by NEECO I to accomplish Form 87, which were applications for either retirement, resignation, or separation from service.
- On October 5, 1991 and February 28, 1992, the applications of Petronilo Baguisa and Ever Guevarra, respectively, were approved. They were paid the appropriate separation pay.
- These successive events, followed by the promotion of certain union officers to supervisory rank, caused apprehension in the labor association. They were considered as harassment threatening the union members, and circumventing the employees' security of tenure.
- On February 29, 1992, to strengthen and neutralize management's arbitrary moves, the union held a "snap election" of officers.
- On March 3, 1992, petitioner labor association passed a resolution withdrawing the applications for retirement of all its members.
- On March 4, March 17, and April 7, 1992, petitioners Ernesto Marin, Reynaldo Fajardo and Victorino Carillo were compulsorily retired by management. They received their separation pay under protest on March 16, March 18, and April 15, 1992, respectively.
- On August 21, 1991, Erdie Javate was terminated from employment allegedly due to misappropriation of funds and dishonesty. He was not paid separation or retirement benefits.
- On March 29, 1992, petitioners and Erdie Javate instituted a complaint for illegal dismissal and damages with the NLRC Regional Arbitration Branch in San Fernando. They alleged they were purposely singled out for retirement from a listing of employees who were made to submit retirement forms, even if they were not on top of the list because they were union officers, past officers or active members of the association.
- The labor Arbiter ruled in favor of the employees but the NLRC eliminated the award of Moral and Exemplary Damages.

ISSUES & ARGUMENTS

Whether the NLRC's decision not to award Moral and Exemplary damages was proper?

HOLDING & RATIO DECIDENDI

No.

To warrant an award of moral damages, it must be shown that the dismissal of the employee was attended to by bad faith, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.

Clearly, therefore, complainants have established the fact that they were illegally dismissed by the respondents and their illegal dismissal was even tainted with unfair labor practice act. Unfair labor practices violate the constitutional rights of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect; and disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

404. Rutaquio vs. NLRC

FACTS

Jose Rutaquio and Erlinda Villareal were Savings Bookkeeper and Cashier of Rural Bank of Baler, respectively. Upon auditing and inspection of MY Mateo and Co. (CPA of the bank) of the records, it found out that certain accounts exceeded the entries of journals and ledgers of the bank and that some transactions were not timely recorded. This prompted them to recommend disciplinary action against the two which the bank heeded through its President (Flordeliza Carpio) by approving a Resolution pursuant thereto. They then sought formal resignation of the two, which the latter questioned through a letter expressing that they would only accede to the discipline if it will be dispensed with in the proper venue. The bank then ratiocinated that the employees' acts were prejudicial to the bank which subjected it to penalties from the Central Bank. The refusal of the two subsequently led to their dismissal. They then sued the bank for illegal dismissal and prayed for reinstatement and certain back pays. NLRC ruled in their favor but instead did not compel reinstatement due to strained relations and awarded moral damages and attorney's fees. CA deleted the latter awards upon appeal of the bank.

ISSUES & ARGUMENTS

Whether CA was correct in deleting award for moral damages and attorney's fees.

HOLDING & RATIO DECIDENDI

Yes but not the Attorney's fees. In this case the employees failed to state the facts and substantiate the same, which served as basis for the award of moral damages. In the absence of bad faith on the part of the employer in dismissing them, an award for moral damages is not proper. Citing the case of *Lopez v. Javier* Moral damages in labor cases are recoverable only when the dismissal is attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. As to the attorney's fees: it is settled that in actions for recovery of wages or where an employee was forced and constrained to litigate and incur expenses in order to protect his rights or interests, the ward of attorney's fees is morally and legally justified.

405. Paguio vs. PLDT| Mendoza
G.R. No. 154072, December 3, 2002|

FACTS

- Petitioner Alfredo S. Paguio was appointed Head of PLDT's Garnet Exchange. He reported to the Head of the Greater Metro Manila (GMM) East Center, Rodolfo R. Santos, one of the respondents herein.
- Paguio sent Santos memoranda criticizing the performance ranking of the GMM exchanges and requested reconsideration of the implementation of the East Center OPSIM Manpower Rebalancing as such was unfair to the Garnet Exchange. Subsequently, respondent Santos issued a memorandum reassigning petitioner to a position in the Office of the GMM East Center Head for Special Assignments.
- Protesting the said transfer, petitioner asked Ferido for a formal hearing but the transfer was affirmed based on the conclusion "that [petitioner is] not a team player and cannot accept decisions of management already arrived at, short of insubordination." This was again affirmed by respondent Enrique Perez, Senior EVP and COO of PLDT explaining that the action was not disciplinary and did not require compliance with the process of investigation, confrontation, and evaluation before implementation.
- As a result, petitioner filed a complaint for illegal demotion and damages against respondents. The Labor Arbiter dismissed the complaint on the ground that petitioner's transfer was an exercise of a management prerogative and there was no showing that the same amounted to a demotion in rank and privileges. Petitioner then appealed to the NLRC, which reversed the decision of the Labor Arbiter stating that there was a diminution of his salary, benefits, and other privileges as he was assigned a functionless position and deprived of the opportunity to get a performance-based promotion or a wage increase. The award included a reinstatement and a wage increase. The CA and SC affirmed but disagreed as to the award of salary increases.

ISSUES & ARGUMENTS

W/N petitioner Paguio is entitled to damages?

HOLDING & RATIO DECIDENDI

YES, PETITIONER IS ENTITLED TO DAMAGES

- Under Article 21 of the Civil Code, any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage. **The illegal transfer of petitioner to a functionless office was clearly an abuse by respondent PLDT of its right to control the structure of its organization.** The right to transfer or reassign an employee is decidedly an employer's exclusive right and prerogative. In several cases, however, we have ruled that such managerial prerogative must be exercised without grave abuse of discretion, bearing in mind the basic elements of justice and fair play. Having the right should not be confused with the manner by which such right is to be exercised. As found by both the NLRC and the Court of Appeals, there is no clear justification for the transfer of petitioner except that it was done as a result of petitioner's disagreement with his superiors with regard to company policies.
- **Petitioner is entitled to an award of moral and exemplary damages.** The Court has held that in determining entitlement to moral damages, it suffices to prove that the claimant has suffered anxiety, sleepless nights, besmirched reputation and social humiliation by reason of the act complained of. Exemplary damages, on the other hand, are granted in addition to moral damages "by way of example or correction for the public good." Furthermore, as petitioner was compelled to litigate and incur expenses to enforce and protect his rights, he is entitled to an award of attorney's fees. The amount of damages recoverable is, in turn, determined by the business, social and financial position of the offended parties and the business and financial position of the offender.

406. Globe Telecom, Inc. vs. Florendo-Flores | Bellosillo
GR. No.- 150092, September 27, 2002 | 390 SCRA 200

FACTS

- Private Respondent was the Senior Account Manager for Northern Luzon of Globe Telecom. She filed a complaint with the NLRC for constructive dismissal against Globe and some of its officials. According to her affidavit, Cacholo Santos, her immediate superior (1) never accomplished and submitted her performance evaluation report thereby depriving her of salary increases, bonuses, and other incentives which other employees of the same rank had been receiving; (2) reduced her to a house-to-house selling agent of company products ("handyphones") despite her rank as supervisor of company dealers and agents; (3) never supported her in the sales programs and recommendations she presented; and (4) withheld all her other benefits, i.e. gasoline allowance, per diems, representation allowance and car maintenance, to her extreme pain and humiliation.
- Petitioners averred that before the filing of the complaint, private respondent went AWOL without signifying whether she was resigning. That notwithstanding, there was no official act which called for her termination and diminution in rank, seniority and benefits.
- Labor Arbiter adjudged illegal dismissal and ordered reinstatement and payment of full backwages. Respondent was also awarded exemplary damages on account of the company's negligence in monitoring all its key personnel, and attorney's fees.
- On appeal, the NLRC held that although private respondent abandoned her employment she was nonetheless entitled to backwages as an act of grace of Globe. CA then affirmed.

ISSUES & ARGUMENTS

1. **W/N respondent was constructively dismissed.**
2. **W/N the payment of backwages and damages was in order.**

HOLDING & RATIO DECIDENDI

YES. ALTHOUGH RESPONDENT CONTINUED TO HAVE THE RANK OF A SUPERVISOR, HER FUNCTIONS WERE REDUCED TO A MERE HOUSE-TO-HOUSE SALES AGENT OR DIRECT SALES AGENT. THIS WAS TANTAMOUNT TO A DEMOTION.

- Constructive dismissal exists where there is cessation of work because "continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay."
- In this case, private respondent might not have suffered any diminution in her basic salary but petitioners did not dispute her allegation that she was deprived of all benefits due to another of her rank and position, benefits which she apparently used to receive.

ENTITLED TO BAKWAGES BUT NOT TO ACTUAL, MORAL AND EXEMPLARY DAMAGES.

- It should be noted that the award of backwages is justified upon the finding of illegal dismissal, and not under the principle of *act of grace* for past services rendered. There are occasions when the Court exercises liberality in granting financial awards to employees, but even then they contemplate only the award of separation pay and/or financial assistance, and only as a measure of *social justice* when the circumstances of the case so warrant, such as instances of valid dismissal for causes other than serious misconduct or those reflecting on the employees' moral character. Proper regard for the welfare of the labor sector should not dissuade us from protecting the rights of management such that an award of back wages should be forthcoming only when valid grounds exist to support it.
- An award of actual or moral damages is not proper as the dismissal is not shown to be attended by bad faith, or was oppressive to labor, or done in a manner contrary to morals, good customs, or public policy. Exemplary damages are likewise not proper as these are imposed only if moral, temperate, liquidated or compensatory damages are awarded.

DANI BOLONG

407. UST vs. CA | Corona
G.R. No. 124250, October 18, 2004 |

FACTS

- UST owns and operates the hospital known as the Santo Tomas University Hospital (STUH). UST entered into a lease agreement with Dr. Librado Canicosa whereby the latter a room in the hospital. Annexed to the lease agreement the following restriction …. No physician accepted as lessee shall **maintain or offer in the leased premises any ancillary services which is being offered by the STUH** (such as nuclear and other laboratory services, physiotherapy, x-ray, pharmacy, etc.).
- Canicosa acquired two diagnostic machines - a scintillation gamma camera and an up take machine. Because STUH had a similar diagnostic instrument, it sent a letter to Dr. Canicosa requesting the latter to remove his up take machine pursuant to the limitation attached to the agreement
- Canicosa rejected petitioner's request, claiming that his machine was not in the hospital premises but in the room he was leasing from the hospital. Due to the refusal of respondent to remove his up take machine from Room 203 of STUH,
- UST filed an ejectment complaint against Canicosa on the ground of violation of the terms of the lease agreement
- In his answer, Canicosa insisted that the up take machine was essential to his medical practice as an internist specializing in thyroidology. **He also filed a counterclaim seeking actual, moral and exemplary damages for the following causes of action**
- He was also dismissed as a personnel health officer as a result of the squabble. He thus filed a case for illegal dismissal at the National Labor Relations Commission (NLRC) and demanded his reinstatement and payment of backwages. Canicosa claimed that his dismissal was a product of ill-will, revenge and harassment as he earlier opposed the application for Filipino citizenship of the hospital administrator, Fr. Antonio Cabezon, O.P. On February 28, 1978, the labor arbiter entered a decision branding his dismissal as illegal and ordering his reinstatement to his former position with full backwages. Petitioner appealed to the NLRC which affirmed the decision Petitioner elevated the case to the SC which affirmed the decisions of both the labor arbiter and the NLRC
- In the ejectment case, the RTC awarded Canicosa with damages arising from illegal dismissal

ISSUES & ARGUMENTS

W/N the Dr. Canicosa is entitled to damages due to illegal dismissal

HOLDING & RATIO DECIDENDI

THE TC IS BEREFT OF JURISDICTION TO AWARD DR. CANICOSA WITH DAMAGES.

- UST argues that Canicosa's first cause of action under his counterclaim was the claim for damages for his alleged illegal dismissal as personnel health officer of the hospital. **As such, it was the NLRC and not the trial court which had jurisdiction to hear the claim for damages, pursuant to PD 1691** which took effect on May 1, 1980.
- The complaint for ejectment was filed by petitioner on May 17, 1979 while respondent's answer with counterclaim was filed on June 27, 1979. At that time, PD 1367 was still the prevailing law. Petitioner alleges that, although the case was filed during the effectivity of PD 1367 which vested the regular courts with jurisdiction over claims for damages arising from an employer-employee relationship, *that jurisdiction was removed from the courts when PD 1691 amended PD 1367 during the pendency of the case*. PD 1691 restored to the labor arbiters and the NLRC their jurisdiction over all money claims of workers and all other claims arising from employer-employee relations, including moral and exemplary damages.
- On the other hand, respondent maintains that once a court has assumed jurisdiction over a case, its jurisdiction continues until the case is terminated.
- However, on May 1, 1980, *during the pendency of this case*, PD 1691 was promulgated, amending Section 1 of PD 1367:
- ART. 217. Jurisdiction of the Labor Arbiter and the Commission. -- a) The Labor Arbiters shall have the original and exclusive jurisdiction to hear and decide the following cases involving all workers whether agricultural or non-agricultural:**[3) All money claims of workers, -xxx- 5) All other claims arising from employer-employee relation,]**
- **We now ask: did PD 1691 apply retroactively in this case so as to transfer jurisdiction over respondent's claims for damages from the courts to the labor arbiter/NLRC? Yes.**
- In *Atlas Fertilizer Corporation vs. Navarro* the Court had the occasion to rule on conflicts of jurisdiction between the courts and the labor agencies arising from the amendments to PD 1367 by PD 1691. The later law, PD 1691, is a curative statute which corrected the lack of jurisdiction of the labor arbiters at the start of the proceedings and therefore should be given *retroactive application* vis-a-vis pending proceedings. It was intended to correct a situation where two different tribunals had jurisdiction over separate issues arising from the same labor conflict.
- This principle was reiterated in *Victorias Milling Co., Inc. vs. Intermediate Appellate Court* where PD 1691 was given retroactive application as the amendment to the law was crafted precisely to settle once and for all the conflict of jurisdiction between regular courts and labor agencies.
- **We rule therefore that the award of damages by the trial court on the first cause of action of respondent's counterclaim cannot be sustained as the court *a quo* was bereft of jurisdiction to grant the same.**

GINO CAPATI

408. Hemedes vs. CA| Gonzaga-Reyes
G.R. No. 107132 October 8, 1999 |SCRA

FACTS

- An unregistered parcel of land was originally owned by the late Jose Hemedes, father of **Maxima Hemedes and Enrique D. Hemedes**.
- Jose Hemedes executed a document entitled *"Donation Inter Vivos With Resolutory Conditions"* whereby he conveyed ownership over the subject land, together with all its improvements, in favor of his third wife, **Justa Kausapin,** subject to following resolution condition (among two):
    (a) Upon the death or remarriage of the DONEE, the title to the property donated shall revert to any of the children, or their heirs, of the DONOR expressly designated by the DONEE in a public document conveying the property to the latter.
    - Pursuant to the condition above mentioned, **Justa Kausapin** executed a *"Deed of Conveyance of Unregistered Real Property by Reversion"* conveying to Maxima Hemedes the subject property. Original Certificate of Title (OCT) No. (0-941) 0-198 [5] was issued in the name of **Maxima Hemedes** married to Raul Rodriguez by the Registry of Deeds of Laguna on June 8, 1962, with the annotation that "**Justa Kausapin** shall have the usufructuary rights over the parcel of land herein described during her lifetime or widowhood."
        - It is claimed by **R & B Insurance** that **Maxima Hemedes** and her husband Raul Rodriguez constituted a real estate mortgage over the subject property in its favor to serve as security for a loan which they obtained. On February 22, 1968, **R & B Insurance** extrajudicially foreclosed the mortgage since **Maxima Hemedes** failed to pay the loan even after it became due. The land was sold at a public auction with R & B Insurance as the highest bidder and a certificate of sale was issued by the sheriff in its favor. On May 21, 1975, The Register of Deeds of Laguna cancelled OCT No. (0-941) 0-198 and issued Transfer Certificate of Title (TCT) No. 41985 in the name of R & B Insurance. The annotation of usufruct in favor of **Justa Kausapin** was maintained in the new title.
- Despite the earlier conveyance of the subject land in favor of **Maxima Hemedes**, **Justa Kausapin** executed a "Kasunduan" on May 27, 1971 whereby she transferred the same land to her stepson **Enrique D. Hemedes**.
    - On February 28, 1979, **Enriques D. Hemedes** sold the property to **Dominium Realty and Construction Corporation (Dominium).**
    - On April 10, 1981, **Justa Kausapin** executed an affidavit *affirming* the conveyance of the subject property in favor of **Enrique D. Hemedes** as embodied in the "Kasunduan" dated May 27, 1971, and at the same time *denying* the conveyance made to **Maxima Hemedes.**
    - May 14, 1981, **Dominium** leased the property to its sister corporation **Asia Brewery, Inc.** (Asia Brewery) who, even before signing the contract of lease, constructed two warehouses.
- **R & B Insurance** sent a letter to **Asia Brewery** informing the former of its ownership of the property as evidenced by TCT No. 41985 issued in its favor and of its right to appropriate the constructions since **Asia Brewery** is a builder in bad faith.
- **Maxima Hemedes** also wrote a letter addressed to **Asia Brewery** wherein she asserted that she is the rightful owner of the subject property by virtue of OCT No. (0-941) 0-198 and that, as such, she has the right to appropriate Asia Brewery's constructions, to demand its demolition, or to compel **Asia Brewery** to purchase the land. In another letter, **Maxima Hemedes** denied the execution of any real estate mortgage in favor of **R&B Insurance**.
- **Dominium** and **Enrique D. Hemedes** filed a complaint with the CFI of Laguna for the annulment of TCT issued in favor of **R & B Insurance** and/or the reconveyance to **Dominium** of the subject property.
    - **Dominium** was the absolute owner of the subject property by virtue of the February 28, 1979 deed of sale executed by Enrique D. Hemedes, who in turn obtained ownership of the land from **Justa Kausapin**, as evidenced by the "Kasunduan" dated May 27, 1971.
    - **Justa Kausapin** never transferred the land to **Maxima Hemedes** and that **Enrique D. Hemedes** had no knowledge of the registration proceedings initiated by **Maxima Hemedes**.
- TC rendered judgment in favor of **Dominium** and **Enrique Hemedes**. CA affirmed.

ISSUES & ARGUMENTS

1. **Which of the two conveyances by Justa Kausapin, the first in favor of Maxima Hemedes and the second in favor of Enrique D. Hemedes, effectively transferred ownership over the subject land.**
2. **W/N R & B Insurance should be considered an innocent purchaser of the land in question (or a mortgagee in good faith), and if so, W/N R & B Insurance is entitled to moral damages.**

HOLDING & RATIO DECIDENDI

1.) The conveyance made by Justa Kausapin in favor of Maxima Hemedes transferred ownership over the subject land. The SC held that Dominium and Enrique Hemedes have failed to produce clear, strong, and convincing evidence to overcome the positive value of the "Deed Conveyance of Unregistered Real Property by Reversion" — a notarized document. In upholding the deed of conveyance in favor of Maxima Hemedes, the SC ruled that Enrique D. Hemedes

and his transferee, Dominium, did not acquire any rights over the subject property.

- Public respondent's finding that the "Deed of Conveyance of Unregistered Real Property By Reversion" executed by **Justa Kausapin** in favor of **Maxima Hemedes** is spurious is not supported by the factual findings in this case. It is grounded upon the mere denial of the same by **Justa Kausapin.**
- The failure of **Dominium** and **Enrique Hemedes** to refute the due execution of the deed of conveyance by making a comparison with **Justa Kausapin's** thumbmark necessarily leads one to conclude that she did in fact affix her thumbmark upon the deed of donation in favor of her stepdaughter.
- Public respondent's reliance upon **Justa Kausapin's** repudiation of the deed of conveyance is misplaced for there are strong indications that she is a biased witness. The trial court found that **Justa Kausapin** was dependent upon **Enrique D. Hemedes** for financial assistance.
- Clearly, article 1332 assumes that the consent of the contracting party imputing the mistake or fraud was given, although vitiated, and does not cover a situation where there is a complete absence of consent. In this case, **Justa Kausapin** disclaims any knowledge of the "Deed of Conveyance of Unregistered Real Property by Reversion" in favor of **Maxima Hemedes**. In fact, she asserts that it was only during the hearing conducted on December 7, 1981 before the trial court that she first caught a glimpse of the deed of conveyance and thus, she could not have possibly affixed her thumbmark thereto.

Thus, the donation in favor of Enrique D. Hemedes is null and void for the purported object thereof did not exist at the time of the transfer, having already been transferred to his sister. Similarly, the sale of the subject property by Enrique D. Hemedes to Dominium is also a nullity for the latter cannot acquire more rights than its predecessor-in-interest and is not an innocent purchaser for value since Enrique D. Hemedes did not present any certificate of title upon which it relied.

2.) Yes. R & B Insurance should be considered as an innocent purchaser of the land in question (or a mortgagee in good faith), but R & B Insurance is not entitled to moral damages.

- The TC and CA court found that **Maxima Hemedes** did in fact execute a mortgage over the subject property in favor of R & B Insurance. This finding shall not be disturbed
- The owner of a parcel of land may still sell the same even though such land is subject to a usufruct; the buyer's title over the property will simply be restricted by the rights of the usufructuary. Thus, **R & B Insurance** accepted the mortgage subject to the usufructuary rights of **Justa Kausapin**. The annotation of usufructuary rights in favor of **Justa Kausapin** upon **Maxima Hemedes'** OCT does not impose upon **R & B Insurance** the obligation to investigate the validity of its mortgagor's title.
- Furthermore, even assuming that **R & B Insurance** was legally obliged to go beyond the title and search for any hidden defect or inchoate right which could defeat its right thereto, it would not have discovered anything since the mortgage was entered into in 1964, while the "Kasunduan" conveying the land to **Enrique D. Hemedes** was only entered into in 1971 and the affidavit repudiating the deed of conveyance in favor of **Maxima Hemedes** was executed by **Justa Kausapin** in 1981.
- It is a well-settled principle that where innocent third persons rely upon the correctness of a certificate of title and acquire rights over the property, the court cannot just disregard such rights. Otherwise, public confidence in the certificate of title, and ultimately, the Torrens system, would be impaired for everyone dealing with registered property would still have to inquire at every instance whether the title has been regularly or irregularly issued. **Being an innocent mortgagee for value, R & B Insurance validly acquired ownership over the property, subject only to the usufructuary rights of Justa Kausapin thereto, as this encumbrance was properly annotated upon its certificate of title**
- **Despite this ruling, R & B Insurance is not entitled to moral damages as it has not alleged nor proven the factual basis for the same.**

NICO CRISOLOGO

409. Development Bank of the Philippines vs. Court of Appeals

FACTS

- Emerald Resort Hotel Corporation obtained a loan from DBP for 3.5 millions pesos
- Thus ERHC mortgaged its property to DBP
- Since ERHC defaulted on the payment of its loan, DBP filed with the RTC sheriff of Iriga an application for extrajudicial foreclosure sale of the said mortgaged properties.
- **It was alleged that sheriffs and other armed men entered the premises of said Hotel when the foreclosure was executed**

ISSUES & ARGUMENTS

Could ERHC demand moral damages?

HOLDING & RATIO DECIDENDI

No

- As a general rule, Corporations could not be awarded moral damages because being an artificial person; a corporation has no feelings, no emotions, and no senses.
- It cannot experience actual sufferings and mental anguish which is only experienced by a person having a nervous system.
- The statement in PP vs Manero is only an obiter dictum, stating that the good reputation of the company is debased, resulting in social humiliation, thus could recover moral damages.
- Assuming that they can, still the company did not present enough proof to warrant moral damages.

410. PAL vs. CA | GRIÑO-AQUINO, J
G.R. No. 55470, May 8, 1990 | 185 SCRA 110

FACTS

- On November 23, 1960 at 5:30 pm., Starlight Flight #26 of the Philippine Airlines took off from Manduriao Airport in Iloilo on its way to Manila with 33 persons on board.
- The plane did not reach its destination but crashed on Mt. Baco in Mindoro, one hour and fifteen minutes after take-off.
- The plane was identified as PI-C133, a DC-3 type aircraft manufactured in 1942 and acquired by PAL in 1948.The same has been certifies as airworthy by the Civil Aeronautics Administration.
- Among the fatalities was Nicanor Padilla who was a passenger on the star crossed flight.
- His mother, Natividad Vda de Padilla filed a complaint against PAL demanding payment of P600,000 as actual and compensatory damages plus exemplary damages and P60,000 as attorney's fees
- PAL denied that the accident was caused by its negligence or that of any of the plane's flight crew.
- It was established that Nicanor Padilla, prior to his death was 29 years old, single, in good health, President and General Manager of Padilla Shipping Company at Iloilo City, and a legal assistant of the Padilla Law Office.
- Lower court rendered a decision ordering PAL to pay plaintiff Natividad Padilla the sum of P477,000 as award for the expected income of the deceased Nicanor. P10,000 as moral damages and P10,000 as attorney's fees.
- CA affirmed.

ISSUES & ARGUMENTS

W/N respondent court erred in computing the awarded indemnity on the basis of the life expectancy of the late Nicanor Padilla rather on the life expectancy of private respondent

HOLDING & RATIO DECIDENDI

No, however there is error as to the computation of the proper indemnity to be awarded.

Petitioner PAL relied on foreign law which states that the controlling element in determining loss of earnings arising from death is the life expectancy of the deceased or of the beneficiary, whichever is shorter.

However resort to foreign law even in the absence of local statute is only persuasive.

As per Philippine law, under Aretciles 1764 and 2206 of the Civil Code, the award of damages for death is computed on the basis of life the life expectancy of the deceased and not of his beneficiary.

In the case of Davila vs PAL, the SC in that case determined not only PAL's liability for negligence but also the manner of computing the damages. Indemnity in that case was also determined based on the life expectancy of the deceased and not of his beneficiaries.

Following the procedure used by the SC in the case of Davila vs. PAL, the trial court determined the victim's gross annual income to be P23,100 based on the yearly salaries of P18,000 from Padilla Shipping Company and P5,100 from the Allied Overseas Trading Corporation.

Considering that he was single, the court deducted P9,200 as yearly living expenses resulting in a net income of P13,900 and not P15,900 as determined by the trial court.

Since Nicanor was only 29 years old and in good health, the trial court allowed him a life expectancy of 30 years.

Then multiplying his annual net income by his life expectancy of 30 years, the product is P417,000 and not P477,000. This is the amount of death indemnity that is due to her Nicanor's mother.

Further, although as a general rule, an appellee who has not appealed is not entitled to such affirmative relief other than the ones granted in the decision of the lower court. Nevertheless, there is merit in PR's plea for relief.

Due to the 16-year delay in the disposition of this case, PR herself has joined her son in the Great Beyond without being able to receive the indemnity that she deserves. Thus in the interest of justice, petitioner should pay legal interest on the indemnity due her. The failure of the trial court to award such interest amounts to a PLAIN ERROR which the SC may rectify on appeal although it was not specified in the appellees' brief.

TIN DIÑO

411. Better Buildings , Inc. vs. NLRC | Romero, J.
G.R. No. 109714, December 15, 1997 | 283 SCRA 242

FACTS

- Private respondent Halim Ysmael (Ysmael) was hired as a Sales Manager by petitioner Better Building, Inc. (BBI) on March 16, 1985. In addition to his monthly salary, he was given the free use of the company car, free gasoline and commission from sales. Private respondent Eliseo Feliciano (Feliciano), on the other hand, was employed as Chief Supervisor by the petitioner since January 1966.
- On May 3, 1988, petitioner, through its Assistant General Manager, Leda A. Beverford, showed to private respondents a memorandum regarding their termination from employment effective the same day
- Unable to accept petitioner's drastic action, on May 6, 1988, private respondents filed a complaint against BBI for illegal dismissal. [3]
- On March 3, 1989, Labor Arbiter Daisy G. Cauton-Barcelona rendered a decision declaring the dismissal illegal.
- Except for the reduction of the damages awarded by the Labor Arbiter, the said decision was affirmed by the NLRC,
- Petitioner, not satisfied with the decision, has filed the instant petition for *certiorari* alleging that the NLRC gravely abused its discretion amounting to lack or excess of jurisdiction when it rendered the decision of March 3, 1989 and the resolution of December 11, 1992.
- On September 4, 1996, this Court resolved to dismiss the case against private respondent Ysmael by virtue of the compromise agreement entered into between him and the petitioner. [6] Hence, the resolution of this case will only affect private respondent Feliciano.

ISSUES & ARGUMENTS

W/N respondent NLRC gravely abused its discretion amounting to lack or excess of jurisdiction?

HOLDING & RATIO DECIDENDI

In termination of employment cases, we have consistently held that two requisites must concur to constitute a valid dismissal: (a) the dismissal must be for any of the causes expressed in Art. 282 of the Labor Code, and (b) the employee must be accorded due process, the elements of which are the opportunity to be heard and defend himself. [7]

- Deeply entrenched in our jurisprudence is the doctrine that an employer can terminate the services of an employee only for valid and just causes which must be supported by clear and convincing evidence. [10] The employer has the burden of proving that the dismissal was indeed for a valid and just cause. [11]
- In the case at bar, petitioner has clearly established private respondent's culpability by convincing evidence. First, it was never disputed that private respondent established another corporation, Reachout General Services, engaged in the maintenance/janitorial service, the same line of business as that of petitioner. In this regard, private respondent failed to adduce substantial evidence to disprove this allegation.

While we find that private respondent was dismissed for cause, the same was, however, effected without the requirements of due process.

- In this jurisdiction, we have consistently ruled that in terminating an employee, it is essential that the twin requirements of notice and hearing must be observed. [12] The written notice apprises the employee of the particular acts or omissions for which his dismissal is sought and at the same informs the employee concerned of the employer's decision to dismiss him.
- In the case at bar, the record is bereft of any showing that private respondent was given notice of the charge against him. Nor was he ever given the opportunity under the circumstances to answer the charge; his termination was quick, swift and sudden.
- Evidently, the decision to dismiss respondent was merely based on the fact that petitioner was already convinced at the time that the private respondents were engaged in disloyal acts. As regards the procedural aspect, the failure to observe the twin requirements of notice and hearing taints the dismissal with illegality.
- In fine, we find that there was basis for petitioner's loss of trust and confidence in private respondent. For an employer cannot be compelled to retain in his service an employee who is guilty of acts inimical to its interest. [14] A company has the right to dismiss its employees as a measure of protection. [15] Corollarily, proof beyond reasonable doubt of an employee's misconduct is not required in dismissing an employee on the ground of loss of trust and confidence. [16] The quantum of proof required, being only substantial evidence, [17] we are convinced that there was an actual breach of trust committed by private respondent which was ample basis for petitioner's loss of trust and confidence in him. **We, therefore, hold that private respondent's dismissal was for a just and valid cause. However, the manner of terminating his employment was done in complete disregard of the necessary procedural safeguards. A man's job being a property right duly protected by our laws, for depriving private respondent the right to defend himself, petitioner is liable for damages consistent with Article 32 of the Civil Code, which provides:**
    - **Art. 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:**
        - **xxx xxx xxx**
    - **(6) The right against deprivation of property without due process of law;**
        - **xxx xxx xxx**
- **In this regard, the damages shall be in the form of nominal damages [18] for the award is not for the purpose of penalizing the petitioner but to vindicate or recognize private respondent's rights to procedural due process which was violated by the petitioner.**

JAY DUHAYLONGSOD

412. Japan Airlines vs. Court of Appeals | Romero, J.
G.R. No. 118664, August 7, 1998 | 294 SCRA 19

FACTS

- On June 13, 1991, private respondent Jose Miranda boarded JAL flight No. JL 001 in San Francisco, California bound for Manila. Likewise, on the same day private respondents Enrique Agana, Maria Angela Nina Agana and Adelia Francisco left Los Angeles, California for Manila via JAL flight No. JL 061. As an incentive for travelling on the said airline, both flights were to make an overnight stopover at Narita, Japan, at the airlines' expense, thereafter proceeding to Manila the following day.
- Upon arrival at Narita, Japan on June 14, 1991, private respondents were billeted at Hotel Nikko Narita for the night. The next day, private respondents, on the final leg of their journey, went to the airport to take their flight to Manila. However, due to the Mt. Pinatubo eruption, unrelenting ashfall blanketed Ninoy Aquino International Airport (NAIA), rendering it inaccessible to airline traffic. Hence, private respondents' trip to Manila was cancelled indefinitely.
- To accommodate the needs of its stranded passengers, JAL rebooked all the Manila-bound passengers on flight No. 741 due to depart on June 16, 1991 and also paid for the hotel expenses for their unexpected overnight stay. On June 16, 1991, much to the dismay of the private respondents, their long anticipated flight to Manila was again cancelled due to NAIA's indefinite closure. At this point, JAL informed the private respondents that it would no longer defray their hotel and accommodation expense during their stay in Narita.
- Since NAIA was only reopened to airline traffic on June 22, 1991, private respondents were forced to pay for their accommodations and meal expenses from their personal funds from June 16 to June 21, 1991. Their unexpected stay in Narita ended on June 22, 1991 when they arrived in Manila on board JL flight No. 741.
- Obviously, still reeling from the experience, private respondents, on July 25, 1991, commenced an action for damages against JAL before the Regional Trial Court of Quezon City, Branch 104. [2] To support their claim, private respondents asserted that JAL failed to live up to its duty to provide care and comfort to its stranded passengers when it refused to pay for their hotel and accommodation expenses from June 16 to 21, 1991 at Narita, Japan. In other words, they insisted that JAL was obligated to shoulder their expenses as long as they were still stranded in Narita. On the other hand, JAL denied this allegation and averred that airline passengers have no vested right to these amenities in case a flight is cancelled due to "force majeure."
- On June 18, 1992, the trial court rendered its judgment in favor of private respondents holding JAL liable for damages
- Undaunted, JAL appealed the decision before the Court of Appeals, which, however, with the exception of lowering the damages awarded affirmed the trial court's finding, [3] thus:
- JAL filed a motion for reconsideration which proved futile and unavailing. [4]
- Failing in its bid to reconsider the decision, JAL has now filed this instant petition.

ISSUES & ARGUMENTS

W/N the JAL, as a common carrier has the obligation to shoulder the hotel and meal expenses of its stranded passengers until they have reached their final destination, even if the delay were caused by "force majeure"?

HOLDING & RATIO DECIDENDI

We are not unmindful of the fact that in a plethora of cases we have consistently ruled that a contract to transport passengers is quite different in kind, and degree from any other contractual relation. It is safe to conclude that it is a relationship imbued with public interest. Failure on the part of the common carrier to live up to the exacting standards of care and diligence renders it liable for any damages that may be sustained by its passengers. However, this is not to say that common carriers are absolutely responsible for all injuries or damages even if the same were caused by a fortuitous event. To rule otherwise would render the defense of "force majeure," as an exception from any liability, illusory and ineffective.

- Accordingly, there is no question that when a party is unable to fulfill his obligation because of "force majeure," the general rule is that he cannot be held liable for damages for non-performance. [6] Corollarily, when JAL was prevented from resuming its flight to Manila due to the effects of Mt. Pinatubo eruption, whatever losses or damages in the form of hotel and meal expenses the stranded passengers incurred, cannot be charged to JAL. Yet it is undeniable that JAL assumed the hotel expenses of respondents for their unexpected overnight stay on June 15, 1991.
- Admittedly, to be stranded for almost a week in a foreign land was an exasperating experience for the private respondents. To be sure, they underwent distress and anxiety during their unanticipated stay in Narita, but their predicament was not due to the fault or negligence of JAL but the closure of NAIA to international flights. Indeed, to hold JAL, in the absence of bad faith or negligence, liable for the amenities of its stranded passengers by reason of a fortuitous event is too much of a burden to assume.
- Furthermore, it has been held that airline passengers must take such risks incident to the mode of travel. [7] In this regard, adverse weather conditions or extreme climatic changes are some of the perils involved in air travel, the consequences of which the passenger must assume or expect. After all, common carriers are not the insurer of all risks. [8]
- The reliance is misplaced. The factual background of the PAL case is different from the instant petition. In that case there was indeed a fortuitous event resulting in the diversion of the PAL flight. However, the unforeseen diversion was worsened when "private respondents (passenger) was left at the airport and could not even hitch a ride in a Ford Fiera loaded with PAL personnel," [10] not to mention the apparent apathy of the PAL station manager as to the predicament of the stranded passengers. [11] In light of these circumstances, we held that if the fortuitous event was accompanied by neglect and malfeasance by the carrier's employees, an action

for damages against the carrier is permissible. Unfortunately, for private respondents, none of these conditions are present in the instant petition.

We are not prepared, however, to completely absolve petitioner JAL from any liability. It must be noted that private respondents bought tickets from the United States with Manila as their final destination. While JAL was no longer required to defray private respondents' living expenses during their stay in Narita on account of the fortuitous event, JAL had the duty to make the necessary arrangements to transport private respondents on the first available connecting flight to Manila. Petitioner JAL reneged on its obligation to look after the comfort and convenience of its passengers when it declassified private respondents from "transit passengers" to "new passengers" as a result of which private respondents were obliged to make the necessary arrangements themselves for the next flight to Manila. Private respondents were placed on the waiting list from June 20 to June 24. To assure themselves of a seat on an available flight, they were compelled to stay in the airport the whole day of June 22, 1991 and it was only at 8:00 p.m. of the aforesaid date that they were advised that they could be accommodated in said flight which flew at about 9:00 a.m. the next day.

- We are not oblivious to the fact that the cancellation of JAL flights to Manila from June 15 to June 21, 1991 caused considerable disruption in passenger booking and reservation. In fact, it would be unreasonable to expect, considering NAIA's closure, that JAL flight operations would be normal on the days affected. Nevertheless, this does not excuse JAL from its obligation to make the necessary arrangements to transport private respondents on its first available flight to Manila. After all, it had a contract to transport private respondents from the United States to Manila as their final destination.
- Consequently, the award of nominal damages is in order. Nominal damages are adjudicated in order that a right of a plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized and not for the purpose of indemnifying any loss suffered by him. [12] The court may award nominal damages in every obligation arising from any source enumerated in article 1157, or in every case where any property right has been invaded. [13]

413. Cojuangco vs. CA | Panganiban
G.R. No. 119398, July 2, 1999 | 309 SCRA 602

FACTS

- Petitioner Eduardo Cojuangco is a known businessman-sportsman owning several racehorses which he entered in the sweepstakes races. Several of his horses won.
- Petitioner sent letters of demand to private respondents PCSO and PCSO Chairman Fernando Carrascoso, Jr. for the collection of the prizes due him.
- However, the respondent said that the demanded prizes are being withheld on advice of Commissioner Ramon Diaz of the PCGG after private respondent Carrascoso sought the latter a clarification of the extent and coverage of the sequestration order issued against the properties of petitioner.
- The sequestration order was in pursuance of EO 2, issued by President Aquino, freezing all assets and properties in the Philippines of the Marcoses, their friends, subordinates, and business associates.
- A case was filed before the RTC, which ruled in favor of petitioner. Upon appeal to the CA, it was reversed.

ISSUES & ARGUMENTS

W/N the award for nominal damages against respondent Carrascoso, Jr. is warranted by evidence and law?

HOLDING & RATIO DECIDENDI

YES. PETITIONER'S RIGHT TO THE USE OF HIS PROPERTY WAS UNDULY IMPEDED.

- Private respondent Carrascoso may still e held liable under Art. 32 of the Civil Code, which provides:
    - Art. 32. Any public officer, 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:
        - The right against deprivation of property without due process of law;
- While private respondent Carrascoso may have relied upon the PCGG's instructions, he could have further sought the specific legal basis therefor.
- A little exercise of prudence would have disclosed that there was no writ issued specifically for the sequestration of the racehorse winnings of petitioner.
- The issuance of a sequestration order requires the showing of a prima facie case and due regard for the requirements of due process.
- The withholding of the prize winnings of petitioner without a properly issued sequestration order clearly spoke of a violation of his property rights without due process of law.
- Art. 2221 of the Civil Code authorizes the award of nominal damages to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered.
- The court may also award nominal damages in every case where a property right has been invaded.

414. BPI Investment Corporation v. Court of Appeals | Quisumbing
G.R. No. 133632 February 15, 2002| 377 SCRA 117

FACTS

- Frank Roa loaned from petitioner and secured the loan with his house. Later on, Roa sold the house to private respondents and the latter assumed Roa's mortgage. However, since petitioner was not willing to extend the same loan terms to respondent, and they agreed on a new loan which also covered Roa's debt.
- On Mar 1981, they executed a mortgage deed containing the new terms with the provision that payment of the monthly amortization would commence on May 1981. On Aug 1982, respondents updated Roa's arrearages which reduced Roa's balance, which in turn was liquidated when petitioner applied thereto the proceeds of respondent's loan of P500,000. On Sep 1982, petitioner then released to respondents P7,146.87, purporting to be what was left of their loan after full payment of Roa's loan.
- In June 1984, petitioner instituted foreclosure proceedings against respondents on the ground that they failed to pay their indebtedness from May 19981 up to June 1984 which amounted to P475,585.31. A notice of sheriff's sale was published on Aug 1984.
- Respondents then filed a civil case against petitioner, alleging that they were not in arrears but in fact made an overpayment. RTC found for respondents, and ordered petitioner to pay moral and exemplary damages and attorney's fees. CA affirmed in toto.

ISSUES & ARGUMENTS

1. **Issue 1: (not important, regarding the loan itself)**
2. **Issue 2: W/N the award of moral and exemplary damages and attorney's fees proper?**
    - Respondents: Petitioner is guilty of bad faith as evidenced by its insistence on the payment of amortization on the loan even before it was released.

HOLDING & RATIO DECIDENDI

ISSUE 2: MORAL AND EXEMPLARY DAMAGES DELETED, AWARDED NOMINAL DAMAGES INSTEAD. ATTORNEY'S FEES PROPER.

- As admitted by private respondents themselves, they were irregular in their payment of monthly amortization. Conformably with previous SC rulings, petitioner cannot be properly declared in bad faith. Consequently, the award of moral and exemplary damages must be ruled out.
- However, in the SC's view, petitioner was negligent in relying merely on the entries found in the deed of mortgage, without checking and correspondingly adjusting its records on the amoun actually released to private respondents and the date when it was released. Sich negligence resulted in damage to private respondents, for which an award of nominal damages worth P25,000 should be given in recognition of respondents' rights which were violated by petitioner.
- The award of attorney's fees is sustained because respondents were compelled to litigate.

415. Almeda vs. Carino | Mendoza
G.R. No. 152143. January 13, 2003 |

FACTS

- April 30, 1980, Ponciano L. Almeda and Avelino G. Cario, predecessors-in-interest of petitioners and respondents, entered into 2 agreements to sell, one covering 8 titled properties at ₱1,743,800.00, 20% upon the signing and execution of the agreement, balance four equal semi-annual installments, beginning six months from the signing thereof, with 12% interest per annum.
- Another 3 untitled properties, at ₱1,208,580.00, 15% upon the signing and execution of the agreement, and the balance, bearing a 12% annual interest from the signing thereof, to be paid as follows: 15% of the purchase price plus interest to be paid upon the issuance of titles to the lots, and the balance plus interests to be paid in semi-annual installments starting from the date of issuance of the respective certificates of title to the lots involved, which must be not later than March 30, 1982.
- The parties amended their agreement by extending the deadline of producing the titles to the lands, P300K payment for the titled lands, Carino tor ender acctg of the sugar cane crops and Carino to pay 10K a month in case of failure to produce the title of the documents.
- Almeda asked Carino for the Deed of Absolute Sale over the 8 titled properties despite non-payment of the full price.
- Carino granted the request and Almeda executed an undertaking to pay the balance but failed despite repeated demands of Carino.
- .Carino filed a case against Almeda. RTC ruled in favor of Carino.
- Almeda appealed, questioning the award of nominal damages of the trial court.
- Court of Appeals affirmed the decision of the lower court. It held that the award of nominal damages was justified by the unjust refusal of Almeda and Almeda, Inc. to settle and pay the balance of the purchase price in violation of the rights of Cario

ISSUES & ARGUMENTS

W/N the award of NOMINAL damages was proper?

HOLDING & RATIO DECIDENDI

YES. Almeda's refusal to pay the purchase price despite repeated demands and after they sold the properties to third parties constitutes a violation of Carino's right to the amount in their agreement.

- Nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right. Indeed, nominal damages are damages in name only and not in fact. When granted by the courts, they are not treated as an equivalent of a wrong inflicted but simply a recognition of the existence of a technical injury. A violation of the plaintiffs right, even if only technical, is sufficient to support an award of nominal damages. Conversely, so long as there is a showing of a violation of the right of the plaintiff, an award of nominal damages is proper.

416. Northwest Airlines V. Cuenca
G.R. L-22425 August 31, 1965

FACTS

- When his contract of carriage was violated by the petitioner, respondent held the office of Commissioner of Public Highways of the Republic of the Philippines. Having boarded petitioner's plane in Manila with a first class ticket to Tokyo, he was, upon arrival at Okinawa, transferred to the tourist class compartment. Although he revealed that he was traveling in his official capacity as official delegate of the Republic to a conference in Tokyo, an agent of petitioner rudely compelled him in the presence of other passengers to move, over his objection, to the tourist class, under threat of otherwise leaving him in Okinawa. In order to reach the conference on time, respondent had no choice but to obey.
- This is an action for damages for alleged breach of contract. After appropriate proceedings the Court of First Instance of Manila, in which the case was originally filed, rendered judgment sentencing defendant Northwest Airlines, Inc. — hereinafter referred to as petitioner — to pay to plaintiff Cuenca — hereinafter referred to as respondent — the sum of P20,000 as moral damages, together with the sum of P5,000 as exemplary damages, with legal interest thereon from the date of the filing of complaint," December 12, 1959, "until fully paid, plus the further sum of P2,000 as attorney's fees and expenses of litigation." On appeal taken by petitioner, said decision was affirmed by the Court of Appeals, except as to the P5,000.00 exemplary damages, which was eliminated, and the P20,000.00 award for moral damages, which was converted into nominal damages.

ISSUES & ARGUMENTS

Whether or not the court erred in awarding nominal damage?

HOLDING & RATIO DECIDENDI

No.

Nominal damages cannot co-exist with compensatory damages." In the case at bar, the Court of Appeals has adjudicated no such compensatory, moral and exemplary damages to respondent herein. There are special reasons why the P20,000.00 award in favor of respondent herein is justified, even if said award were characterized as nominal damages. It is true that said ticket was marked "W/L," but respondent's attention was not called thereto. Much less was he advised that "W/L" meant "wait listed." Upon the other hand, having paid the first class fare in full and having been given first class accommodation as he took petitioner's plane in Manila, respondent was entitled to believe that this was a confirmation of his first class reservation and that he would keep the same until his ultimate destination, Tokyo. Then, too, petitioner has not tried to explain or even alleged that the person to whom respondent's first class seat was given had a better right thereto. In other words, since the offense had been committed with full knowledge of the fact that respondent was an official representative of the Republic of the Philippines, the sum of P20,000 awarded as damages may well be considered as merely nominal. At any rate, considering that petitioner's agent had acted in a wanton, reckless and oppressive manner, said award may also be considered as one for exemplary damages.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the petitioner. It is so ordered.

J.C. LERIT

417. Armovit v Court of Appeals
G.R. No. 88561 April 20, 1990

FACTS

- Dr. Armovit, a Filipino physician and his family residing in the United States came to the Philippines on a Christmas visit. They were bumped off at the Manila International Airport on their return flight to the United States because of an erroneous entry in their plane ticket relating to their time of departure.
- In October 1981, they decided to spend their Christmas holidays with relatives and friends in the Philippines so they purchased from Northwest three roundtrip Airline tickets from the United States to Manila and back, plus three tickets for the rest of the children, though not involved in the suit.
- Each ticket of the petitioners which was in the handwriting of Northwest's tickets sales agent contains the following entry on the Manila to Tokyo portion of the return flight 'Manila to Tokyo, NW flight 002 dated 17 January, time 10:30 a.m. Status OK."
- On their return trip from Manila to the U.S. scheduled on January 17,1982, Armovit arrived at the check in counter of Northwest at the Manila International Airport at 9:15 in the morning, a good one (1) hour and Fifteen (15) minutes ahead of the 10:30 a.m. scheduled flight time recited in their ticket. They were rudely informed that they cannot be accommodated inasmuch as flight 002 scheduled at 9:15 a.m. was already taking off and the 10:30 a.m. flight entered in their plane ticket was erroneous.
- Previous to the said date of departure the petitioners re-confirmed their reservations through their representatives who personally presented the three (3) tickets at the Northwest office. The departure time in the three (3) tickets of the petitioners was not changed when re-confirmed. The names of petitioners appeared in the passenger manifest and confirmed.
- Petitioner Dr. Armovit protested that because of the bumped-off he will not be able to keep his appointment with his patients in the United States. Petitioners suffered anguish, wounded feelings, and serious anxiety day and night of January 17th until the morning of January 18th when they were finally informed that seats will be available for them on the flight of that day. The trial court rendered judgment against the airline as follows: P1,300.00 actual damages; P500,000.00 moral damages; P500,000.00 exemplary damages; and **P100,000.00 nominal damages in favor of Dr. Armovit;** also moral damages of P300,000.00; exemplary damages of P300,000.00; nominal damages of P50,000.00 each in favor of Mrs. Armovit and Miss Jacqueline Arrnovit.
- The Court of Appeals modified the trial court's judgment as follows: The P900,000.00 moral damages and **P100,000.00 nominal damages awarded to petitioners were eliminated**; exemplary damages were reduced from P500,000.00 to P50,000.00 in favor of Mrs. Armovit and from P300,000.00 to P20,000.00 in favor of Miss Jacqueline Armovit.

ISSUES & ARGUMENTS

W/N the Armovits are entitled to Nominal Damages

HOLDING & RATIO DECIDENDI

NO. NOMINAL DAMAGES CANNOT CO-EXIST WITH ACTUAL OR COMPENSATORY DAMAGES.

- The Supreme Court further modified the Court of Appeals judgment as follows: Actual damages in favor of Dr. Armovit, P1,300.00 with legal interest from January 17, 1982; moral damages at P100,000.00, and exemplary damages at P100,000.00 in favor of Dr. Armovit; Moral damages at P100,000.00 and exemplary damages at P50,000.00 in favor of Mrs. Armovit; Moral damages at P100,000.00 and exemplary damages of P20,000.00 in favor of Mrs. Jacqueline Armovit; and attorneys fees at 5% of the total awards under above paragraphs, plus costs of suit, and
  - 1. The gross negligence committed by Northwest in the issuance of the tickets with entries as to the time of the flight; the failure to correct such erroneous entries and the manner by which petitioners were rudely informed that they were bumped off` are clear indicia of such malice and bad faith and establish that respondent has committed a breach of contract which entitle petitioners to moral damages.
  - 2. Considering the circumstances of this case whereby Northwest attended to the flight of the petitioners, taking care of their accommodation while waiting and boarding them in the flight back to the United States the following dag;. the Court finds that petitioners are entitled to moral damages in the amount of P100,000.00 each.
  - 3. By the same token to provide an example for the public good, an award of exemplary damages is also proper, the award of the appellate court is adequate.
  - 4**. The deletion of nominal damages by the appellate court is well-taken since there is an award of actual damages. Nominal damages cannot co-exist with actual and compensatory damages.**

418 Cathay Pacific Airways v. Spouses Vasquez | Davide
G.R. No. 150843 March 14, 2003

FACTS

- The Spouses Vasquez went to HongKong via Cathay Pacific Airlines. Included in the trip was their maid who rode in the tourist class, and 2 friends who rode with them in the business class cabin.
- On the way back to Manila, the spouses presented their boarding passes to the attendant. The attendant informed them that their seats have been upgraded to first class because they were Marco Polo Club Members (frequent flyer club) and they had such the privilege of a free upgrade in seating accommodations when such is available.
- The spouses did not want to change their seats because they felt that they should be seated with their friends with whom they had traveled and Dr. Vasquez had business matters he wanted to discuss with them.
- The attendant, however, insisted that they take the seats because the flight has been overbooked and the only way for them to get in this flight was to take the first class upgrade. They took in reluctantly for want to be with their friends.
- When they returned back to Manila, they demanded from Cathay Pacific damages of up to P1M, including Moral Damages.

ISSUES & ARGUMENTS

W/N Spouses Vasquez are entitled to MORAL DAMAGES, if not should they be indemnified in another manner.

HOLDING & RATIO DECIDENDI

NO. SPOUSES ARE NOT ENTITLED TO MORAL DAMAGES AS THERE WAS NO BAD FAITH ON THE PART OF CATHAY PACIFIC OR ITS ATTENDANTS.

- The spouses knew that they were members of the Marco Polo Club and that they had such privileged. But privileges, as known to us, can be waived. The flight attendant whould have consulted the spouses if they wanted to avail of that privilege before their business class seats were given to someone else and not surprise them, as like what happened in this case.
- The spouses clearly waived such privilege, therefore Cathay Pacific breached the contract of carriage.
- It is essential, however, that there exists bad faith or malice when in breach of the contract of carriage. The attendants changed the seat accommodations without such malice. Bad faith imports a dishonest purpose or some moral obliquity which was not present in this case.

SPOUSES MAY ENTITLED ONLY TO NOMINAL DAMAGES

- **The court did not award them even nominal damages, they just made mention that Nominal Damages is the most the spouses may claim: According to article 2221:**
  - **Article 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.**

CHESKA RESPICIO

419. Precillano Necesito, Etc. Vs. Natividad Paras, Et Al. |JBL Reyes
G.R. No. L-10605 June 30, 1958| 104 SCRA 75

FACTS

- Severina Garces, with her 1y.o. son, Precillano Necesito, rode a Phil Rabbit Bus from Agno to Manila, driven by Franciso Bandonell.
- Due to fracture of the right steering knuckle, which had a defective core at it was not compact but "bubbled and cellulous" (a condition that could not be known or ascertained by the carrier despite the fact that regular thirty-day inspections were made of the steering knuckle), the front wheel swerved to the right; then, the driver lost control and the bus fell into a creek. As a result, Severina died and the Precillano had a broken femur and abrasions; they also lost cargo of vegetables, a wristwatch and money.
- They filed 2 suits for damages against Phil. Rabbit.
- CFI: dismissed on the grounds that injury occurred due to a fortuitous events since the bus was traveling slow due to a bad road condition and that the proximate cause was the reduced strength of the steering knuckle.

(NB: this case both had the original SC decision and the MR. MR slightly diverted by saying that moral damages are due to the heirs of Severina due to the fact of her death, but JBL Reyes concluded that the MR was denied and affirmed what was held in the original decision.)

ISSUES & ARGUMENTS

1. **W/N the carrier is liable for the manufacturing defect of the steering knuckle, and whether the evidence discloses that in regard thereto the carrier exercised the diligence required by law (under Art. 1755)**
2. **On DAMAGES: W/N the carrier is liable for MODERATE DAMAGES?** ***(Temperate damages rin yun; note that JBL Reyes didn't brand it as temperate damages.)*** **MORAL DAMAGES? ATTY's FEES?**

HOLDING & RATIO DECIDENDI

UNDER THE ORGINAL DECISION:
YES, the carrier is liable

- While the carrier is not insurer of the safety of the passenger, it should nevertheless be held to answer for the flaws in its equipment if the flaws were at all discoverable. In this connection, the manufacturer of the defective appliance is considered in law as the agent of the carrier and the good repute of the manufacturer will not relieve the carrier from liability.
- The rationale of the carrier's liability is the fact that the passenger has no privity with the manufacturer if the defective equipment; hence, he has no remedy against him while the carrier usually has.

NOT LIABLE FOR MORAL DAMAGES but LIABLE FOR MODERATE (TEMPERATE) DAMAGES

- No allowance may be made for moral damages, since under Article 2220 of the new Civil Code, in case of suits for breach of contract, **moral damages are recoverable only where the defendant acted fraudulently or in bad faith**, and there is **none in this case**. As to exemplary damages, the carrier has not acted in a "wanton, fraudulent, reckless, oppressive or malevolent manner" to warrant their award.
- For the minor Precillano, an indemnity of P5,000 would be adequate for the abrasions and fracture of the femur, including medical and hospitalization expenses, there being no evidence that there would be any permanent impairment of his faculties or bodily functions, beyond the lack of anatomical symmetry.
- As for the death of Severina, who was 33 years old, with 7 minor children when she died, her heirs are obviously entitled to indemnity not only for the incidental loses of property (cash, wrist watch and merchandise) worth P394 that she carried at the time of the accident and for the burial expenses of P490, but also for the loss of her earnings (shown to average P120 a month) and for the deprivation of her protection, guidance and company. In our judgment, an award of P15,000 would be adequate

LIABLE FOR ATTORNEY'S FEES:

- Low income of the plaintiffs-appellants makes an award for attorney's fees just and equitable (Civil Code, Art. 2208, par. 11). Considering that the two cases filed were tried jointly, a fee of P3,500 would be reasonable.

CFI decision reversed.

MR DECISION: Award of moral damages was granted under Art 1764[26]. Under the new Civil Code, in case of accident due to a carrier's negligence, the heirs of a deceased passenger may recover moral damages, while, a passenger who is injured, but manages to survive, is not entitled to them.

Art 1764, being a special rule limited to cases of fatal injuries, this article prevails over the general rule of Art. 2220.

DIANE LIPANA

[26] ART. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book, concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier. ART. 2206. . . .

(3) The spouse, legitimate and eligimate descendants and ascendants of the deceased **may demand moral damages for mental anguish by reason of the death of the deceased.**

420. Pleno vs. Court of Appeals | Gutierrez, Jr.
G.R. No. L-56505, June 16, 1992 | 161 SCRA 208

FACTS

- Florante de Luna was driving a delivery truck owned by Philippine Paper Products Inc. at great speed along South Super Highway in Taguig when he bumped the van which was being driven by Maximo Pleno.
- The bump caused Pleno's van to swerve to the right and crash into a parked truck.
- As a result, Pleno was hospitalized and his van was wrecked.
- Pleno sued and was awarded actual, temperate, moral, exemplary damages and attorney's fees by the trial court.
- However, the CA reduced the amount of temperate and moral damages given because they were 'too high'.

ISSUES & ARGUMENTS

W/N the CA erred in reducing the amount of temperate damages awarded?

HOLDING & RATIO DECIDENDI

The CA erred in reducing the award of temperate damages.
Temperate damages are included within the context of compensatory damages. In arriving at a reasonable level of temperate damages to be awarded, trial courts are guided by our ruling that there are cases where from the nature of the case, definite proof of pecuniary loss cannot be offered, although the court is convinced that there has been such loss.

For instance, injury to one's commercial credit or to the goodwill of a business firm is often hard to show certainty in terms of money. Should damages be denied for that reason? The judge should be empowered to calculate moderate damages in such cases, rather than that the plaintiff should suffer, without redress from the defendant's wrongful act.

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

421. Consolidated Plywood Industried and Henry Wee vs. CA, Willie and Alfred Kho | Medialdea
G.R. No. 101706, September 23, 1992 | 214 SCRA 209

FACTS

- Sometime in February 1978, Consolidated Plywood, through its president Wee, entered into a verbal hauling agreement with the father and son, Willie and Alfred Kho (the Khos), for its logging and manufacturing timber products at its logging concession
- As a pre-condition, the Khos will be provided a financial assistance to defray the cost of needed repairs and re-conditioning of the trucks and other expenses necessary for the hauling operations
- It was understood that the financial assistance was in the nature of cash advance to be obtained by the Khos from Equitable Bank on the guaranty of Wee, and that the hauling services shall continue unless and until this loan remain unpaid
- After hauling logs for a year, the Khos without giving notice to Consolidated and Wee, suddenly and surreptitiously at nighttime, withdrew all its truck haulers from the jobsite and returned it to its base in violation of the agreement
- Because of this, several logs have been left unhauled from the area which spawned serious and varied consequences to the great damage and prejudice to Consolidated
  - The Aquarius Trading charged it with a reimbursement representing the cancellation fee of a chartered vessel and other charges due to its unfulfilled commitment
  - During the interim period, it could have produced 5,000 cu. m. of logs, to fill other commitments
- After 2 demand letters from Consolidated that remained unheeded, it then filed an action for damages against the Khos for breach of their agreement
- The CFI (now the RTC) rendered judgment in favor of Consolidated ordering the Khos to pay damages
- On appeal, the CA modified the award by deleting all other damages awarded except that of unpaid overdraft cash vales, reimbursement, and the unrealized profit in the Aquarius transaction

ISSUES & ARGUMENTS

W/N the deletion of the damages for unfulfilled import of logs, moral damages and attorney's fees were proper

HOLDING & RATIO DECIDENDI

THE DELETION OF ACTUAL DAMAGES IS PROPER BUT THE MORAL DAMAGES AND ATTORNEY'S FEES ARE NOT JUSTIFIED

- The trial court correctly held that there was no evidence to support such claim of actual damages. This claim apparently refers to an alleged commitment to a certain Ching Kee Trading of Taiwan scheduled in June 1979 as distinguished from the claim for actual damages incurred in connection with its Aquarius Trading transaction, which was sufficiently substantiated
- Consolidated's contention that the damages for the unfulfilled shipments should have been awarded as a form of temperate or moderate damages, as provided under Art. 2224, is not well taken
- The grant thereof is proper under the provision of Art. 2205, which provides that damages may be recovered. In this case, there was no showing nor proof that Consolidated was entitled to an award of this kind of damages in addition to the actual damages it suffered as a direct consequence of the Khos' act. The nature of the contract between the parties is such that damages which the innocent party may have incurred can be substantiated by evidence

Decision MODIFIED.

KATH MATIBAG

422. Metrobank vs. CA | Romero
G.R. No. 112756 October 26, 1994 | 237 SCRA 761

FACTS

- Katigbak is the president and director of RBPG, which maintain an account in Metrobank (MBTC)
- MBTC received from the Central Bank a credit memo for 304k, to be credited to RBPG's account
- Due to the negligence of the bank's messenger, such was not credited promptly
- Katigbak issued checks in the amount of 300k payable to Dr. Felipe Roque and Mrs. Eliza Roque for 25k
- Checks bounced as funds were insufficient to cover checks
- Was berated by Roque's for issuing bum checks so Katigbak had to cut short her HK vacation to settle matters with MBTC
- RBPG and Isabel Katigbak filed a civil case against the MBTC for damages

ISSUES & ARGUMENTS

Whether or not private respondents RBPG and Isabel Rodriguez are legally entitled to moral damages and attorney's fees

Assuming that they are so entitled, whether or not the amounts awarded are excessive and unconscionable

HOLDING & RATIO DECIDENDI

THERE IS NO MERIT IN MBTC'S ARGUMENT THAT IT SHOULD NOT BE CONSIDERED NEGLIGENT, MUCH LESS BE HELD LIABLE FOR DAMAGES ON ACCOUNT OF THE INADVERTENCE OF ITS BANK EMPLOYEE AS ARTICLE 1173 OF THE CIVIL CODE ONLY REQUIRES IT TO EXERCISE THE DILIGENCE OF A GOOD *PATER FAMILIAS*

- The dishonoring of the RBPG checks committed through negligence by the petitioner bank and was rectified only nine days after receipt of the credit memo.
- Clearly, petitioner bank was remiss in its duty and obligation to treat private respondent's account with the highest degree of care, considering the fiduciary nature of their relationship. The bank is under obligation to treat the accounts of its depositors with meticulous care, whether such account consists only of a few hundred pesos or of millions.
- **Responsibility arising from negligence in the performance of every kind of obligation is demandable**
- While the bank's negligence may not have been attended with malice and bad faith, nevertheless, it caused serious anxiety, embarrassment and humiliation to private respondents for which they are entitled to recover reasonable moral damages.
- The damage to private respondents' reputation and social standing entitles them to moral damages. **Moral damages** include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.
- **Temperate or moderate damages** which are more than nominal but less than compensatory 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 proved with certainty.
- The carelessness of petitioner bank, aggravated by the lack of promptness in repairing the error and the arrogant attitude of the bank officer handling the matter, justifies the grant of moral damages, which are clearly not excessive and unconscionable

423. People v. Lopez | Mendoza, J.
G.R. No. 119380 August 19, 1999

FACTS

- Mario Seldera, 11, his father Rogelio Seldera, and his cousin Rodolfo Padapat worked in the riceland of a certain Lagula in Umingan, Pangasinan. It was harvest time and the three were hired to bundle the palays stalks which had been cut. As it was a moonlit night, the three worked in the field until around 9:00 pm, and then walked for home taking a trail alongside the Banila river. The trail is about two feet wide only, and so the three walked along the trail single file with Rogelio, being the oldest, leading the way, followed by his son Mario and by Rodolfo who was last. As they reached a sloping portion in the trail, accused-appellant Federico Lopez appeared armed with a shotgun. Accused-appellant had a companion, a dark man. He was unarmed. Without uttering a word, accused-appellant fired at the three, who slumped forward, face down. Accused-appellant's companion went near the bodies of the victims and rolled them over with his foot. Satisfied that the victims were dead, accused-appellant and his companion left.
- However, Mario, the youngest in the group, was not killed, although he had been wounded in the back. The latter testified during trial,and after the accused appellant was convicted of Double Murder and Frustrated Murder. The accused-appellant was ordered to pay compensatory, actual and moral.
- For the injuries sustained by Mario Seldera, the court *a quo* awarded P10,000.00 moral damages, P20,000.00 exemplary damages and P300.00 actual damages for medical expenses.

ISSUES & ARGUMENTS

W/N the amount of actual damages awarded is proper

HOLDING & RATIO DECIDENDI

IT IS IMPROPER BECAUSE THE PROSECUTION FAILED TO PRESENT ANY DOCUMENTARY PROOF.

However, Article 2224 of the New Civil Code provides that temperate or moderate damages, which are more than nominal but less than compensatory 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 proved with certainty. In lieu of Actual Damages, absent proof, the amount of P200.00 as temperate damages may be made in its place.

424. BPI vs ALS Management | Panganiban
G.R. No. 151821, April 14, 2004 |

FACTS

- Petitioner BPI and Respondent ALS Management executed a Deed of Sale for 1 unfurnished unit of the Twin Towers Condominium. The Condominium Certificate was issued after BPI advanced the expenses in causing issuance and registration. The Deed of Sale stated that ALS, as vendee, should pay the expenses for the preparation and registration of the CCT. However, despite repeated demands, ALS refused to pay BPI the advances it had made.
- In its Answer, ALS alleged that it has just and valid reasons for refusing to pay, i.e. that BPI had jacked up/increased the amount of its alleged advances by including charges which should not be collected from buyers of the condominium units. Moreover, contrary to representations made by BPI, the condominium had a lot of defects and deficiencies.
- The trial court ordered ALS to pay BPI, and ordered BPI to deliver, replace or correct the deficiencies/defects in the condominium unit. The CA affirmed.

ISSUES & ARGUMENTS

W/N the award of damages by the CA is proper.

HOLDING & RATIO DECIDENDI

BPI ORDERED TO PAY P51,000 AS TEMPERATE DAMAGES FOR THE TERMINATION OF THE LEASE CONTRACT DUE TO DEFECTS IN THE CONDOMINIUM UNIT.

- The trial court ordered petitioner to pay damages of P136,608.75 representing unearned income for the period that respondent had to suspend a lease contract. We find a dearth of evidence to support such award. Respondent was able to establish through its witness' testimony that the condominium unit suffered from defects. This testimony was confirmed by an inspection report.
- To recover actual damages, the amount of loss must not only be capable of proof, but also be proven with a reasonable degree of certainty.
- We agree with petitioner. While respondent may have suffered pecuniary losses for completion work done, it failed to establish with reasonable certainty the actual amount spent. The award of actual damages cannot be based on the allegation of a witness without any tangible document, such as receipts or other documentary proofs to support such claim. In determining actual damages, courts cannot rely on mere assertions, speculations, conjectures or guesswork, but must depend on competent proof and on the best obtainable evidence of the actual amount of loss.
- Despite the defects of the condominium unit, a lessee stayed there for almost three years. The damages claimed by respondent is based on the rent that it might have earned, had Advanced Micro Device chosen to stay and renew the lease. Such claim is highly speculative, considering that respondent failed to adduce evidence that the unit had been offered for lease to others, but that there were no takers because of the defects therein
- We recognize, however, that respondent suffered damages when its lessee vacated the condominium unit on May 1, 1985, because of the defects therein. Respondents are thus entitled to temperate damages. Under the circumstances, the amount equivalent to three monthly rentals of P17,000 -- or a total of P51,000 -- would be reasonable.

Petition PARTLY GRANTED. Decision MODIFIED.

CHRISSIE MORAL

425. NPC vs Court of Appeals | Carpio
G.R. No. 106804, August 12, 2004|

FACTS

- Private respondent Pobre is the owner of a 68,969 square-meter land ("Property") located in Albay. Pobre began developing the Property as a resort-subdivision, which he named as "Tiwi Hot Springs Resort Subdivision." The Commission on Volcanology certified that thermal mineral water and steam were present beneath the Property and found the thermal mineral water and steam suitable for domestic use and potentially for commercial or industrial use.
- NPC then became involved with Pobre's Property in three instances. **First** was when Pobre leased to NPC for one year eleven lots from the approved subdivision plan. **Second** was sometime in 1977, the first time that NPC filed its expropriation case against Pobre to acquire an 8,311.60 square-meter portion of the Property. The trial court ordered the expropriation of the lots upon NPC's payment of ₱25 per square meter or a total amount of ₱207,790. NPC began drilling operations and construction of steam wells. While this first expropriation case was pending, NPC dumped waste materials beyond the site agreed upon by NPC with Pobre. The dumping of waste materials altered the topography of some portions of the Property. NPC did not act on Pobre's complaints and NPC continued with its dumping. **Third** was in 1979 when NPC filed its second expropriation case against Pobre to acquire an additional 5,554 square meters of the Property. NPC needed the lot for the construction and maintenance of Naglagbong Well Site.
- Pobre filed a motion to dismiss the second complaint for expropriation. Pobre claimed that NPC damaged his Property. Pobre prayed for just compensation of all the lots affected by NPC's actions and for the payment of damages.
- NPC filed a motion to dismiss the second expropriation case on the ground that NPC had found an alternative site and that NPC had already abandoned in 1981 the project within the Property due to Pobre's opposition. The trial court granted NPC's motion to dismiss but the trial court allowed Pobre to adduce evidence on his claim for damages. The trial court admitted Pobre's exhibits on the damages because NPC failed to object

ISSUES & ARGUMENTS

W/N NPC is liable to respondent to pay damages?

HOLDING & RATIO DECIDENDI

NPC liable to pay temperate and exemplary damages.

- NPC's abuse of its eminent domain authority is appalling. However, we cannot award moral damages because Pobre did not assert his right to it. We also cannot award attorney's fees in Pobre's favor since he did not appeal from the decision of the Court of Appeals denying recovery of attorney's fees.
- Nonetheless, we find it proper to award ₱50,000 in temperate damages to Pobre. The court may award temperate or moderate damages, which are more than nominal but less than compensatory damages, if the court finds that a party has suffered some pecuniary loss but its amount cannot be proved with certainty from the nature of the case. As the trial and appellate courts noted, Pobre's resort-subdivision was no longer just a dream because Pobre had already established the resort-subdivision and the prospect for it was initially encouraging. That is, until NPC permanently damaged Pobre's Property. NPC did not just destroy the property. NPC dashed Pobre's hope of seeing his Property achieve its full potential as a resort-subdivision.
- The lesson in this case must not be lost on entities with eminent domain authority. Such entities cannot trifle with a citizen's property rights. The power of eminent domain is an extraordinary power they must wield with circumspection and utmost regard for procedural requirements. Thus, we hold NPC liable for exemplary damages of ₱100,000. Exemplary damages or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Petition denied for lack of Merit. Decision of the Court of Appeals Affirmed.

MAUI MORALES

426 Jison v CA | CORTES, J.:
G.R. No. L-45349 August 15, 1988

FACTS

Spouses Newton and Salvacion Jison, entered into a Contract to Sell with private respondent, Robert O. Phillips & Sons, Inc., whereby the latter agreed to sell to the former a lot in Rizal. Petitioners failed to pay several installments thus respondent informed petitioners that the contract was canceled. This was affirmed by both RTC and CA

ISSUES & ARGUMENTS

W/N the CA erred in not holding that the private respondent's act of forfeiting all previous payments made by petitioners is contrary to law, highly iniquitous and unconscionable

HOLDING & RATIO DECIDENDI

Yes.

- While the resolution of the contract and the forfeiture of the amounts already paid are valid and binding upon petitioners, the Court is convinced that the forfeiture of the amount of P5.00 although it includes the accumulated fines for petitioners' failure to construct a house as required by the contract, is clearly iniquitous considering that the contract price is only P6,173.15 The forfeiture of fifty percent (50%) of the amount already paid, or P3,283.75 appears to be a fair settlement. In arriving at this amount the Court gives weight to the fact that although petitioners have been delinquent in paying their amortizations several times to the prejudice of private respondent, with the cancellation of the contract the possession of the lot review.... to private respondent who is free to resell it to another party.
- The Court's decision to reduce the amount forfeited finds support in the Civil Code. As stated in paragraph 3 of the contract, in case the contract is cancelled, the amounts already paid shall be forfeited in favor of the vendor as liquidated damages. The Code provides that liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable [Art. 2227.]
- Further, in obligations with a penal clause, the judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor [Art. 1229]

427. Country Bankers Insurance Association vs. CA | Medialdea, J.:
G.R. No. 85161, September 9, 1991 | 201 SCRA 458

FACTS

- Oscar Ventanilla Enterprises Corporation (OVEC), as lessor, and the petitioner Enrique F. Sy, as lessee, entered into a (6 years) lease agreement over the Avenue, Broadway and Capitol Theaters and the land on which they are situated in Cabanatuan City, including their air-conditioning systems, projectors and accessories needed for showing the films or motion pictures.
- After more than two (2) years of operation of the Avenue, Broadway and Capitol Theaters, the lessor OVEC made demands for the repossession of the said leased properties in view of the Sy's arrears in monthly rentals and non-payment of amusement taxes.
- By reason of Sy's request for reconsideration of OVECs demand for repossession of the three (3) theaters, the former was allowed to continue operating the leased premises upon his conformity to certain conditions imposed by the latter in a supplemental agreement dated August 13, 1979.
- In pursuance of their latter agreement, Sy's arrears in rental in the amount of P125,455.76 (as of July 31, 1979) was reduced to P71,028.91 as of December 31, 1979.
    - However, the accrued amusement tax liability of the three (3) theaters to the City Government of Cabanatuan City had accumulated to P84,000.00 despite the fact that Sy had been deducting the amount of P4,000.00 from his monthly rental with the obligation to remit the said deductions to the city government.
    - Hence, letters of demand dated January 7, 1980 and February 3, 1980 were sent to Sy demanding payment of the arrears in rentals and amusement tax delinquency.
    - But notwithstanding the said demands and warnings SY failed to pay the above-mentioned amounts in full Consequently, OVEC padlocked the gates of the three theaters under lease and took possession thereof in the morning of February 11, 1980 by posting its men around the premises of the oId movie houses and preventing the lessee's employees from entering the same.
- Sy, through his counsel, filed the present action for reformation of the lease agreement, damages and injunction and by virtue of a restraining order dated February 12, 1980 followed by an order directing the issuance of a writ of preliminary injunction issued in said case, Sy regained possession and operation of the Avenue, Broadway and Capital theaters.
- The trial court arrived at the conclusions that Sy is not entitled to the reformation of the lease agreement; that the repossession of the leased premises by OVEC after the cancellation and termination of the lease was in accordance with the stipulation of the parties in the said agreement and the law applicable thereto and that the consequent forfeiture of Sy's cash deposit in favor of OVEC was clearly agreed upon by them in the lease agreement. The trial court further concluded that Sy was not entitled to the writ of preliminary injunction issued in his favor after the commencement of the action and that the injunction bond filed by Sy is liable for whatever damages OVEC may have suffered by reason of the injunction.
- From this decision of the trial court, Sy and (CBISCO) appealed the decision in toto while OVEC appealed insofar as the decision failed to hold the injunction bond liable for an damages awarded by the trial court.
- The respondent Court of Appeals found no ambiguity in the provisions of the lease agreement. It held that the provisions are fair and reasonable and therefore, should be respected and enforced as the law between the parties. It held that the cancellation or termination of the agreement prior to its expiration period is justified as it was brought about by Sy's own default in his compliance with the terms of the agreement and not "motivated by fraud or greed." It also affirmed the award to OVEC of the amount of P100,000.00 chargeable against the injunction bond posted by CBISCO which was soundly and amply justified by the trial court.
- The respondent Court likewise found no merit in OVECS appeal and held that the trial court did not err in not charging and holding the injunction bond posted by Sy liable for all the awards as the undertaking of CBISCO under the bond referred only to damages, which OVEC may suffer as a result of the injunction.
- Hence, the present petition

ISSUES & ARGUMENTS

W/N the Court of Appeals erred in holding CBISCO's bond liable

HOLDING & RATIO DECIDENDI

NO.

- A provision which calls for the forfeiture of the remaining deposit still in the possession of the lessor, without prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee's violation of any of the terms and conditions of the agreement is a penal clause that may be validly entered into.
- A penal clause is an accessory obligation, which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special presentation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled
- As a general rule, in obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance.
- In such case, proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded (Article 1228, New Civil Code).
- However, there are exceptions to the rule that the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance with the principal obligation. They are first, when there is a stipulation to the contrary; second, when the obligor is sued for refusal to pay the agreed penalty; and third, when the obligor is guilty of fraud (Article 1226, par. 1, New Civil Code).

- It is evident that in all said cases, the purpose of the penalty is to punish the obligor. Therefore, the obligee can recover from the obligor not only the penalty but also the damages resulting from the non-fulfillment or defective performance of the principal obligation.
- In the case at bar, inasmuch as the forfeiture clause provides that the deposit shall be deemed forfeited, without prejudice to any other obligation still owing by the lessee to the lessor, the penalty cannot substitute for the P100,000.00 supposed damage resulting from the issuance of the injunction against the P290,000.00 remaining cash deposit. This supposed damage suffered by OVEC was the alleged P10,000.00 a month increase in rental from P50,000.00 to P60,000,00), which OVEC failed to realize for ten months from February to November, 1980 in the total sum of P100,000.00.
- This opportunity cost which was duly proven before the trial court, was correctly made chargeable by the said court against the injunction bond posted by CBISCO.
- There is likewise no merit to the claim of petitioners that respondent Court committed serious error of law and grave abuse of discretion in not dismissing private respondent's counterclaim for failure to pay the necessary docket fee, which is an issue raised for the first time in this petition.
- Petitioners rely on the rule in Manchester Development Corporation v. Court of Appeals, G.R. No. 75919, May 7, 1987, 149 SCRA 562 to the effect that all the proceedings held in connection with a case where the correct docket fees are not paid should be peremptorily be considered null and void because, for all legal purposes, the trial court never acquired jurisdiction over the case.
- It should be remembered however, that in Davao Light and Power Co., Inc. v. Dinopol, G.R. 75195, August 19, 1988, 164 SCRA 748, this Court took note of the fact that the assailed order of the trial court was issued prior to the resolution in the Manchester case and held that its strict application to the case at bar would therefore be unduly harsh.
- Thus, We allowed the amendment of the complaint by specifying the amount of damages within a non-extendible period of five (5) days from notice and the re-assessment of the filing fees.
- Then, in Sun Insurance Office, Ltd. v. Asuncion, G.R. 79937-38, February 3, 1989, 170 SCRA 274, We held that where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
- Nevertheless, OVEC's counterclaims are compulsory so no docket fees are required as the following circumstances are present: (a) they arise out of or are necessarily connected with the transaction or occurrence that is subject matter of the opposing party's claim; (b) they do not require for their adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (c) the court has jurisdiction to entertain the claim (see Javier v. Intermediate Appellate Court, G.R. 75379, March 31, 1989, 171 SCRA 605).
- Whether the respective claims asserted by the parties arise out of the same contract or transaction within the limitation on counterclaims imposed by the statutes depends on a consideration of all the facts brought forth by the parties and on a determination of whether there is some legal or equitable relationship between the ground of recovery alleged in the counterclaim and the matters alleged as the cause of action by the plaintiff (80 C.J.S. 48).
- As the counterclaims of OVEC arise from or are necessarily connected with the facts alleged in the complaint for reformation of instrument of Sy, it is clear that said counterclaims are compulsory.

ACCORDINGLY, finding no merit in the grounds relied upon by petitioners in their petition, the same is hereby DENIED and the decision dated June 15, 1988 and the resolution dated September 21, 1988, both of the respondent Court of Appeals are AFFIRMED.

CEO OCAMPO

428 Pacific Mills v. CA | Feliciano
G.R. No. 87182, February 17, 1992 |206 SCRA 317

FACTS

- Pacific Mills purchased on credit varying quantites of cottonlint from Phillippine Cotton (Philcotton). The parties agreed to the follwing:
  - That Pacific Mills would issue a promissory note for the cotton if they are unable to pay within 60 days from delivery of the goods
- Pacific Mills failed to pay for the goods so they issued that 4 promissory notes to cover the varying quantities of cotton they bought. The promissory notes together ith a joint manifestation stated the follwing:
  - That there would be a 21% per annum interest rate
  - Additional interest and penalty charge of 8%
  - That Pacific Mills chall advance the insurance, taxes, and other out of pocket expenses at 2% [for one time service fee] and 8% [for penalty charge from due payment of advances on such premiums and taxes]
  - That PhilCotton reserves the right to increase with notice to the borrower the rate of interest on the account and advance
- Pacific Mills again falied to make good their obligation so Philcotton filed a case for collection of sum of money in the total anount of P16M excluding interest and charges.
- The court awarded to them P13M plus 21% regular interest per annum as stated in joint manifestation and 14% additional interest of the principal obligation as penalty charges and 10% attorney's fees. (an additional 21% was removed, and the penalty charge rate of 8% was increased to 14%, and the attorney's fees were reduced from 25% to 10% from the trial court's judgement)
- It is to be noted that Pacific Mills made a partial payment of the obligation in order to lift the writ of execution upon ther possessions.

ISSUES & ARGUMENTS

W/N the penalty clause was iniquitous and imconscionable.

- **Petitioner:** Pacific Milss insists that the additional charges must be reduced because the amount which the have to pay is already ridiculously high if you take into account all the rates and charges that PhilCotton stipulated in their joint manifestiaion
- **Respondent:** Philcotton conteds that Pcaific Mills was already granted a reduction by the CA, ant a further reduction cannot merit serious consideration.

HOLDING & RATIO DECIDENDI

NO. THE PENALTY CLAUSE IS VALID.

- In determining wheter a penalty clause is iniquitous or unconscionable, a court may take into consideration the actual damages sustained by a creditot who has been compelled to sue the defaulting creditor, which actual damges would include the interest and penalties which the creditor may have had to pay on its own loan from its funding source.
- In this case, the funds which Philcotton loaned to Pacific Mills came from DBP and that PhilCotton wanted to recover from Pacific Mills so that it may, in turn, pay back that amount to DBP. Therefore the interests and charges were only as high and as that rate because Philcotton had to pay DBP their principal obligation and interest because Philcotton could not promptly collect from Pacific Mills

429. RCBC vs. Court of Appeals |Kapuna
G.R. No. 133107 March 25, 1999 |

FACTS

- Private respondent Atty. Felipe Lustre purchased a Toyota Corolla from Toyota Shaw, Inc. for which he made a down payment of P164,620.00, the balance of the purchase price to be paid in 24 equal monthly installments. Private respondent thus issued 24 postdated checks for the amount of P14,976.00 each. The first was dated April 10, 1991; subsequent checks were dated every 10th day of each succeeding month.
- To secure the balance, private respondent executed a promissory note and a contract of chattel mortgage [2] over the vehicle in favor of Toyota Shaw, Inc. The contract of chattel mortgage, in paragraph 11 thereof, provided for an acceleration clause stating that should the mortgagor default in the payment of any installment, the whole amount remaining unpaid shall become due. In addition, the mortgagor shall be liable for 25% of the principal due as liquidated damages.
- On March 14, 1991, Toyota Shaw, Inc. assigned all its rights and interests in the chattel mortgage to petitioner Rizal Commercial Banking Corporation (RCBC).
- All the checks dated April 10, 1991 to January 10, 1993 were thereafter encashed and debited by RCBC from private respondent's account, except for RCBC Check No. 279805 representing the payment for August 10, 1991, which was unsigned. Previously, the amount represented by RCBC Check No. 279805 was debited from private respondent's account but was later recalled and re-credited, to him. Because of the recall, the last two checks, dated February 10, 1993 and March 10, 1993, were no longer presented for payment. This was purportedly in conformity with petitioner bank's procedure that once a client's account was forwarded to its account representative, all remaining checks outstanding as of the date the account was forwarded were no longer presented for patent.
- On the theory that respondent defaulted in his payments, the check representing the payment for August 10, 1991 being unsigned, petitioner, in a letter dated January 21, 1993, demanded from private respondent the payment of the balance of the debt, including liquidated damages. The latter refused, prompting petitioner to file an action for replevin and damages before the Pasay City Regional Trial Court (RTC). Private respondent, in his Answer, interposed a counterclaim for damages.
- RTC dismissed the case while the CA affirmed the decision
- Hence this petition

ISSUES & ARGUMENTS

W/N the chattel mortgage is void for being ambiguous?

HOLDING & RATIO DECIDENDI

NO.

It bears stressing that a contract of adhesion is just as binding as ordinary contracts. It is true that we have, on occasion, struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. Nevertheless, contracts of adhesion are not invalid *per se*; [7] they are not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.

While ambiguities in a contract of adhesion are to be construed against the party that prepared the same, this rule applies only if the stipulations in such contract are obscure or ambiguous. If the terms thereof are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. In the latter case, there would be no need for construction.

The Agreement[27] leaves no room for construction. All that is required is the application thereof.

Petitioner's conduct, in the light of the circumstances of this case, can only be described as mercenary. Petitioner had already debited the value of the unsigned check from private respondent's account only to re-credit it much later to him. Thereafter, petitioner encashed checks subsequently dated, then abruptly refused to encash the last two. More than a year after the date of the unsigned check, petitioner, claiming delay and invoking paragraph 11, demanded from private respondent payment of the value of said check and that of the last two checks, including liquidated damages. As pointed out by the trial court, this whole controversy could have been avoided if only petitioner bothered to call up private respondent and ask him to sign the check. Good faith not only in compliance with its contractual obligations, but also in observance of the standard in human relations, for every person "to act with justice, give everyone his due, and observe honesty and good faith." behooved the bank to do so.

Failing thus, petitioner is liable for damages caused to private respondent. These include moral damages for the mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation suffered by the latter.

JAVIN OCAMPO

[27] 11. In case the MORTGAGOR fails to pay any of the installments, or to pay the interest that may be due as provided in the said promissory note, the whole amount remaining unpaid therein shall immediately become due and payable and the mortgage on the property (ies) herein-above described may be foreclosed by the MORTGAGEE, or the MORTGAGEE may take any other legal action to enforce collection of the obligation hereby secured, and in either case the MORTGAGOR further agrees to pay the MORTGAGEE an additional sum of 25% of the principal due and unpaid, as liquidated damages, which said sum shall become part thereof. The MORTGAGOR hereby waives reimbursement of the amount heretofore paid by him/it to the MORTGAGEE.

430. Ligutan vs. CA | Vitug
G.R. No. 138677, February 12, 2002

FACTS

- Ligutan and dela Llana obtained a P120,000 loan from Security Bank. The promissory note contains the provisions for an interest of 15.189% per annum upon maturity and a penalty of 5% every month on the outstanding principal and interest in case of default. In addition, petitioners agreed to pay 10% of the total amount due by way of attorney's fees if the matter were indorsed to a lawyer for collection or if a suit were instituted to enforce payment.
- The obligation became due, and despite repeated demands by the bank, the petitioners remained in default. The bank then filed a suit for recovery with the RTC of Makati.
- After the bank had presented its evidence in court, instead of presenting their own, petitioners had the hearing reset on two consecutive occasions. On the third hearing date and both counsel and petitioners were absent, the bank moved and trial court resolved to consider the case submitted for resolution.
- Only after two years did the petitioners filed an MR of the order of the trial court declaring them to have waived their right to present evidence. The court denied such and eventually promulgated a decision in favor of Security Bank.
- Upon appeal to the CA, it modified the judgment appealed from by lowering the penalty to 3% per month instead of the stipulated.
- Petitioners then filed an MR to admit newly discovered evidence. Spouses Ligutan executed an R.E.M. and it should have novated the contract with the bank. Moreover, such was already foreclosed but was allegedly not credited to their account.
- The CA denied the MR hence this petition. Petitioners also submitted that the 15.189% annual interest and the 3% monthly penalty were unconscionable.

ISSUES & ARGUMENTS

W/N the bank is entitled to the 3% monthly penalty

HOLDING & RATIO DECIDENDI

YES, the penalty clause is the liquidated damages for the breach of an obligation

- A penalty clause is expressly recognized by law. It is an accessory obligation for the obligor to assume a greater responsibility upon breach of an obligation. It functions to strengthen the coercive force of the obligation and to provide for what could be the liquated damages for the breach of the obligation. The obligor would then be bound to pay the stipulated indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach.
- Although a court may equitably reduce the unconscionable or iniquitous, it is based on the discretion of the Court depending on the surrounding circumstances. The CA had already reduced the penalty from 5% to 3%. Given the circumstances, not to mention the repeated acts of breach by petitioners of their contractual obligation, the Court sees no cogent ground to modify the ruling of the appellate court.
- Moreover, the stipulate interest of 15.189%, for the first time, the petitioners raised this issue in the SC. This contention is a fresh issue that has not been raised and ventilated before the courts below. In any event, the interest stipulation, on its face, does not appear as being that excessive.
- What may justify a court in not allowing the creditor to impose full surcharges and penalties, despite an express stipulation therefor in a valid agreement, may not equally justify the non-payment or reduction of interest. Indeed, the interest prescribed in loan financing arrangements is a fundamental part of the banking business and the core of a bank's existence.

MARICE PACHECO

431 Arwood Industries, Inc vs. D.M. Consunji, Inc |
No. L-27523. February 25, 1975|

FACTS

- Petitioner and respondent, as owner and contractor, respectively, entered into a Civil, Structural and Architectural Works Agreement (Agreement) dated February 6, 1989 for the construction of petitioner's Westwood Condominium at No. 23 Eisenhower St., Greenhills, San Juan, Metro Manila. The contract price for the condominium project aggregated ₱20,800,000.00.
- Despite the completion of the condominium project, the amount of ₱962,434.78 remained unpaid by petitioner. Repeated demands by respondent for petitioner to pay went unheeded.
- Thus, on August 13, 1993, respondent, as plaintiff in Civil Case No. 63489 filed its complaint for the recovery of the balance of the contract price and for damages against petitioner.
- Respondent specifically prayed for the payment of the (a) amount of ₱962,434.78 with interest of 2% per month or a fraction thereof, from November 1990 up to the time of payment; (b) the amount of ₱250,000 as attorney's fees and litigation expenses; (c) amount of ₱150,000 as exemplary damages and (d) costs of suit.

ISSUES & ARGUMENTS

- W/N the court of appeals was correct in imposing 2% per month or the fraction thereof in days of the amount due for payment by the owner

HOLDING & RATIO DECIDENDI

Delay in the performance of an obligation is looked upon with disfavor because, when a party to a contract incurs delay, the other party who performs his part of the contract suffers damages thereby. Obviously, respondent suffered damages brought about by the failure of petitioner to comply with its obligation on time. Damages take the form of interest. Accordingly, the appropriate measure of damages in this case is the payment of interest at the rate agreed upon, which is 2% interest for every month of delay.

It must be noted that the Agreement provided the contractor, respondent in this case, two options in case of delay in monthly payments, to wit: a) suspend work on the project until payment is remitted by the owner or b) continue the work but the owner shall be required to pay interest at a rate of two percent (2%) per month or a fraction thereof. Evidently, respondent chose the latter option, as the condominium project was in fact already completed. The payment of the 2% monthly interest, therefore, cannot be jettisoned overboard.

Since the Agreement stands as the law between the parties, this Court cannot ignore the existence of such provision providing for a penalty for every month's delay. From the moment petitioner gave its consent, it was bound not only to fulfill what was expressly stipulated in the Agreement but also all the consequences which, according to their nature, may be in keeping with good faith, usage and law. Petitioner's attempt to mitigate its liability to respondent should thus fail.

Moreover, even assuming that there was a default of stipulation or agreement on interest, respondent may still recover on the basis of the general provision of law, which is Article 2209 of the Civil Code, thus:

> "Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum."

Article 2209 of the Civil Code, as abovementioned, specifies the appropriate measure of damages where the obligation breached consisted of the payment of sum of money. Article 2209 was, in extent, explicated by the Court in State Investment House, Inc. vs. Court of Appeals, which provides:

> "The appropriate measure for damages in case of delay in discharging an obligation consisting of the payment of a sum of money, is the payment of penalty interest at the rate agreed upon; and in the absence of a stipulation of a particular rate of penalty interest, then the payment of additional interest at a rate equal to the regular monetary interest; and if no regular interest had been agreed upon, then payment of legal interest or six percent (6%) per annum."

Hence, even in the absence of a stipulation on interest, under Article 2209 of the Civil Code, respondent would still be entitled to recover the balance of the contract price with interest. Respondent court, therefore, correctly interpreted the terms of the agreement which provides that "the OWNER shall be required to pay the interest at a rate of two percent (2%) per month or the fraction thereof in days of the amount due for payment by the OWNER."

VP PADILLA

432. State Investment House Inc. v Court of Appeals | Kapunan.
G.R. No. 112590, July 12, 2001 |

FACTS

- Private Respondents Malonjaos executed a real estate mortgage to secure payment of receivables sold to plaintiff. Plaintiff has discretion to impose 3% penalty per month for non-payment. Lomuyon Timber (one of the private respondents) sold to plaintiff for 2.558M several receivables consisting of checks as per their agreement
- TCBTC (The Consolidated Bank and Trust Co.) Checks drawn by Malonjao in favor of Lomuyon were indorsed to petitioner. MBTC checks were drawn by another Malonjao in favor of Lomuyon and indorsed by the latter to petitioner. Petitioner presented checks for payment which then subsequently bounced.
- Petitioner made several demands on private respondent for payment, respondents failed to pay thus petitioner foreclosed on mortgaged property
- Petitioner through sheriff extrajudicially foreclosed on property and sold at public auction for 4.223M. Petitioner alleges that after deducting cost of property sold there is still an outstanding balance of 2.601M which as of May 31 1983 amounted to 2.876M. Petitioner alleges it is entitled to recover on value of checks plus exemplary damages, attorney's fees and litigation expenses.
- TC ruled against plaintiff dismissing complaint. CA affirmed decision disallowing petitioner to deficiency stating that penalty charge and interest is too high (3% a month)
-

ISSUES & ARGUMENTS

1. **W/N CA erred in its decision in finding SIHI not entitled**
2. **CA erred in reducing penalty charge as liquidated damages**

HOLDING & RATIO DECIDENDI

CA did not err in both. CA not entitled to excess neither to penalty charge as damages clause

- 3% p.m. or 36%pa is unconscionable and iniquitous. Art. 2227 allows for reduction of liquidated damages as penalty or indemnity if iniquitous and unconscionable.
- Computation of difference by petitioner is erroneous, difference is only .575M and already these amounts were under the 36% p.a. charge
- Court allowed to temper interest rates Art. 1229 allows judge to reduce interest if obligation partly or irregularly complied with or if no performance if iniquitous or unconscionable

CHRIS PALARCA

433. NAWASA vs. Judge Catolico, 19 SCRA 980 (1967)

FACTS

A civil case was instituted by the Province of Misamis Occidental recover from the NAWASA the possession, administration, operation and control of the Misamis Waterworks System and the Orquieta Waterworks System, which had been taken over by the NAWASA since 1956, acting in pursuance of Republic Act No. 1383.

In the said case, the Trial Court, presided by Judge Catolico, rendered judgment ordering that:

1) the Province is the absolute owner of said Systems and ordering the NAWASA to return the same to the Province, to refund thereto the sum of P13,855.44 which the Province had delivered to the NAWASA when it took over the Systems,
2) to render — within thirty (30) days from notice of said decision — an accounting of the income realized by the Systems since April 1956,
3) or, in defect of such accounting, to pay to the Province the sum of P7,823.76 monthly, the average monthly income of the two (2) Systems; from April, 1956, to the date of the return thereof to the Province
4) **to pay thereto P50,000, as temperate, punitive and exemplary damages**, and P5,000 by way of attorney's fees, in addition to the costs.

Thereafter, Judge Catolico issued 2 writs of execution over NAWASA's opposition and its petition to post a supersedeas bond to stay execution.

NAWASA then filed a petition for certiorari with the Supreme Court assailing the writs of execution issued by the respondent Judge.

ISSUE & ARGUMENTS

Was Judge Catolico correct in awarding temperate, punitive, and exemplary damages and attorneys fees in favor of the Province of Misamis?

HOLDING & RATIO DECIDENDI

NO.

The lower court was not justified, however, in awarding P50,000 as exemplary and temperate damages, and P5,000, as attorney's fees, for the NAWASA took over the Systems in compliance with said Republic Act No. 1383, which it was entitled to assume to be constitutional. In other words, it had acted in good faith. The fact that RA 1383 was subsequently declared unconstitutional is of no moment since at the time NAWASA acted in pursuance of it, it acted so in good faith on the assumption that the law was constitutional.

BYRON PEREZ

434. Octot vs. Ybanez | Teehankee
G.R. No. l48643, January 18, 1982 | 111 SCRA 79

FACTS

- Octot was a Government Employee who held the position of Security Guard. Pursuant to PD 6, he was dismissed from the service as he had a pending libel case against him. Later on he was acquitted from the criminal case.
- Alfredo Imbong then filed a request for Octot's reinstatement. The request was favorably acted upon by all levels. The papers were sent to Octot stating that his request for reinstatement may be given due course pursuant to LOI 647. Octot failed to appear and so he was personally furnished with the necessary papers to be filed to support his appointment. Octot sent a letter again asking for reinstatement. The regional health director then instructed Octot to appear to furnish the necessary documents. Octot did not appear but filed a case for mandamus for his reinstatement.
- As his reinstatement was never disputed, he was reinstated.

ISSUES & ARGUMENTS

1. **W/N Octot can claim backwages**
2. **W/N Octot can claim moral damages**
3. **W/N Octot can claim exemplary damages**

HOLDING & RATIO DECIDENDI

No
- In the absence of bad faith or abuse of discretion, Octot cannot claim backwages and damages. There was no bad faith in this case as the dismissal was due to law, PD 6. Also, LOI647 does not provide for payment of back wages

No
- The delay in the reinstatement of Octot was due to his own fault. Also seeing as there was no Bad Faith involved and that it doesn't involve the situations under 2219 and 2220, moral damages cannot be claimed

No
- Exemplary damages are not usually recoverable in a mandamus case unless the defendant patently acted with vindictiveness and wantonness. It is granted by way of example or correction for the public good.
- Requisites
    - They may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant.
    - The claimant must first establish his right to moral, temperate, liquidated or compensatory damages.
    - The wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.

JAN PORTER

435. Patricio v. Leviste | Padilla
G.R. L-51832, April 26, 1989

FACTS

- Petitioner was a Catholic priest appointed Director General of 1976 Religious and Municipal Town Fiesta of Pilar, Capiz.
- On 16 May 1976 at about 10:00 o'clock in the evening, while a benefit dance was on-going in connection with the celebration of the town fiesta, petitioner together with two (2) policemen were posted near the gate of the public auditorium. Private respondent Bienvenido Bacalocos, President of the Association of Barangay Captains of Pilar, Capiz and a member of the Sangguniang Bayan, who was in a state of drunkenness, struck a bottle of beer on the table causing an injury on his hand which started to bleed. He approached petitioner in a hostile manner and asked the latter if he had seen his wounded hand, and before petitioner could respond, private respondent, without provocation, hit petitioner's face with his bloodied hand. As a consequence, a commotion ensued.
- A criminal complaint for "Slander by Deed was flied by petitioner but was dismissed. Subsequently, a complaint for damages was filed by petitioner with the court *a quo*. The court awarded moral and exemplary damages in favor of petitioner as well as attorney's fees.
- Petitioner moved for execution of judgment but this was denied owing to the pendency of a motion for reconsideration. Subsequently, the court dismissed the complaint, prompting the filing of the subject petition on 2 grounds: (1) lack of service of copy of MR, and (2) admission of private respondent of slapping petitioner entitles petitioner to award of damages.

ISSUES & ARGUMENTS

W/N petitioner is entitled to damages originally awarded by TC.

HOLDING & RATIO DECIDENDI

- Yes. Moral and exemplary damages should be given. Petitioner is also entitled to attorney's fees.
- There is no question that moral damages may be recovered in cases where a defendant's wrongful act or omission has caused the complainant physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury.
    - Private respondent's contention that there was no bad faith on his part in slapping petitioner on the face and that the incident was merely accidental is not tenable. It was established before the court *a quo* that there was an existing feud between the families of both petitioner and private respondent and that private respondent slapped the petitioner without provocation in the presence of several persons.
    - The act of private respondent in hitting petitioner on the face is contrary to morals and good customs and caused the petitioner mental anguish, moral shock, wounded feelings and social humiliation. Private respondent has to take full responsibility for his act and his claim that he was unaware of what he had done to petitioner because of drunkenness is definitely no excuse and does not relieve him of his liability to the latter.
    - The fact that no actual or compensatory damage was proven before the trial court, does not adversely affect petitioner's right to recover moral damages. Moral damages may be awarded in appropriate cases referred to in the chapter on human relations of the Civil Code (Articles 19 to 36), without need of proof that the wrongful act complained of had caused any physical injury upon the complainant
- *Exemplary or corrective damages may be imposed upon herein private respondent by way of example or correction for the public good. Exemplary damages are required by public policy to suppress the wanton acts of the offender. They are an antidote so that the poison of wickedness may not run through the body politic. The amount of exemplary damages need not be proved where it is shown that plaintiff is entitled to either moral, temperate or compensatory damages, as the case may be, although such award cannot be recovered as a matter of right.*

- In cases where exemplary damages are awarded to the injured party, attorney's fees are also recoverable.

AYEN QUA

436 Philippine Airlines v. CA| Regalado
G.R. No. 120262 July 17, 1997 | 275 SCRA 621

FACTS

- Leo Pantejo was bound for Surigao City from Cebu City via Philippine Airlines. His flight was postponed due to the typhoon Osang.
- Since he was stranded with the other passengers, he asked the Philippine Airlines officer for hotel accommodations while waiting for the next scheduled flight which was on the following day.
- Philippine Airlines refused to give him hotel accommodations, which was unfortunate because he did not have any cash at that time. A kind co-passenger, Engr. Dumlao offered Pantejo to share his room, Pantejo promised to pay him when they get back to Surigao.
- Upon reaching Surigao, he learned that the hotel expenses of the passengers were reimbursed. At this point, Pantejo informed Oscar Jereza, PAL's Manager for Departure Services at Mactan Airport and who was in charge of cancelled flights, that he was going to sue the airline for discriminating against him. It was only then that Jereza offered to pay respondent Pantejo P300.00 which, due to the ordeal and anguish he had undergone, the latter decline.

ISSUES & ARGUMENTS

W/N Pantejo is entitled to MORAL and EXEMPLARY DAMAGES for refusing to provide hotel accommodations to Pantejo

HOLDING & RATIO DECIDENDI

YES. PANTJO IS ENTITLED TO MORAL AND EXEMPLARY DAMAGES AS THERE WAS BAD FAITH ON THE PART OF PHILIPPPINE AIRLINES ATTENDANTS.

- To begin with, it must be emphasized that a contract to transport passengers is quite different in kind and degree from any other contractual relation, and this is because of the relation which an air carrier sustain with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages
- Assuming arguendo that the airline passengers have no vested right to these amenities in case a flight is cancelled due to force majeure, what makes petitioner liable for damages in this particular case and under the facts obtaining herein is its blatant refusal to accord the so-called amenities equally to all its stranded passengers who were bound for Surigao City. No compelling or justifying reason was advanced for such discriminatory and prejudicial conduct.
- More importantly, it has been sufficiently established that it is PAL'S standard company policy, whenever a flight has been cancelled, to extend to its hapless passengers cash assistance or to provide them accommodations in hotels with which it has existing tie-ups. In fact, PAL's Mactan Airport Manager for departure services, Oscar Jereza, admitted that PAL has an existing arrangement with hotels to accommodate stranded passengers,

CHESKA RESPICIO

437. Industrial Insurance vs. Bondad | Panganiban
G.R. No. 136722, April 12, 2000 |

FACTS

- The present Petition finds its roots in an incident which involved three vehicles: a Galant Sigma car driven by Grace Ladaw Morales, a packed passenger jeepney originally driven by Ligorio Bondad, and a DM Transit Bus driven by Eduardo Mendoza.
- Investigation disclosed that shortly before the accident took place, V-3 (D.M. Transit Bus) was traveling along South Expressway coming from Alabang towards the general direction of Makati. When upon reaching a place at KM Post 14 [in front] of Merville Subd., said V-3 hit and bumped the rear left side portion of V-1 [Bondads' jeepney] which was then at [stop] position due to flat tire[;] due to the severe impact cause by V-3 it swerved to the left and collided with the right side portion of V-2 [Morales' car] which was travelling [in] the same direction taking the innermost lane V-2 was dragged to its left side and hit the concrete wall. All vehicles incurred damages and sustaining injuries to the occupant of V-1 and the passengers of V-3. Victims were brought to the hospital for treatment
- Before the Regional Trial Court of Makati on April 12, 1985, Petitioner Industrial Insurance Company, Inc. and Grace Ladaw Morales filed a Complaint for damages 7 against DM Transit Corporation, Eduardo Diaz, Pablo Bondad and Ligorio Bondad. Petitioner contended that it had paid Morales P29,800 for the damages to her insured car. It also asserted that the December 17, 1984 accident had been caused "solely and proximately" by the "joint gross and wanton negligence, carelessness and imprudence of both defendant drivers Eduardo Diaz y Mendoza and Ligorio Bondad y Hernandez, who failed to exercise and observe the diligence required by law in the management and operation of their respective vehicles and by their defendant employers; D.M. Transit Corporation and Pablo Bondad, respectively, for their failure to exercise the diligence required of them by law in the selection and supervision of their employees including their aforementioned involved drivers
- In its October 14, 1991 Decision, the trial court exculpated the Bondads and ordered petitioner to pay them actual, moral and exemplary damages, as well as attorney's fees.Petitioner appealed to the Court of Appeals, which affirmed the ruling of the trial court with modification.Hence, this Petition for Review.

ISSUES & ARGUMENTS

W/N The award for damages was proper

HOLDING & RATIO DECIDENDI

- Yes. In justifying the award of attorney's fees and other litigation expenses, the appellate court held that respondents were compelled to litigate an unfounded suit because of petitioner's negligence and lack of prudence in not verifying the facts before filing this action. In affirming the award of moral damages, it accepted the trial court's justification that respondents had "been recklessly and without basis . . . impleaded by the plaintiff in spite of the clear language in the Traffic Investigation Report . . . submitted by Pfc. Agapito Domingo."
- Attorney's fees may be awarded by a court if one who claims it is compelled to litigate with third persons or to incur expenses to protect one's interests by reason of an unjustified act or omission on the part of the party from whom it is sought. In this case, the records show that petitioner's suit against respondents was manifestly unjustified. In the first place, the contact between the vehicles of respondents and of Morales was completely due to the impact of the onrushing bus. This fact is manifest in the police investigation report and, significantly, in the findings of facts of both lower courts.Moreover, even a cursory examination of the events would show that respondents were not even remotely the cause of the accident. Their vehicle was on the shoulder of the road because of a flat tire. In view of their emergency situation, they could not have done anything to avoid getting hit by the bus. Verily, an ordinary person has no reason to think that respondents could have caused the accident. It is difficult to imagine how petitioner could have thought so.More significantly, petitioner knew that respondents were not the cause of the accident. This is evident from its failure to even make a prior formal demand on them before initiating the suit. Indeed, the cause of the accident was the negligence of the DM Transit bus driver.
- In the same vein, we affirm the award of moral damages. To sustain this award, it must be shown that (1) the claimant suffered injury, and (2) such injury sprung from any of the cases listed in Articles 2219 and 2220 of the Civil Code. It is not enough that the claimant alleges mental anguish, serious anxiety, wounded feelings, social humiliation, and the like as a result of the acts of the other party. It is necessary that such acts be shown to have been tainted with bad faith or ill motive. In the case at bar, it has been shown that the petitioner acted in bad faith in compelling respondents to litigate an unfounded claim. As a result, Respondent Ligorio Bondad "could no longer concentrate on his job." Moreover, Pablo Bondad became sick and even suffered a mild stroke. Indeed, respondents' anxiety is not difficult to understand. They were innocently attending to a flat tire on the shoulder of the road; the next thing they knew, they were already being blamed for an accident. Worse, they were forced to commute all the way from Laguna to Makati in order to attend the hearings. Under the circumstances of this case, the award of moral damages is justified.
- Likewise, we affirm the award of exemplary damages because petitioner's conduct needlessly dragged innocent bystanders into an unfounded litigation. Indeed, exemplary damages are imposed by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages.

DEANNE REYES

438. People of the Philippines, vs. Albior |G.R. No. 115079 | February 19, 2001 | QUISUMBING, J.:

FACTS

- The RTC found Francisco Albior guilty of rape, and sentenced him to suffer the penalty of reclusion perpetua. The victim, Lorena Tolentino was also awarded moral damages in the amount of P50,000.

ISSUE

Whether or not the award of damages are sufficient?

HOLDING & RATIO DECIDENDI

- The Court affirmed the ruling of trial court, finding that the accused Albior was indeed guilty of rape. However, the court modified the award of civil damages. The lower court failed to grant the necessary civil indeminity which is mandated by jurisprudence to be awarded to rape victims. An additional P50,000 was granted by the court, and this was held to be separate and distinct from that of the award of moral damages.

(Note: this is the only related pronouncement with regard to damages in this case).

JR RUIZ

439. Traders Royal Bank v. Radio Philippines Network, Inc. | Corona
G.R. No. 138510, October 10, 2002|

FACTS

On April 15, 1985, the Bureau of Internal Revenue (BIR) assessed plaintiffs Radio Philippines Network (RPN), Intercontinental Broadcasting Corporation (IBC), and Banahaw Broadcasting Corporation (BBC) of their tax obligations for the taxable years 1978 to 1983.

On March 25, 1987, Mrs. Lourdes C. Vera, plaintiffs' comptroller, sent a letter to the BIR requesting settlement of plaintiffs' tax obligations.

The BIR granted the request and accordingly, on June 26, 1986, plaintiffs purchased from defendant Traders Royal Bank (TRB) three (3) manager's checks to be used as payment for their tax liabilities

Defendant TRB, through Aida Nuñez, TRB Branch Manager at Broadcast City Branch, turned over the checks to Mrs. Vera who was supposed to deliver the same to the BIR in payment of plaintiffs' taxes.

Sometime in September, 1988, the BIR again assessed plaintiffs for their tax liabilities for the years 1979-82. It was then they discovered that the three (3) managers checks (Nos. 30652, 30650 and 30796) intended as payment for their taxes were never delivered nor paid to the BIR by Mrs. Vera. Instead, the checks were presented for payment by unknown persons to defendant Security Bank and Trust Company (SBTC), Taytay Branch as shown by the bank's routing symbol transit number (BRSTN 01140027) or clearing code stamped on the reverse sides of the checks.

Meanwhile, for failure of the plaintiffs to settle their obligations, the BIR issued warrants of levy, distraint and garnishment against them. Thus, they were constrained to enter into a compromise and paid BIR P18,962,225.25 in settlement of their unpaid deficiency taxes.

Thereafter, plaintiffs sent letters to both defendants, demanding that the amounts covered by the checks be reimbursed or credited to their account. The defendants refused, hence, the instant suit

ISSUES & ARGUMENTS

Whether TRB should be held solely liable when it paid the amount of the checks in question to a person other than the payee indicated on the face of the check, the Bureau of Internal Revenue?

HOLDING & RATIO DECIDENDI

Petitioner ought to have known that, where a check is drawn payable to the order of one person and is presented for payment by another and purports upon its face to have been duly indorsed by the payee of the check, it is the primary duty of petitioner to know that the check was duly indorsed by the original payee and, where it pays the amount of the check to a third person who has forged the signature of the payee, the loss falls upon petitioner who cashed the check. Its only remedy is against the person to whom it paid the money.

It should be noted further that one of the subject checks was crossed. The crossing of one of the subject checks should have put petitioner on guard; it was duty-bound to ascertain the indorser's title to the check or the nature of his possession. Petitioner should have known the effects of a crossed check: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once to one who has an account with a bank and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is not a holder in due course.

By encashing in favor of unknown persons checks which were on their face payable to the BIR, a government agency which can only act only through its agents, petitioner did so at its peril and must suffer the consequences of the unauthorized or wrongful endorsement.In this light, petitioner TRB cannot exculpate itself from liability by claiming that respondent networks were themselves negligent.

A bank is engaged in a business impressed with public interest and it is its duty to protect its many clients and depositors who transact business with it. It is under the obligation to treat the accounts of the depositors and clients with meticulous care, whether such accounts consist only of a few hundreds or millions of pesos.

Since TRB did not pay the rightful holder or other person or entity entitled to receive payment, it has no right to reimbursement. Petitioner TRB was remiss in its duty and obligation, and must therefore suffer the consequences of its own negligence and disregard of established banking rules and procedures.

We agree with petitioner, however, that it should not be made to pay exemplary damages to RPN, IBC and BBC because its wrongful act was not done in bad faith, and it did not act in a wanton, fraudulent, reckless or malevolent manner.

440 Singapore Airlines Ltd. Vs. Fernandez | Callejo
G.R. No. 142305. December 10, 2003 |

FACTS

- Andion Fernandez is an acclaimed soprano here in the Philippines and abroad. At the time of the incident, she was availing an educational grant from the Federal Republic of Germany, pursuing a Master's Degree in Music majoring in Voice.
- She was invited to sing before the King and Queen of Malaysia on February 3 and 4, 1991. For this singing engagement, an airline passage ticket was purchased from petitioner Singapore Airlines which would transport her to Manila from Frankfurt, Germany on January 28, 1991. From Manila, she would proceed to Malaysia on the next day. It was necessary for the respondent to pass by Manila in order to gather her wardrobe; and to rehearse and coordinate with her pianist her repertoire for the aforesaid performance.
- The petitioner issued the respondent a Singapore Airlines ticket for Flight No. SQ 27, leaving Frankfurt, Germany on January 27, 1991 bound for Singapore with onward connections from Singapore to Manila. Flight No. SQ 27 was scheduled to leave Frankfurt at 1:45 in the afternoon of January 27, 1991, arriving at Singapore at 8:50 in the morning of January 28, 1991. The connecting flight from Singapore to Manila, Flight No. SQ 72, was leaving Singapore at 11:00 in the morning of January 28, 1991, arriving in Manila at 2:20 in the afternoon of the same day.
- On January 27, 1991, Flight No. SQ 27 left Frankfurt but arrived in Singapore two hours late or at about 11:00 in the morning of January 28, 1991. By then, the aircraft bound for Manila had left as scheduled, leaving the respondent and about 25 other passengers stranded in the Changi Airport in Singapore.
- Upon disembarkation at Singapore, the respondent approached the transit counter who referred her to the nightstop counter and told the lady employee thereat that it was important for her to reach Manila on that day, January 28, 1991. The lady employee told her that there were no more flights to Manila for that day and that respondent had no choice but to stay in Singapore. Upon respondent's persistence, she was told that she can actually fly to Hong Kong going to Manila but since her ticket was non-transferable, she would have to pay for the ticket. The respondent could not accept the offer because she had no money to pay for it. Her pleas for the respondent to make arrangements to transport her to Manila were unheeded.
- The respondent then requested the lady employee to use their phone to make a call to Manila. Over the employees' reluctance, the respondent called her mother to inform the her that she missed the connecting flight. The respondent contacted a family friend who picked her up from the airport for her overnight stay in Singapore.
- The next day, after being brought back to the airport, the respondent proceeded to petitioner's counter which says: "Immediate Attention To Passengers with Immediate Booking." There were four or five passengers in line. The respondent approached petitioner's male employee at the counter to make arrangements for immediate booking only to be told: "Can't you see I am doing something." She explained her predicament but the male employee uncaringly retorted: "It's your problem, not ours."
- The respondent never made it to Manila and was forced to take a direct flight from Singapore to Malaysia on January 29, 1991, through the efforts of her mother and travel agency in Manila. Her mother also had to travel to Malaysia bringing with her respondent's wardrobe and personal things needed for the performance that caused them to incur an expense of about P50,000.
- As a result of this incident, the respondent's performance before the Royal Family of Malaysia was below par. Because of the rude and unkind treatment she received from the petitioner's personnel in Singapore, the respondent was engulfed with fear, anxiety, humiliation and embarrassment causing her to suffer mental fatigue and skin rashes. She was thereby compelled to seek immediate medical attention upon her return to Manila for "acute urticaria."
- RTC held: (P100,000.00) PESOS as exemplary damages; petitioner appealed, CA affirmed in toto. Petitioner further appealed, hence this case.

ISSUES & ARGUMENTS

- **W/N petitioner should be held liable for exemplary damages**

HOLDING & RATIO DECIDENDI

YES, petitioner should be held liable for exemplary damages

- When an airline issues a ticket to a passenger, confirmed for a particular flight on a certain date, a contract of carriage arises. The passenger then has every right to expect that he be transported on that flight and on that date. If he does not, then the carrier opens itself to a suit for a breach of contract of carriage.
- Article 2232 of the Civil Code provides that in a contractual or quasi-contractual relationship, exemplary damages may be awarded only if the defendant had acted in a "wanton, fraudulent, reckless, oppressive or malevolent manner." In this case, petitioner's employees acted in a wanton, oppressive or malevolent manner. The award of exemplary damages is, therefore, warranted in this case.
- Bad faith was imputed by the trial court when it found that the petitioner's employees at the Singapore airport did not accord the respondent the attention and treatment allegedly warranted under the circumstances. The lady employee at the counter was unkind and of no help to her. The respondent further alleged that without her threats of suing the company, she was not allowed to use the company's phone to make long distance calls to her mother in Manila. The male employee at the counter where it says: "Immediate Attention to Passengers with Immediate Booking" was rude to her when he curtly retorted that he was busy attending to other passengers in line. The trial court concluded that this inattentiveness and rudeness of petitioner's personnel to respondent's plight was gross enough amounting to bad faith. This is a finding that is generally binding upon the Court which we find no reason to disturb.

FRANK TAMARGO

441. NPC vs Court of Appeals | Carpio
G.R. No. 106804, August 12, 2004|

FACTS

- Private respondent Pobre is the owner of a 68,969 square-meter land ("Property") located in Albay. Pobre began developing the Property as a resort-subdivision, which he named as "Tiwi Hot Springs Resort Subdivision." The Commission on Volcanology certified that thermal mineral water and steam were present beneath the Property and found the thermal mineral water and steam suitable for domestic use and potentially for commercial or industrial use.
- NPC then became involved with Pobre's Property in three instances. **First** was when Pobre leased to NPC for one year eleven lots from the approved subdivision plan. **Second** was sometime in 1977, the first time that NPC filed its expropriation case against Pobre to acquire an 8,311.60 square-meter portion of the Property. The trial court ordered the expropriation of the lots upon NPC's payment of ₱25 per square meter or a total amount of ₱207,790. NPC began drilling operations and construction of steam wells. While this first expropriation case was pending, NPC dumped waste materials beyond the site agreed upon by NPC with Pobre. The dumping of waste materials altered the topography of some portions of the Property. NPC did not act on Pobre's complaints and NPC continued with its dumping. **Third** was in 1979 when NPC filed its second expropriation case against Pobre to acquire an additional 5,554 square meters of the Property. NPC needed the lot for the construction and maintenance of Naglagbong Well Site.
- Pobre filed a motion to dismiss the second complaint for expropriation. Pobre claimed that NPC damaged his Property. Pobre prayed for just compensation of all the lots affected by NPC's actions and for the payment of damages.
- NPC filed a motion to dismiss the second expropriation case on the ground that NPC had found an alternative site and that NPC had already abandoned in 1981 the project within the Property due to Pobre's opposition. The trial court granted NPC's motion to dismiss but the trial court allowed Pobre to adduce evidence on his claim for damages. The trial court admitted Pobre's exhibits on the damages because NPC failed to object

ISSUES & ARGUMENTS

W/N NPC is liable to respondent to pay damages?

HOLDING & RATIO DECIDENDI

NPC liable to pay temperate and exemplary damages.

- NPC's abuse of its eminent domain authority is appalling. However, we cannot award moral damages because Pobre did not assert his right to it. We also cannot award attorney's fees in Pobre's favor since he did not appeal from the decision of the Court of Appeals denying recovery of attorney's fees.
- Nonetheless, we find it proper to award ₱50,000 in temperate damages to Pobre. The court may award temperate or moderate damages, which are more than nominal but less than compensatory damages, if the court finds that a party has suffered some pecuniary loss but its amount cannot be proved with certainty from the nature of the case. As the trial and appellate courts noted, Pobre's resort-subdivision was no longer just a dream because Pobre had already established the resort-subdivision and the prospect for it was initially encouraging. That is, until NPC permanently damaged Pobre's Property. NPC did not just destroy the property. NPC dashed Pobre's hope of seeing his Property achieve its full potential as a resort-subdivision.
- The lesson in this case must not be lost on entities with eminent domain authority. Such entities cannot trifle with a citizen's property rights. The power of eminent domain is an extraordinary power they must wield with circumspection and utmost regard for procedural requirements. Thus, we hold NPC liable for exemplary damages of ₱100,000. Exemplary damages or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

Petition denied for lack of Merit. Decision of the Court of Appeals Affirmed.

MAUI MORALES

442. De Leon v CA | Paras
G.R. No. L-31931 August 31, 1988 |

FACTS

- Sps. Briones (Juan Briones and Magdalena Bernardo) were former registered owners of the fishpond situated at San Roque, Paombong, Bulacan. Said property was mortgaged twice to secure a loan obtained from, initially Hermogenes Tantoco but was later on assigned to, Dr. Cornelio Tantoco, Hermogenes' father, in the amounts of P20,000 and P68,824 (the later having a 10% interest per annum). Both mortgages were duly registered in the Office of the Register of Deeds of Bulacan and duly annotated at the back of the TCT.
- While these two mortgages were still subsisting the Sps. Briones sold the fishpond, which is the subject matter of said two mortgages, to plaintiff Sps. De Leon (Fortunato de Leon and Juana F. Gonzales de Leon) in the amount of P120,000.00. Of the amount of P120,000.00, the Sps. Briones actually received only the amount of P31,000.00 on June 2, 1959, as the amount of P89,000.00 was withheld by the Fortunato de Leon who assumed to answer the mortgage indebtedness of the Briones to the Tantocos. After the sale Sps. De Leon satisfied the mortgage loan of P20,000.00 including 10% interest per annum to Hermogenes Tantoco who then accordingly executed a deed of discharge of mortgage, but the mortgage in favor of Cornelio S. Tantoco in the amount of P68,824 was not satisfied. On February 5, 1962 plaintiffs made payment of P29,382.50 to the Dr. Cornelio.
- Trying to set the record straight, Dr. Cornelio made the clarification that the principal obligation of the Briones as of May 25, 1959 was P68,824.00 and on January 26, 1962 when a letter of demand was sent to them their total obligation including the agreed interest amounted to P88,888.98. Hence the above mentioned PNB check will be held in abeyance pending remittance of the total obligation after which the necessary document will be executed.
- On May 8, 1962 the Sps. De Leon filed a complaint with the Court of First Instance of Bulacan against defendant Cornelio S. Tantoco for discharge of mortgage. On May 31, 1962 Dr. Cornelio filed his answer with counterclaim and third party complaint against the Sps. Briones with petition for leave to file third party complaint. He alleged by way of special and affirmative defenses, among others, that the true and real amount of obligation of the Sps. Briones is the sum of P68,824.00, Philippine currency, with 10% interest secured by a second mortgage in favor of defendant, executed and signed by the Briones spouses on May 26,1959, which deed of second mortgage was duly registered in the Office of the Register of Deeds of Malolos, Bulacan on May 27, 1959 and properly annotated at the back of Transfer Certificate of Title No. 28296 issued in the names of Juan Briones and Magdalena Bernardo; that the amount of P29,382.50 sent by Sps. DeLeon as alleged counsel of the spouses Juan Briones and Magdalena Bernardo was accepted by Dr. Cornelio as part payment or partial extinguishment of the mortgage loan of P68,824.00 with 10% interest thereon per annum from May 22, 1959, and Sps. De Leon have been informed of the tenor of said acceptance and application and, that the latter did not accede to the demand of the former to have the mortgage lien on the property in question cancelled or discharged because the full amount of the mortgage debt of P68,824.00 plus the 10% interest thereon from May 22, 1959 has not yet been fully paid either by the plaintiffs or by the spouses Juan Briones and Magdalena Bernardo.
- RTC dismissed the complaint and ordered for Sps. De Leon to pay Dr. Cornelio the sum of P64,921.60 with interest thereon at 10% per annum from February 5, 1962 until fully paid; payment of the sum of P100,000 as moral and exemplary damages, and further sum of P10,000 as attorney's fees
- On appeal, CA affirmed the judgment of trial court with modification respecting the award of moral and exemplary damages as well as attorney's fees.

ISSUES & ARGUMENTS

W/N the award of P60,000 in the concept of moral and exemplary damages is proper?

HOLDING & RATIO DECIDENDI

YES. Respondent Court found malice in De Leon's refusal to satisfy Dr. Tantoco's lawful claim and in their subsequent filing of the present case against the latter, and took into consideration the worries and mental anxiety of latter as a result thereof.

- Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.
- On the other hand, jurisprudence sets certain conditions when exemplary damages may be awarded, to wit: (1) They may be imposed by way of example or correction only in addition, among others, to compensatory damages and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (2) the claimant must first establish his right to moral, temperate, liquidated or compensatory damages; and (3) the wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolant manner.
- As a lawyer in the practice of law since his admission to the Bar in 1929, who has held several important positions in the government petitioner Fortunato de Leon could not have missed the import of the annotation at the back of TCT regarding the second mortgage for the sum of sixty eight thousand eight hundred twenty-four pesos (P68,824.00) of the property he was buying, in favor of respondent Cornelio Tantoco. The same annotation was transferred to the new TCT issued in the name of De Leon after the sale of the property was effected and entered in the registry of

deeds of Bulacan on June 3, 1959. Furthermore, Sps. De Leon cannot deny having assumed the mortgage debts of the Sps. Briones amounting to P89,000.00 in favor of the Tantocos. The "Patunay" executed by the Sps. Briones on June 3, 1959 gives the information that their property, and fishpond, was sold by them to the spouses Fortunato de Leon and Juana F. Gonzales for the amount of one hundred twenty thousand pesos (Pl20,000.00), payment made to them, as follows:

Pinanagutan na aming pagkakautang kay

G. Hermogenes Tantoco hanggang Mayo 1959	P 89,000.00
Cash na tinanggap namin PBC Check No. 57040	11,000.00
Pagare No. 1 Junio 1, 1959	10,000.00
Pagare No. 2 Junio 1, 1959	10,000.00
Kabuuan	P 120,000.00

- At the bottom of the "Patunay" in the handwriting of petitioner Fortunato de Leon is a statement signed by him signifying that he was assuming the spouses'debt of P89,000.00 to respondent Tantoco, in the following words:
  Ang pagkautang na P89,000.00 sa mga Tantoco ay aking inaasumihan.
- The **entitlement to moral damages having been established the award of exemplary damages is proper**. And while the award of moral and exemplary damages in an aggregate amount may not be the usual way of awarding said damages there is no question of Dr. Tantoco's entitlement to moral and exemplary damage. **The amount should be reduced**, however, for being excessive compared to the actual losses sustained by the aggrieved party. Moral damages though incapable of pecuniary estimations, are in the category of an award designed to compensate the claimant for actual injury suffered and not to impose a penalty of the wrongdoer.
- In the case of Miranda Ribaya v. Bautista, this Court considered 25% of the principal amount as reasonable. In the case at bar, the Court of Appeals found on February 21, 1970 that the outstanding balance of the disputed loan was P64,921.69. Twenty five percent thereof is P16,230.00 but considering the depreciation of the Philippine peso today, it is believed that the award of moral and exemplary damages in the amount of **P25,000.00 is reasonable**.

TEL VIRTUDEZ

443. People v. Cristobal| Quisumbing
GR No. 116279 January 29, 1996|

FACTS

- The pain rape causes becomes more excruciating when the victim carries the life of an unborn within her womb. That tender and innocent life, born of love and its parents' participation in the mystery of life, is thereby placed in undue danger. Such was the case of Cherry Tamayo, a married woman. She was twenty-eight years old, with one child and another on the way, when tragedy struck. She was sexually assaulted on 31 March 1986. Fortunately, the life in her womb survived.
- She accused Rogelio Cristobal of rape in a sworn complaint
- Having found sufficient ground to engender a well-founded belief that the crime charged has been committed and the accused was probably guilty thereof, the court ruled that the accused should be held for trial. Accordingly, it issued a warrant for his arrest and fixed his bail bond at P17,000.00. The accused was arrested but was later released on bail. Thereafter, the court increased the amount of bail to P30,000.00 and, consequently, ordered the rearrest of the accused. Unfortunately, by this time, he was nowhere to be found.
- The trial court found the accused guilty beyond reasonable doubt of the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the complainant, Cherry Tamayo, in the amount of P30,000.00.
- The trial court found clear and convincing the categorical testimony of Cherry Tamayo of having been accosted from behind, knocked to the ground, boxed, submerged in water, taken three meters from the creek, and raped.
- The Appellee disagrees with him and prays that the assailed decision be affirmed with modification of the award for moral damages, which should be increased from P30,000.00 to P50,000.00.

ISSUES & ARGUMENTS

Whether it is proper to increase the moral damages and exemplary damages?

HOLDING & RATIO DECIDENDI

Yes.
For sexually assaulting a pregnant married woman, the accused has shown moral corruption, perversity, and wickedness. He has grievously wronged the institution of marriage. The imposition then of exemplary damages by way of example to deter others from committing similar acts or for correction for the public good is warranted. We hereby fix it at P25,000.00.
Pursuant to the current policy of this Court, the moral damages awarded by the trial court should be increased from P30,000.00 to P40,000.00.
The award of moral damages is increased from P30,000.00 to P40,000.00, and the accused is further ordered to pay exemplary damages in the amount of P25,000.00.

444. PNB vs. Utility Assurance

FACTS

The Kangyo Bank Ltd., Tokyo, Japan, issued Letter of Credit in the amount of US$ 28,150.00 in favor of the Pedro Bartolome Enterprises of Manila to cover an export shipment of logs to Japan. The beneficiary of the Letter of Credit assigned its rights to Lanuza Lumber. On 29 March 1960, Procopio Caderao, doing business under the trade name "Lanuza Lumber," obtained a loan of P 25,000.00 from plaintiff-appellee Philippine National Bank (PNB) as evidenced by a promissory note on the security, among other things, of the proceeds of the Letter of Credit. The PNB in addition required Lanuza Lumber to submit a surety bond. Defendant- Appellant Utility Assurance & Surety Co., Inc. ("Utassco"), accordingly, executed Surety Bond in favor of PNB. In addition to the agreement was an endorsement saying: that if the bounden principal and surety shall, in all respects, duly and fully observe and perform all and singular terms and conditions in the aforementioned Letter of Credit, then this obligation shall be and become null and of no further force nor effect; in the contrary case, the same shall continue in full effect and be enforceable, as a joint and several obligation of the parties hereto in the manner provided by law so long as the account remains unpaid and outstanding in the books of the Bank either thru non-collection, extension, renewals or plans of payment with or without consent of the surety. It is a special condition of the bond that the liability of the surety thereon shall, at all times, be enforceable simultaneously with that of the principal without the necessity of having the assets of the principal resorted to, or exhausted by, the creditor; Provided, however, that the liability of the surety shall he limited to the sum of TWENTY-FIVE THOUSAND PESOS (P 25,000), Philippine Currency. The promissory note executed by Lanuza Lumber became due and payable. Neither Lanuza Lumber nor Utassco paid the loan despite repeated demands by PNB for payment. Accordingly, PNB filed in the then Court of First Instance of Manila an action to recover the amount of the promissory note with interest as provided thereon plus attorney's fees.

On 14 January 1971, upon motion of PNB, the trial court rendered judgment on the pleadings. The dispositive part of the judgment reads as follows:

WHEREFORE, in the light of the foregoing considerations, judgment is hereby rendered ordering the defendant to pay the plaintiff the sum of P 25,000.00 plus 6 % interest per annum counted from May 19, 1962, the date of the filing of the original complaint until fully paid, plus attorney's fees equivalent to 10 % of the principal obligation and the costs of the suit.

On appeal, UTTASCO assailed lower court's award of interest and attorney's fees in favor of plaintiff-appellee PNB. (Utassco: that the trial court should not have granted interest and attorney's fees in favor of PNB, considering the clause in the endorsement limiting the liability of Utassco to P 25,000.00.)

Moreover: ART. 1956. No interest shall be due unless it has been expressly stipulated in writing.ART. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except: (. . .)

ISSUES & ARGUMENTS

Whether UTTASCO's contention is correct.

HOLDING & RATIO DECIDENDI

No. The SC DISMISSED the appeal by defendant-appellant Utility Assurance & Surety Co., Inc. for lack of merit, and AFFIRMED the judgment of the trial court.

The objection has to be overruled, because as far back as the year 1922 SC held in Tagawa vs. Aldanese, 43 Phil. 852, that creditors suing on a suretyship bond may recover from the surety as part of their damages, interest at the legal rate even if the surety would thereby become liable to pay more than the total amount stipulated in the bond. 'The theory is that interest is allowed only by way of damages for delay upon the part of the sureties in making payment after they should have done. In some states, the interest has been charged from the date of the judgment of the appellate court. In this jurisdiction, we rather prefer to follow the general practice which is to order that interest begin to run from the date when the complaint was filed in court, ... '

Such theory aligned with Sec. 510 of the Code of Civil Procedure which was subsequently recognized in the Rules of Court (Rule 53, Section 6) and with Article 11-08 of the Civil Code (now Art. 2209 of the New Civil Code). In other words the surety is made to pay interest, not by reason of the contract, but by reason of its failure to pay when demanded and for having compelled the plaintiff to resort to the courts to obtain payment. It should be observed that interest does not run from the time the obligation became due, but from the filing of the complaint.

As to attorney's fees: Before the enactment of the New Civil Code, successful litigants could not recover attorney's fees as part of the damages they suffered by reason of the litigation. Even if the party paid thousands of pesos to his lawyers, he could not charge the amount to his opponent. However, the New Civil Code permits recovery of attorney's fees in eleven cases enumerated in Article 2208, among them 'where the court deem it just and equitable that attorney's fees and expenses of litigation should be recovered' or 'when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim.' This gives the courts discretion in apportioning attorney's fees.

Now, considering, in this case, that the principal debtor had openly and expressly admitted his liability under the bond, and the surety knew it (p.123 R.A.) we can not say there was abuse of lower court's discretion in the way of awarding fees, specially when the indemnity agreement . . . afforded the surety adequate protection. (100 Phil. 681-682. (Emphasis supplied).

JOY ADRANEDA

445. Del Rosario vs. CA| Vitug
G.R. No. 98149, September 26, 1994|

FACTS

- Petitioner suffered physical injuries, requiring two major operations, when he fell from, and then was dragged along the asphalted road by, a passenger bus operated by private respondent De Dios Marikina Transportation Co., Inc. The incident occurred when the bus driver bolted forward at high speed while petitioner was still clinging on the bus door's handle bar that caused the latter to lose his grip and balance. The refusal of private respondent to settle petitioner's claim for damages constrained petitioner to file, on 26 June 1985, a complaint for damages against private respondent.
- The trial court ruled in favor of petitioner and on appeal to it, the Court of Appeals affirmed *in toto* the findings of fact of the trial court, as well as the grant to petitioner of damages, but it reduced the award for attorney's fees from P33,641.50 to P5,000.00.

ISSUES & ARGUMENTS

W/N THE CA ERRED IN THE REDUCTION OF ATTORNEY'S FEES?

HOLDING & RATIO DECIDENDI

YES, THE CA ERRED IN THE REDUCTION OF ATTORNEY'S FEES

- There is no question that a court may, whenever it deems it just and equitable, allow the recovery by the prevailing party of attorney's fees. In determining the reasonableness of such fees, this Court in a number of cases has provided various criteria which, for convenient guidance, we might collate thusly:
    - **a) the quantity and character of the services rendered;**
    - **b) the labor, time and trouble involved;**
    - **c) the nature and importance of the litigation;**
    - **d) the amount of money or the value of the property affected by the controversy;**
    - **e) the novelty and difficulty of questions involved;**
    - **f) the responsibility imposed on counsel;**
    - **g) the skill and experience called for in the performance of the service;**
    - **h) the professional character and social standing of the lawyer;**
    - **i) the customary charges of the bar for similar services;**
    - **j) the character of employment, whether casual or for establishment client;**
    - **k) whether the fee is absolute or contingent (it being the rule that an attorney may properly charge a higher fee when it is contingent than when it is absolute); and**
    - **l) the results secured.**
- Given the nature of the case, the amount of damages involved, and the evident effort exerted by petitioner's counsel, the trial court's award of attorney's fees for P33,641.50 would appear to us to be just and reasonable.

446. Bodiongan vs. Court of Appeals and Simeon| Puno
GR. No.- 114418, September 21, 1995| 248 SCRA 496

FACTS

- Lea Simeon obtained from petitioner Estanislao Bodiongan and his wife a loan of P219,117.39 secured by a mortgage on 3 parcels of land with a 4-storey hotel building and personal properties. Upon the former's failure to pay loan, petitioner instituted a civil case for collection of sum of money or foreclosure of mortgage.
- Trial court ordered payment of the loan with legal interest as well as P5000 reimbursement of plaintiff's attorney's fees and in case of non-payment, to foreclose the mortgage on the properties. CA affirmed.
- Simeon again failed to pay the judgment debt so the mortgaged properties were foreclosed and sold on execution to petitioner (who was the sole bidder). Petitioner then took possession of the properties after filing a guaranty bond of P350,000.
- Simeon offered to redeem her properties and tendered to the provincial sheriff a check in the amount of P337,580 (based on sheriff's computation). Petitioner then filed a motion to correct the computation, which was denied.
- Subsequently, petitioner instituted a civil case for annulment of redemption and confirmation of the foreclosure sale on the ground of insufficiency of the redemption price. The trial court dismissed the complaint but reduced the 12% interest rate on the purchase price to 6% and thus, on counterclaim, ordered petitioner to refund Simeon the excess 6% plus P10,000 and P5,000 for moral damages and attorney's fees. CA affirmed except for the refund of the 6% interest.

ISSUES & ARGUMENTS

What is the correct redemption price?
Petitioner: The redemption price should be P351,080.00. Since private respondent actually tendered P337,580.00 which is short by P13,500.00, this price was inadequate thereby rendering redemption ineffectual.

HOLDING & RATIO DECIDENDI

DEDUCT P5,000 FROM THE P351,080.00 BEING CLAIMED BY PETITIONER BECAUSE ATTORNEY'S FEES IS EXCLUDED FROM REDEMPTION PRICE.

- According to Section 6 of Art 3135, the redemption price of properties at an extrajudicial foreclosure sale is fixed by Sec 30 of Rule 39 of the Revised Rules of Court. Said Rule provides that in order to effect a redemption, the judgment debtor must pay the purchaser the redemption price composed of the following: (1) the price which the purchaser paid for the property; (2) interest of 1% per month; (3) the amount of any assessments or taxes which the purchaser may have paid on the property after the purchase; and (4) interest of 1% per month on such assessments and taxes. If the tender is for less than the entire amount, the purchaser may justly refuse acceptance thereof.
- In the case at bar redemption price covers the purchase price of P309,000 plus 1% interest thereon per month for 12 months at P37,080.00. Petitioner does not claim any taxes or assessments he may have paid on the property after his purchase. He, however, adds P5,000.00 to the price to cover the attorney's fees awarded him by the trial court.
- In the redemption of property sold at an extrajudicial foreclosure sale, the amount payable is no longer the judgment debt but the purchase price at the auction sale. In other words, the attorney's fees awarded by the trial court should not have been added to the redemption price because the amount payable is no longer the judgment debt, but that which is stated in Section 30 of Rule 39. The redemption price for the mortgaged properties in this case is therefore P346,080.00.
- Simeon's tender is still short by P8,500.00. Inasmuch as tender of the redemption price was timely made and in good faith, and the deficiency in price is not substantial, Simeon is given the opportunity to complete the redemption of her properties within 15 days from the time decision becomes final.

Petition DENIED. Court of Appeals' decision AFFIRMED.

DANI BOLONG

447. Pimentel vs. CA | Gonzaga-Reyes
G.R. No. 117422, May 12, 1999 |

FACTS

- Pimentel through her lawyer, Atty. Laurel, filed an application for the payment of benefits with the US Department of Labor, in connection with the death of her husband, Pedro Petilla, Jr., who was a former employee in Wake Island, USA under the employ of Facilities Management Corporation, USA.
- After the filing of the said application for payment and during its pendency, Atty. Laurel died and for failure of petitioner to respond to a pre-hearing statement requested by the US Department of Labor, the case was considered closed.
- Pimentel requested private respondent Namit, husband of her first cousin, to help her in reviving and pursuing her claim for death benefits before the US Department of Labor.
- Namit accepted petitioner's request and initially wrote a letter addressed to the US Department of Labor regarding petitioner's application for death benefits, and as a result, the case was reopened
- Trial ensued conducted by the US Embassy. The US Department of Labor rendered a decision granting petitioner benefits in the amount of US$53,347.80. Pimentel received the lump sum award as embodied in the decision and the subsequent monthly benefits in checks.
- Pimentel then paid private respondent the sum of US$2,500.00 as attorneys fees for the services he had rendered
- Dissatisfied, private respondent demanded payment of the alleged balance of his attorney's fees but petitioner did not heed respondent's demands
- On November 16, 1988, private respondent filed with the Regional Trial Court of Pasay City a complaint for sum of money against petitioner to recover from the latter the alleged balance of his attorney's fees (according to Namit, the agreed fees were 25%)
- RTC awarded $2.5k more to Namit plus 10k Pesos as attorney's fees. CA affirmed.

ISSUES & ARGUMENTS

W/N the Namit is entitled to more attorney's fees

HOLDING & RATIO DECIDENDI

AS TO THE $2.5K IT CAN BE AWARDED. AS TO THE P10K, SUCH HAS NO BASIS IN THE DISPOSITIVE PORTION

- Pimentel contends that absent any agreement on attorney's fees, **the determination of the compensation for the lawyer's services will have to be based on *quantum meruit*, such as but not limited to the extent and character of the services rendered, the labor, time and trouble involved, the skill and experience called for in performing the services, the professional and social standing of the lawyer, and the results secured**. Pimentel further contends that Namit failed to demonstrate the circumstances showing the extent of services rendered and that there were no specific findings of fact in the court's decision that would justify the award of an additional US$2,500.00 as attorney fees to private respondent
- The issue of the reasonableness of attorneys fees based on *quantum meruit* is a question of fact, and well-settled is the rule that conclusions and findings of fact by the lower courts are entitled to great weight on appeal and will not be disturbed except for strong and cogent reasons
- The respondent court's ratiocination in affirming the reasonableness of the additional compensation of US$2,500.00 awarded by the trial court properly took into account the character and extent of the services rendered, the results secured which amounted to an award of $53,347.80, and the critical nature of counsel's intervention to pursue the claims after the death of the former counsel, in justifying the award.
- With respect to Pimentel's contention that the respondent court erred in affirming the trial court's decision awarding P10,000.00 attorney's fees to private respondent, we rule in favor of petitioner. The text of the trial court's decision does not mention the reason for the award of attorney's fees and the award was simply contained in the dispositive portion of the trial court's decision. **It is now settled that the reasons or grounds for an award must be set forth in the decision of the court**
- Since the trial court's decision failed to state the justification for the award of attorney's fees, it was a reversible error to affirm the same

448. Ibaan Rural Bank vs. CA| Quisimbing
G.R. No. 123817 December 17, 1999 |SCRA

FACTS

- Spouses Cesar and Leonila Reyes were the owners of three (3) titled lots.
- The spouses mortgaged these lots to **Ibaan Rural Bank, Inc.**
- With the knowledge and consent of **Ibaan Rural Bank**, the spouses as sellers, and **Mr. and Mrs. Ramon Tarnate**, as buyers, entered into a *Deed of Absolute Sale with Assumption of Mortgage* of the lots in question.
- The **Spouses Tarnate** failed to pay the loan and the bank extra-judicially foreclosed on the mortgaged lots.
- The Provincial Sheriff conducted a public auction of the lots and awarded the lots to the **bank**, the sole bidder.
- On December 13, 1978, the Provincial Sheriff issued a Certificate of Sale which was registered on October 16, 1979. The certificate stated that the redemption period expires two (2) years from the registration of the sale. No notice of the extrajudicial foreclosure was given to the **Spouses Tarnate**.
- On September 23, 1981, the **Spouses Tarnate** offered to redeem the foreclosed lots and tendered the redemption amount of P77,737.45. However, **Ibaan Rural Bank** refused the redemption on the ground that it had consolidated its titles over the lots. The Provincial Sheriff also denied the redemption on the ground that the **Spouses Tarnate** did not appear on the title to be the owners of the lots.
- **Spouses Tarnate** filed a complaint to compel the bank to allow their redemption of the foreclosed lots.
    - The extra-judicial foreclosure was null and void for lack of valid notice and demand upon them.
    - They were entitled to redeem the foreclosed lots because they offered to redeem and tendered the redemption price before October 16, 1981, the deadline of the *2-year* redemption period.
- **Ibaan Rural Bank** opposed the redemption.
    - There was no need of personal notice to them because under Section 3 of Act 3135, only the posting of notice of sale at three public places of the municipality where the properties are located was required.
    - At the time they offered to redeem on September 23, 1981, the right to redeem had prescribed, as more than *one year* had elapsed from the registration of the Certificate of Sale on October 16, 1979.
- TC ruled in favor of the **Spouses Tarnate** awarding moral damages and attorney's fees. CA affirmed with modification deleting the award for moral damages and reducing the award for attorney's fees.

ISSUES & ARGUMENTS

W/N the Spouses Tarnate could still redeem the land as they tendered the redemption within two years.

1. **W/N the CA may award attorney's fees solely on the basis of the refusal of the bank to allow redemption.**

HOLDING & RATIO DECIDENDI

Yes. The Spouses Tarnate could still redeem the land as they tendered the redemption within two years.

- Although there was no voluntary agreement between the parties and the sheriff unilaterally and arbitrarily extended the period of redemption to two years, the **bank** may not oppose the redemption as for two years, it did not object to the two-year redemption period provided in the certificate. Thus, it could be said that **Ibaan Rural Bank** consented to the two-year redemption period specially since it had time to object and did not. When circumstances imply a duty to speak on the part of the person for whom an obligation is proposed, his silence can be construed as consent. By its silence and inaction, **Ibaan Rural Bank** misled the **Spouses Tarnate** to believe that they had two years within which to redeem the mortgage. After the lapse of two years, **Ibaan Rural Bank** is estopped from asserting that the period for redemption was only one year and that the period had already lapsed.
- Moreover, the rule on redemption is liberally interpreted in favor of the original owner of a property.

No. The CA may not award attorney's fees solely on the basis of the refusal of the bank to allow redemption.

- The award of attorney's fees must be disallowed for lack of legal basis.
- Attorney's fees cannot be recovered as part of damages because of the public policy that no premium should be placed on the right to litigate.
- The award of attorney's fees must be deleted where the award of moral and exemplary damages are eliminated.

449 Compania Maritima Inc. vs. CA

FACTS

- Petitioner engaged the services of Atty. Consulta for 3 cases against Genstar Container Corporation (the 2nd case technically is not a case against the said company for it was against the sheriff of the RTC).
- Atty. Consulta billed them P100,000, P50,000, and P3M respectively for the said cases.
- Petitioner only paid P10,000, P30,000, and none respectively though.
- Said Atty. Consulta filed for the recovery of said balance, plus damages, and Attys. Fees.
- Petitioner alleged that the Attorney's fees was unlawful.

ISSUES & ARGUMENTS

W/N the said fees were unlawful?

HOLDING & RATIO DECIDENDI

No

- There are two concepts of Atty's fees in the jurisdiction. What is involved here is the Atty's fees in the ordinary sense. **It is the reasonable compensation given to a lawyer for the legal services he has rendered.**
- Generally, the said fees are based on stipulation, but in its absence the amount is fixed on *Quantum Meruit* meaning the reasonable worth of his service.
- In the said case, the amount awarded was reasonable even though the cases were dismissed or based on compromise. We should take into account the value of the property involved which amounted to around P51M. Not only this, the court found that the pleadings were well researched given the complexity of the cases, and to this, a compromise took effect whereas both parties agreed to dismiss the said case.

Almeda vs. Carino | **MENDOZA**, J
G.R. No. 152143, January 13, 2003| 395 SCRA 144

FACTS

- Ponciano L. Almeda and Avelino G. Cariño, predecessors-in-interest of petitioners and respondents, entered into two agreements to sell, one covering eight titled propertiesand another three untitled properties all of which are located in Biñan, Laguna.
- The agreed price of the eight titled properties was P1,743,800.00, 20% of which was to be paid upon signing of the agreement and the balance to be paid in four equal semi-annual installments, beginning six months from the signing thereof, with the balance earning 12% interest per annum.
- On April 3, 1982, Cariño and Almeda executed an amendment to their agreements to sell extending the deadline for the production of the titles to the untitled properties from March 31, 1982 to June 30, 1982
- Before the end of April 1982, Almeda asked Cariño for the execution of a Deed of Absolute Sale over the eight titled properties although they had not been fully paid.
- Cariño granted the request and executed on May 3, 1982 the deed of sale over the eight titled lots in favor of Almeda, Inc. On April 30, 1982, Almeda executed an undertaking to pay Cariño the balance of the purchase price.
- Cariño made demands for the full and final payment of the balance due him but since these were unheeded, a complaint was filed against Almeda and Almeda, Inc., in whose name the titles to the properties had been transferred.
- Almeda and Almeda, Inc. contended that the purchase price, including interest charges, of the eight titled properties had been fully paid as of April 3, 1982. With respect to the three untitled lots, they contended that the purchase price been fully paid except for the 3rd lot which had a remaining balance of P167,522.70.
- RTC of Biñan, Laguna found the claim of Cariño to be well founded and gave judgment in his favor
- Without questioning the amount of judgment debt for which they were held liable, Ponciano Almeda and Almeda, Inc. appealed to the Court of Appeals for a modification of judgment, contending that the lower court erred in awarding nominal damages and attorney's fees in favor of Cariño and imposing a 12% annual interest on the judgment debt from the time of demand on March 9, 1983 until it was fully paid.
- They maintained that they were not guilty of any unfair treatment or reckless and malevolent actions so as to justify an award of nominal damages. They claimed that they refused to pay the remaining balance because the proceeds of certain harvests from the lands in question and liquidated damages were also due them.
- As for the award of attorney's fees, they contended that there was no finding that they acted in gross and evident bad faith in refusing to satisfy Cariño's demand so as to justify its award under Art. 2208 (5) of the Civil Code, because they had acted on the basis of what they honestly believed to be correct as their residual obligations.
- During the pendency of the case, Almeda died and he was substituted by his heirs.
- The Court of Appeals affirmed the decision of the lower court. It held that the award of nominal damages was justified by the unjust refusal of Almeda and Almeda, Inc. to settle and pay the balance of the purchase price in violation of the rights of Cariño. The award of attorney's fees was also affirmed, it being shown that Cariño was forced to litigate to protect his interests.
- Petitioners do not dispute the amount of the outstanding balance on the purchase price of the lots. Petitioners only seek a modification of the decision of the appeals court insofar as it upheld the trial court's award of nominal damages, attorney's fees, and 12% interest.

ISSUES & ARGUMENTS

- **W/N the CA erred when it awarded nominal damages and atty's fees**

HOLDING & RATIO DECIDENDI

NO.

Indeed, nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right

Petitioners have an unpaid balance on the purchase price of lots sold to them by respondents. Their refusal to pay the remaining balance of the purchase price despite repeated demands, even after they had sold the properties to third parties, undoubtedly constitutes a violation of respondents' right

Nor is there any basis for petitioners' claim that the appellate court erred in awarding attorney's fees in favor of respondents. Under the Civil Code, attorney's fees and litigation expenses can be recovered in cases where the court deems it just and equitable. Thus, there is no reason to set aside the order of the trial court, as affirmed by the appeals court, granting to respondents attorney's fees in the amount of P15,000.00.

Further, the case has dragged on for more than a decade. While the records reveal that respondents engaged the services of two lawyers, petitioners had a total of sixteen counsels starting from January 24, 1984 up to December 22, 1997. Of the sixteen, one lawyer served for more than 2 years, another for 8 days only, and still another entered his appearance and withdrew it only to re-enter his appearance after some time. The records show that most of the lawyers who entered their appearances either filed only motions to cancel hearings or motions for postponements, claiming to have misplaced the calendar of court hearings or to be staying abroad.

These unduly delayed the disposition of the case in violation of the right of respondents to claim what is rightfully due them. This fact further justifies the award of nominal damages and supports the grant of attorney's fees.

TIN DINO

451. Concept Placement Resources, Inc. vs. Funk | Sandoval-Gutierrez, J.
G.R. No. 137680, February 6, 2004 | 422 SCRA 317

FACTS

- On June 25, 1994, Concept Placement Resources, Inc., petitioner, engaged the legal services of Atty. Richard V. Funk, respondent.
- On July 1, 1994, the parties executed a retainer contract wherein they agreed that respondent will be paid regular retainer fee for various legal services, **except litigation**, quasi-judicial and administrative proceedings and similar actions. In these services, there will be separate billings.
- Meanwhile, one Isidro A. Felosopo filed with the Philippine Overseas Employment Administration (POEA) a complaint for illegal dismissal against petitioner, docketed as POEA Case No. 94-08-2370. Petitioner referred this labor case to respondent for legal action.
- Immediately, respondent, as counsel for petitioner, filed with the POEA its answer with counterclaim for ₱30,000.00 as damages and ₱60,000.00 as attorney's fees.
- On March 1, 1995, while the labor case was still pending, petitioner terminated its retainer agreement with respondent. Nevertheless, respondent continued handling the case.
- On October 30, 1995, the POEA rendered a Decision dismissing Felosopo's complaint with prejudice. The POEA, however, failed to rule on petitioner's counterclaim for damages and attorney's fees. Thereafter, the Decision became final and executory.
- On December 8, 1995, respondent advised petitioner of the POEA's favorable Decision and requested payment of his attorney's fees.
- In reply, petitioner rejected respondent's request for the following reasons: (1) the retainer agreement was terminated as early as March 1995; (2) there is no separate agreement for the handling of the labor case; and (3) the POEA did not rule on petitioner's counterclaim for attorney's fees. This prompted respondent to file with the Metropolitan Trial Court (MTC), Branch 67, Makati City a complaint for sum of money (attorney's fees) and damages against petitioner, docketed as Civil Case No. 51552.
- During the pre-trial on September 3, 1996, the MTC, upon respondent's motion, declared petitioner as in default. Its motion for reconsideration was denied in an Order dated September 13, 1996. Forthwith, respondent was allowed to present his evidence *ex-parte*.
- On October 27, 1996, the MTC rendered a Decision[2] ordering petitioner to pay respondent ₱50,000.00 as attorney's fees.
- On appeal, the Regional Trial Court (RTC), Branch 137, Makati City, reversed the MTC Decision, holding *inter alia* that since the MTC, in the same Decision, did not resolve petitioner's counterclaim for attorney's fees, which constitutes *res judicata*, respondent is not entitled thereto.
- Respondent filed a motion for reconsideration but was denied by the RTC in an Order[3] dated December 29, 1997.
- Thus, respondent filed with the Court of Appeals a petition for review ascribing to the RTC the following errors: (1) in reversing the MTC Decision on the ground of *res judicata*; and (2) in disregarding the compulsory counterclaim as basis for respondent's action for attorney's fees.
- In due course, the Court of Appeals promulgated its Decision[4] dated February 18, 1999 reversing the assailed RTC Decision and affirming the MTC Decision, thereby sustaining the award to respondent of his attorney's fees in the amount of ₱50,000.00.

ISSUES & ARGUMENTS

W/N respondent is entitled to attorney's fees for assisting petitioner as counsel in the labor case.

HOLDING & RATIO DECIDENDI

While it is true that the retainer contract between the parties expired during the pendency of the said labor case, it does not follow that petitioner has no more obligation to pay respondent his attorney's fees. The Court of Appeals found that petitioner engaged the legal services of respondent and agreed to pay him accordingly, thus:

> "Anent the first issue, the Petitioner resolutely avers that he and the Private Respondent had agreed on the latter paying him the amount of ₱60,000.00 by way of attorney's fees for his professional services as its counsel in POEA Case No. 94-08-2370 the Petitioner relying on his '*Retainer Agreement*' in tandem with the '*Compulsory Counterclaim*' of the Private Respondent to the complaint of Isidro Felosopo.
>
> "We agree with the Petitioner's pose. It bears stressing that the '*Retainer Agreement*' of the Petitioner and the Private Respondent (Exhibit 'A') envisaged two (2) species of professional services of the Petitioner, namely, those professional services covered by the regular retainer fee and those covered by separate billings. Petitioner's services not covered by the regular retainer fee and, hence, subject to separate billing include:
>
> > 'x x x
> > 5. *Services not covered by the regular retainer fee and therefore, subject to separate billing:*
> > a) litigation, quasi-judicial proceedings, administrative investigation, and similar proceedings legal in nature;
> > x x x'
>
> "x x x While admittedly, the Petitioner and the Private Respondent did not execute a written agreement on Petitioner's fees in said case apart from the '*Retainer Agreement*', however, the Private Respondent did categorically and unequivocally admit in its '*Compulsory Counterclaim*' embodied in its Answer to the Complaint, in POEA Case No. 94-08-2370, that it engaged the services of the Petitioner as its counsel 'For a fee in the amount of ₱60,000.00, Etc.':
>
> '*COMPULSORY COUNTERCLAIM*

> 1. *Respondent reproduces herein by reference all the material allegations in the foregoing Answer.*
> 2. *As shown by the allegation in the Answer the complaint is factually and legally unfounded. To defend itself against this baseless suit, respondent suffered and continues to suffer actual damage in the amount of ₱30,000.00 and was compelled to hire the services of counsel for a fee in the amount of ₱60,000.00 plus ₱1,500.00 honorarium per appearance and litigation expenses in the amount of not less than ₱10,000.00 plus cost of*
> 3. *suit*." (Exhibit 'B-1': underscoring supplied)

Significantly, in *German Marine Agencies, Inc. vs. NLRC*,[8] we held that there must always be a factual basis for the award of attorney's fees. Here, since petitioner agreed to be represented by respondent as counsel in the labor case and to pay him his attorney's fees, it must abide with its agreement which has the force of law between them.[9]

We observe, however, that respondent did not encounter difficulty in representing petitioner. The complaint against it was dismissed with prejudice. All that respondent did was to prepare the answer with counterclaim and possibly petitioner's position paper. Considering respondent's limited legal services and the case involved is not complicated, the award of ₱50,000.00 as attorney's fees is a bit excessive. In *First Metro Investment Corporation vs. Este del Sol Mountain Reserve, Inc.*,[10] we ruled that courts are empowered to reduce the amount of attorney's fees if the same is iniquitous or unconscionable. Under the circumstances obtaining in this case, we consider the amount of ₱20,000.00 reasonable.

452. Cortes vs. Court of Appeals | Austria-Martinez
G.R. No. 121772, January 13, 2003, 395 SCRA 33

FACTS

- F.S. Management and Development Corporation (FSMDC) filed a case for specific performance against spouses Edmundo and Elnora Cortes involving the sale of the parcel of land owned by the said spouses.
- Spouses Cortes retained the professional services of Atty. Felix Moya for the purpose of representing them in said case. However, they did not agree on the amount of compensation for the services to be rendered by Atty. Moya.
- Before a full-blown trial could be had, defendant spouses Cortes and plaintiff FSMDC decided to enter into a compromise agreement.
- Petitioner spouses Cortes received from FSMDC, three checks totaling P2,754,340 which represents the remaining balance of the purchase price of the subject land.
- Atty. Moya filed an "Urgent Motion to Fix Attorney's Fees" praying that he be paid a sum equivalent to 35% of the amount received by the defendants, which the latter opposed for being excessive.
- The Cortes spouses and Atty. Moya settled their differences by agreeing in open court that the former will pay the latter the amount of P100,000 as his attorney's fees.
- The trial court issued an order that the parties agreed that the Cortes spouses would *pay P100,000 out of any check paid by FSMDC to them.*
- Cortes spouses terminated the services of Atty. Moya and retained the services of another lawyer.
- Atty. Moya filed a "Motion for Early Resolution of Pending Incidents and to Order Defendants to Pay Their Previous Counsel."
- The trial court issued an order directing the petitioners to pay Atty. Moya P100,000 as attorney's fees.

ISSUES & ARGUMENTS

W/N the amount of P100,000 awarded to Atty. Moya as attorney's fees is reasonable?

HOLDING & RATIO DECIDENDI

NO. THE REASONABLENESS OF THE AMOUNT OF ATTORNEY'S FEES SHOULD BE GAUGED ON THE BASIS OF THE LONG-STANDING RULE OF *QUANTUM MERUIT*.

- Quantum meruit means "as much as he deserves."
- Where a lawyer is employed without agreement as to the amount to be paid for his services, the courts shall fix the amount on quantum meruit basis.
- In such case, he would be entitled to receive what he merits of his services.
- Sec. 24, Rule 138 of the Rules of Court provides:
    - Sec 24. Compensation of attorneys – An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. xxx"
- Rule 20.1, Canon 20 of the Code of Professional Responsibility serves as a guideline in fixing a reasonable compensation for services rendered by a lawyer on the basis of quantum meruit:
    - Time spent and extent of services rendered;
    - Novelty and difficulty of the questions involved;
    - Importance of subject matter;
    - Skill demanded;
    - Probability of losing other employment as a result of acceptance of the proffered case;
    - Customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;
    - Amount involved in the controversy and the benefits resulting to the client from the services;
    - Contingency or certainty of compensation;
    - Character of employment, whether occasional or established;
    - Professional standing of lawyer.
- Aside from invoking his professional standing, Atty. Moya claims that he was the one responsible in forging the initial compromise agreement with FSMDC. The fact remains, however, that such agreement was not consummated because the checks given by FSMDC were all dishonored. Hence, it was not him who was responsible in bringing into fruition the *subsequent* compromise agreement between petitioners and FSMDC.
- Nonetheless, it is undisputed that Atty. Moya has rendered services as counsel for the petitioners. He prepared petitioners' Answer and Pre-trial brief, appeared at the Pre-trial conference, attended a hearing, cross-examined a witness, and was present in the conference between the parties. All of which were rendered during 1990-1991, where the value of the peso was higher.
- Thus, the sum of P100,000 as attorney's fees is disproportionate to the services rendered by him.
- The amount of P50,000 is just and reasonable.
- Imposition of legal interest on amount payable is unwarranted because contracts for attorney's services are different from contracts for the payment of compensation for any other services.

FRANCIS ESPIRITU

453. Smith Kline Beckman v. Court of Appeals | Carpio-Morales
G.R. No. 126627 August 14, 2003|

FACTS

- In 1976, Petitioner Smith Kline applied for a patent over an invention entitled "Methods and Compositions for Producing Biphasic Parasiticide Activity Using Methyl 5 Propylthio-2-Benzimidazole Carbamate" and such patent was granted. The invented medicine is used in fighting infections caused by gastrointestinal parasites and lungworms in animals such as swine, sheep, cattle, goats, horses, and even pet animals.
- Private Respondent Tryco Pharma is a domestic corporation that manufactures, distributes and sells veterinary products including Impregon, a drug that has Albendazole for its active ingredient and is claimed to be effective against gastro-intestinal roundworms, lungworms, tapeworms and fluke infestation in carabaos, cattle and goats.
- Petitioner then sued respondent for unfair competition saying that Impregon infringes on their patent. As a result, an injunction was issued against respondent for it to stop selling Impregon to stop its acts of patent infringement and unfair competition. Respondent filed a counterclaim for actual damages and attorney's fees.
- RTC ruled in favor of respondent, awarding damages and attorney's fees to respondent. CA affirmed.

ISSUES & ARGUMENTS

- **Issue 1: IP-related, not important in our discussion.**
- **Issue 2: W/N the award of actual damages and attorney's fees are proper.**

HOLDING & RATIO DECIDENDI

NO, THE AWARD FOR BOTH ACTUAL DAMAGES AND ATTORNEY'S FEES ARE NOT PROPER.

- The claimed actual damages of ₱330,000.00 representing lost profits or revenues incurred by respondent as a result of the issuance of the injunction against it, computed at the rate of 30% of its alleged ₱100,000.00 monthly gross sales for eleven months, were supported by the testimonies of respondent's President and Executive Vice-President that the average monthly sale of Impregon was ₱100,000.00 and that sales plummeted to zero after the issuance of the injunction. While indemnification for actual or compensatory damages covers not only the loss suffered (*damnum emergens)* but also profits which the obligee failed to obtain (*lucrum cessans* or *ganacias frustradas*), it is necessary to prove the actual amount of damages with a reasonable degree of certainty based on competent proof and on the best evidence obtainable by the injured party. The testimonies of respondent's officers are not the competent proof or best evidence obtainable to establish its right to actual or compensatory damages for such damages also require presentation of documentary evidence to substantiate a claim therefor.
- In the same vein, the SC did not sustain the grant by the appellate court of attorney's fees to private respondent anchored on Article 2208 (2) of the Civil Code, respondent having been allegedly forced to litigate as a result of petitioner's suit. Even if a claimant is compelled to litigate with third persons or to incur expenses to protect its rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause. There exists no evidence on record indicating that petitioner was moved by malice in suing respondent.
- This Court, however, grants private respondent temperate or moderate damages in the amount of ₱20,000.00 which it finds reasonable under the circumstances, it having suffered some pecuniary loss the amount of which cannot, from the nature of the case, be established with certainty.

JOHN. FADRIGO

454. Reyes vs. CA| Ynares - Santiago
G.R. No. 154448. August 15, 2003| 409 SCRA 267

FACTS

- In 1989, Leong Hup Poultry Farms of Malaysia thru its director Francis Lau, appointed Pedrito Reyes (reyes) as Technical/Sales Manager w/ a net salary of $4,500.
- In 1992, the company formed Phil Malay Poultry Breeders (PhilMalay) and appointed Reyes as General Manager w/ monthly salary of $5,500.
- In 1996-97, the company experienced losses and retrenched some of its employees. Reyes gave a verbal notice then a letter expressing his intention to resign and requesting that he be granted the same benefits as the retrenched employees.
- In 1998, PhilMalay retrenched Reyes and promised to pay him separation benefits pursuant to the Labor Code.
- But he was offered separation pay equivalent only to 4 months which he refused.
- Reyes filed the NLRC a complaint for non-payment of benefits.
- The Labor Arbiter ruled in his favour and granted him: unpaid salary, underpayment of salary, 13th month pay, unused vacation and sick leaves, separation pay, brand new car, office rentals, life insurance policy, services of a lawfirm, moral damages, exemplary damages, and attorney's fees.
- The NLRC modified the decision by deleting the unpaid salary, vacation and sick leaves, separation pay, moral damages, exemplary damages, and attorney's fees.
- CA dismissed the petition due to failure to attach documents to the petition.

ISSUES & ARGUMENTS

W/N NLRC properly deleted the monetary awards?

HOLDING & RATIO DECIDENDI

YES, with respect to:

- Unpaid Salary – no proof Reyes worked during those times.
- Moral/Exemplary Damages – no basis, respondents not shown to have acted in bad faith.
- Car and life insurance – only granted during the employment of the employee.
- Rental – contractual obligation, not based of EER therefore not within the jurisdiction of the Labor Arbiter. Regular courts have jurisdiction.
- Reimbursement for the services of a law firm – no proof that the services of a law firm was needed and that he spent 200K as a consequence.

NO, with respect to vacation / sick leave and Attorney's Fees.

- 2 concepts of Atty's Fees:
  - Ordinary – reasonable compensation paid to a lawyer by his client for the legal services. The basis is the fact of his employment.
  - Extraordinary – indemnity for damages ordered by the court to be paid by the losing party in a litigation. The instances where these may be awarded are enumerated in par 7 of Art 2208 of the Civil Code which pertains to actions for recovery of wages, NOT payable to the lawyer but to the client.
- Although an express finding of facts and law is still necessary to prove the merit of the award, there need not be any showing that the employer acted maliciously or in bad faith when it withheld the wages. There need only be a showing that the lawful wages were not paid accordingly, as in this case.
- Petitioner is entitled to attorney's fees equivalent to 10% of his total monetary award.

PAT FERNANDEZ

455. Malaysian Airline System Bernand V. CA
G.R. 78015 December 11, 1987

FACTS

The petitioner recruited the private respondent from Philippine Airlines for his training and experience and contracted his services as pilot for two years, beginning 1979. On April 12, 1981, when the plane he was driving landed at Bintulo Airport, all the tires burst, causing alarm among the passengers but, fortunately, no injuries. An investigation was conducted pending which he was preventively suspended. On May 5, 1981, he was offered and accepted an extension of his contract for another year, subject to the expressed condition that he would submit to the jurisdiction of Malaysian courts in an matters relating to the contract. Ultimately, however, he was found negligent by the investigating board and dismissed by the petitioner, effective July 30, 1981.

The private respondent sought relief from the Malaysian courts but to no avail. He then brought suit in the regional trial court of Manila where the petitioner moved to dismiss for lack of jurisdiction and improper venue. The order of the trial court denying its motion was affirmed by the Court of Appeals and later by this Court. The case then proceeded to trial on the merits. After hearing, it was held that the private respondent was not guilty of negligence and that the accident was due not to his violation of the MAS manual of instructions but to a defect in the rigging of the brake control valve and the failure of the ground crew to properly maintain the aircraft. The court also found that the petitioner had acted in bad faith in inveigling the private respondent into signing the renewal of the contract submitting himself to the jurisdiction of the Malaysian courts and that his dismissal was prompted by a letter-complaint signed by Filipino and Indonesian pilots, including himself, protesting their discrimination in pay and benefits by MAS. The trial court required the petitioner to pay as follows:

1. The amount of $300,000 Malaysian dollars representing plaintiffs' salary and flight type and P100,000.00 for uprooting his family to Manila plus the further sum of P200,000.00 representing renewal of his license;
2. The amount of P3,000,000.00 as moral damages;
3. The amount of Pl,000,000.00 as exemplary damages;
4. The amount equivalent to 25% of the amount due and collectible as attorney's fees, and cost of suit.

ISSUES & ARGUMENTS

Whether or not the amounts of damages awarded were excessive?

HOLDING & RATIO DECIDENDI

Yes.

We affirm the factual findings of the respondent court and the lower court, there being no sufficient showing that the said courts committed reversible error in reaching such conclusions.

We cannot agree, however, with the award of damages, which seems to have gotten out of hand. The inordinate amount granted to the private respondent cans for the moderating hand of the Court, that justice may be tempered with reason instead of being tainted with what appears here to be a ruthless vindictiveness.

The complaint prayed for payment of unpaid salaries from July 1981 to July 1982 which corresponds to the periods of the renewed contract. **15** On the basis of his monthly salary of Malaysian $4,025.00, **16** or P33,568.50 (at the current Central Bank conversion rate of P8.34 for every Malaysian $1.00), Ms total unearned salaries will be P402,822.00. To this should be added the amount of P123,098.40 as allowance for the same period of one year at the rate of $1,230.00 per month **17** plus P80,000.00, representing his expenses in transferring his family to the Philippines, **18** amounting to an aggregate sum of P605,920.40 in actual damages. The moral and exemplary damages, while concededly due, are reduced to P500,000.00 and the attorney's fees to the fixed sum of P25,000.00. All the other awards are disauthorized.

It is important to reiterate the following observations we made in Baranda v. Baranda:

> We deal with one final matter that should be cause for serious concern as it has a direct relevance to the faith of our people in the administration of justice in this country. It is noted with disapproval that the respondent court awarded the total indemnity of P120,000.00, including attorney's fees and litigation expenses that were double the amounts claimed and exemplary damages which were not even prayed for by the private respondents. Such improvident generosity is likely to raise eyebrows, if not outright challenge to the motives of some of our courts, and should therefore be scrupulously avoided at all times, in the interest of maintaining popular confidence in the judiciary. We therefore caution against a similar recklessness in the future and call on an members of the bench to take proper heed of this admonition.

The respondent court affirmed the original award of damages in the staggering amount of more than P8,000,000.00. It is only fair that it be lowered to a realistic and judicious level that will, in our view, be just to both the petitioner and the private respondent.

WHEREFORE, the petition is DENIED and the challenged decision, as above modified, is affirmed. It is so ordered.

J.C. LERIT

456 Far East Bank and Trust Co. v. CA | Vitug
G.R. No. 108164 February 23, 1995 | 241 SCRA 671

FACTS

- In October 1986 Luis Luna applied for a FAREASTCARD with Fart East Bank. A supplemental card was also issued to his wife, Clarita
- On August 1988, Clarita lost her card and promptly informed the bank of its loss for which she submitted an Affidavit of Loss. The bank recorded this loss and gave the credit card account a status of "Hot Card" and/or "Cancelled Card." Such record holds also for the principal card holder until such time that the lost card was replaced.
- On October 1988, Luis Luna used his card to purchase a despidida lunch for hi friend in the Bahia Rooftop Restaurant. His card was dishonored in the restaurant and he was forced to pay in cash, amounting to almost P600.00. He felt embarrassed by this incident.
- He then complained to Far East Bank and he found out that his account has been cancelled without informing him. Bank security policy is to tag the card as hostile when it is reported lost, however, the bank failed to inform him and an overzealous employee failed to consider that it was the cardholder himself presenting the credit card.
- The bank sent an apology letter to Mr. Luna and to the Manager of the Bahia Rooftop Restaurant to assure that Mr Luna was a very valuable client.
- Spouses Luna still felt aggrieved and thus filed this case for damages against Far East Bank.
- Far East Bank was adjudged to pay the following: (a) P300,000.00 moral damages; (b) P50,000.00 exemplary damages; and (c) P20,000.00 attorney's fees.

ISSUES & ARGUMENTS

- **W/N Far East Bank is liable for damages to the Spouses Luna amounting the above-mentioned figures?**
    - **Petitioner-Appellant:** Far East contends that the amounts to be paid to the spouses are excessive. They argue that they should not be paying moral damages because there was no bad faith on their part in breaching their contract.
    - **Respondent-Appellee:** Mr. Luna contends that he was embarrassed by the situation which was caused by the bank's failure to inform him of the cancellation of his card. thus, he is entitled to damages.

HOLDING & RATIO DECIDENDI

SPOUSES LUNA ARE ENTITLED ONLY TO NOMINAL DAMAGES BUT NOT MORAL AND EXEMPLARY DAMAGES.

- Moral damages are awarded if the defendant is to be shown to have acted in bad faith. Article 2219 states that, "Moral damages may be recovered in the following and analogous cases: (1) A criminal offense resulting in physical injuries; (2) Quasi-delicts causing physical injuries;
- It is true that the bank was remiss in indeed neglecting to personally inform Luis of his own card's cancellation. Nothing however, can sufficiently indicate any deliberate intent on the part of the Bank to cause harm to private respondents. Neither could the bank's negligence in failing to give personal notice to Luis be considered so gross as to amount to malice or bad faith.
- Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with furtive design or ill will.

- Nominal damages were awarded because of the simple fact that the bank failed to notify Mr. Luna, thus entitle him to recover a measure of damages sanctioned under Article 2221 of the Civil Code providing thusly:
    - Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

457. Bricktown Development Corp et al vs. Amor Tierra Devt Corporation | Vitug G.R. No. 112182 December 12, 1994| 239 SCRA 126

FACTS

- **Bricktown**, through its President, Mariano Velarde, entered into a CONTRACT TO SELL residential lots at Multinational Village, Parañaque (covering 82, 888 sq.m., amounting to P21, 639,875.00) to **Amor Tierra** .
- **PAYMENT SCHEME:**
  - Mar 31 1981: DP of P2.2 M
  - June 30: P3,209,968.75
  - December 31: P4,729,906.25
  - Balance of 11.5 M by paying mortgage to PSBank or pay it in cash.
- Subsequently, the parties executed a **Supplemental Agreement:** where Amor Tierra will pay 21% interest on the balance of the DP and pay P390, 369.37 for the interest paid by Bricktown to update bank loan with PS Bank for the period of Feb-Mar 1981.
- Amor Tierra was only able to pay 1.334M, however the parties continued to negotiate despite suspension of further payments by Amor Tierra.
- Later, Bricktown sent a Notice of Cancellation for failure to pay the June 30 installment by Amor; Bricktown advised the latter that non-payment 30D from receipt id the notice will result to the actual cancellation of K to Sell.
- Months later, instead of paying, Amor demanded a refund of the total payments of 2.455M + interest or an assignment of unencumbered residential lots corresponding to the amount already paid. Unheeded, Amore filed suit against Bricktown.
- RTC: K to Sell and Supplemental Agreement are rescinded; return payments of Amor with 12% from judicial demand/the time complaint was filed; atty's fees of 25K to Amor.
- CA: affirmed RTC.

ISSUES & ARGUMENTS

1. W/N the contracts to sell were validly rescinded or cancelled by Bricktown (TORTS RELATED) W/N the amounts already remitted by Amor Tierra under said contracts were rightly forfeited by Bricktown

HOLDING & RATIO DECIDENDI

VALIDLY RESCINDED K to SELL

- The cancellation of the contracts to sell by Bricktown accords with the contractual covenants of the parties, and such cancellation must be respected. It may be noteworthy to add that in a contract to sell, the non-payment of the purchase price (which is normally the condition for the final sale) can prevent the obligation to convey title from acquiring any obligatory force.

NO. FORFEITURE BY BRICKTOWN IS UNCONSCIONABLE however, interest payment must be counted from finality of judgment (not from judicial demand)

- While we must conclude that Bricktown still acted within its legal right to declare the contracts to sell rescinded, considering, nevertheless, the peculiar circumstances**: of the parties continued negotiation despite Amor's suspension of payments**, it would be unconscionable to sanction the forfeiture by petitioner corporation of payments made to it by private respondent.
- The relationship between parties in any contract must always be characterized and punctuated by good faith and fair dealing. Judging from what the courts below have said, Bricktown did fall well behind that standard. **We do not find it equitable, however, to adjudge any interest payment by Bricktown on the amount to be refunded, to be computed from judicial demand.**
  - **BECAUSE: Amor Tierra should not be allowed to totally free itself from its own breach.**

Simply put: *The SC held that forfeiture was unconscionable because the Bricktown lead Amor Tierra to believe that there will be a new arrangement as a result of their continued negotiation. On the other hand, since Amor Tierra even barely covered to pay the complete DP, thus committing a breach of the K to Sell, the interest on the refund was mitigated/reduced by its imposition ONLY from the finality of the judgment of rescission of K to Sell, and not from the time of judicial demand of the refund.*

WHEREFORE, the appealed decision is AFFIRMED insofar as it declares valid the cancellation of the contracts in question but MODIFIED by ordering the refund by petitioner corporation of P1,334,443.21 with 12% interest per annum to commence only, however, from the date of finality of this decision until such refund is effected.

DIANE LIPANA

458. International School v. CA | Gonzaga-Reyes
G.R. No. 131109 June 29, 1999| 309 SCRA 474

FACTS

- The son of Spouses Torralba died in the custody of International School Manila (ISM). The courts awarded the following amount in damages to the spouses: 1) Moral Damages – P4M; 2) Exemplary Damages – P1M; 3) Actual Damages – P2M, and 4) Attorney's fees – P300K.
- ISM appealed to the Court of Appeals. During the pendency of the appeal, the spouses Torralba filed a motion for execution pending appeal before the lower court on the grounds that the appeal is merely dilatory and that the filing of a bond is another good reason for the execution of a judgment pending appeal. The lower court granted the execution pending upon the posting of a bond in the amount of Five Million Pesos (P5,000,000.00) by the spouses Torralba.
- The court then issued a Notice of Garnishment to Citibank (which was Citibank). Citibank complied and held that P5.5M. The court then ordered the release of this amount in favor of the spouses Torralba.
- ISM then filed a motion for reconsideration or approval of supersedeas bond so that the amount cannot be turned over to the spouses.

ISSUES & ARGUMENTS

W/N the grant of the writ of execution was valid.

- **Petitioner:** IS claims that there is no good reason to grant the writ of executing, citing Ong v. CA, saying that the reason given is that the appeal is frivolous and dilatory is not a reason to justify the approval of an execution pending appeal.
- **Respondent:** The spouses argue that ISM virtually admitted that the appeal appears to be dilatory and that it adopted the project "Code Red: consisting of safety and emergency measure only after the death of their son, and that the delay has already affected them financially.

HOLDING & RATIO DECIDENDI

THE WRIT OF EXECUTION IS NOT VALID. THE MERE FILING OF A BONG BY THE DEFENDANT IS NOT A GOOD REASON FOR ORDERING EXECUTION PENDING APPEAL.

- A combination of circumstances is the dominant consideration which impels the grant of immediate execution, the requirement of a bond is imposed merely as an additional factor, no doubt for the protection of the defendant's creditor. Since we have already ruled that the reason that an appeal is dilatory does not justify execution pending appeal, neither does the filing of a bond, without anything more, justify the same. Moreover, ISM could not be faulted for its withdrawal of its supersedeas bond inasmuch as the lower court granted the execution pending appeal and rejected its offer of supersedeas bond.
- *Radio Communications of the Philippines*, *Inc.* (*RCPI*) *vs. Lantin*, *et al.*; The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Unlike the actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of errors on appeal. It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the Supreme Court, the awards may be reduced.

459. Teodoro Banas et. al., vs. Asia Pacific Finance |Bellosillo
G.R. No. 128703, October 18, 2000 | 343 SCRA 527

FACTS

- Sometime in August 1980, Bañas executed a Promissory Note in favor of C. G. Dizon Construction whereby for value received he promised to pay to the order of C. G. Dizon Construction the sum of P390,000.00 in installments of "P32,500.00 every 25th day of the month starting from September 25, 1980 up to August 25, 1981"
- Later, C. G. Dizon Construction endorsed with recourse the Promissory Note to Asia Pacific Finance Corporation (Asia Pacific), and to secure its payment, it, through its corporate officers, Dizon, President, executed a Deed of Chattel Mortgage covering three (3) heavy equipment units of Caterpillar Bulldozer Crawler Tractors in favor of Asia Pacific. Dizon also executed a Continuing Undertaking wherein he bound himself to pay the obligation jointly and severally with C. G. Dizon Construction
- In compliance with the provisions of the Promissory Note, C. G. Dizon Construction made the installment payments to Asia Pacific totaling P130,000, but thereafter defaulted in the payment of the remaining installments, prompting Asia Pacific to send a Statement of Account to Dizon for the unpaid balance. As the demand was unheeded, Asia Pacific sued Bañas, C. G. Dizon Construction and Dizon
- While they admitted the genuineness and due execution of the Promissory Note, the Deed of Chattel Mortgage and the Continuing Undertaking, they nevertheless maintained that these documents were never intended by the parties to be legal, valid and binding but a mere subterfuge to conceal the loan with usurious interests and claimed that since Asia Pacific could not directly engage in banking business, it proposed to them a scheme wherein it could extend a loan to them without violating banking laws
- The RTC issued writ of replevin against C. G. Dizon Construction for the surrender of the bulldozer crawler tractors subject of the Deed of Chattel Mortgage, which of the 3, only 2 were actually turned over and were subsequently foreclosed by Asia Pacific to satisfy the obligation
- The RTC ruled in favor of Asia Pacific holding them to pay jointly and severally the unpaid balance
- On appeal, the CA affirmed in toto the decision

ISSUES & ARGUMENTS

W/N they can be held liable under the said documents

HOLDING & RATIO DECIDENDI

THEY CAN BE HELD LIABLE UNDER THE SAID DOCUMENTS BUT THE COURT MITIGATED THE AMOUNT OF DAMAGES AS IT WAS SHOWN THAT THERE WAS A PARTIAL COMPLIANCE ON THEIR PART

- Indubitably, what is prohibited by law is for investment companies to lend funds obtained from the public through receipts of deposit, which is a function of banking institutions. But here, the funds supposedly "lent" to petitioners have not been shown to have been obtained from the public by way of deposits, hence, the inapplicability of banking laws
- On their submission that the true intention of the parties was to enter into a contract of loan, the Court examined the Promissory Note and failed to discern anything therein that would support such theory. On the contrary, the terms and conditions of the instrument clear, free from any ambiguity, and expressive of the real intent and agreement of the parties. Likewise, the Deed of Chattel Mortgage and Continuing Undertaking were duly acknowledged before a notary public and, as such, have in their favor the presumption of regularity. To contradict them there must be clear, convincing and more than merely preponderant evidence. In the instant case, the records do not show even a preponderance of evidence in their favor that the Deed of Chattel Mortgage and Continuing Undertaking were never intended by the parties to be legal, valid and binding
- With regard to the computation of their liability, the records show that they actually paid a total sum of P130,000.00 in addition to the P180,000.00 proceeds realized from the sale of the bulldozer crawler tractors at public auction. Deducting these amounts from the principal obligation of P390,000.00 leaves a balance of P80,000.00, to which must be added P7,637.50 accrued interests and charges, or a total unpaid balance of P87,637.50 for which they are jointly and severally liable. Furthermore, the unpaid balance should earn 14% interest per annum as stipulated in the Promissory Note, computed from 20 March 1981 until fully paid
- On the amount of attorney's fees which under the Promissory Note is equivalent to 25% of the principal obligation and interests due, it is not, strictly speaking, the attorney's fees recoverable as between the attorney and his client regulated by the Rules of Court. Rather, the attorney's fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause. It has been said that so long as such stipulation does not contravene the law, morals and public order, it is strictly binding upon the obligor
- Nevertheless, it appears that their failure to fully comply with their part of the bargain was not motivated by ill will or malice, but due to financial distress occasioned by legitimate business reverses. They in fact paid a total of P130,000.00 in 3 installments, and even went to the extent of voluntarily turning over to Asia Pacific their heavy equipment consisting of 2 bulldozer crawler tractors, all in a bona fide effort to settle their indebtedness in full. Article 1229 of the New Civil Code specifically empowers the judge to equitably reduce the civil penalty when the principal obligation has been partly or irregularly complied with. Upon the foregoing premise, the Court held that the reduction of the attorney's fees from 25% to 15% of the unpaid principal plus interests is in order

- Finally, while the Court empathizes with them, it cannot close its eyes to the overriding considerations of the law on obligations and contracts which must be upheld and honored at all times. They have undoubtedly benefited from the transaction; they cannot now be allowed to impugn its validity and legality to escape the fulfillment of a valid and binding obligation

Judgment AFFIRMED.

KATH MATIBAG

460. Development Bank of the Philippines v. CA| Mendoza, J.
G.R. No. 137557. October 30, 2000
Mitigation of Damages

FACTS

- Petitioner DBP is the owner of a parcel of land in Bulacan which it sold to spouses Dela Pena under a Deed of Conditional Sale for 207,000. The spouses constructed a house on the said lot and began living there. They also introduced other improvements by planting fruit trees and building a small garage. After making several payments amounting to P289, 600, they went to petitioner DBP and asked for the execution of a Deed of Absolute Sale and for the issuance of the title to the property However, respondent spouses De La Peña were informed by DBP through a letter that there was still a balance of ₱221,86.85. The parties failed to reach an agreement, respondent spouses filed a complaint against petitioner on January 30, 1990 for specific performance and damages with injunction before the Regional Trial Court, Valenzuela.
- The trial court ruled in favor of Petitioner DBP and ordered the private respondents to pay the remaining balance under the deed, plus interest, penalty, ddditional interest and interest on advances. The amount to be paid amounted to P233,361.50, which is more than the principla obligation of P207,000.

ISSUES & ARGUMENTS

W/N the interest charges are excessive

HOLDING & RATIO DECIDENDI

The interests are excessive.
It is noteworthy that the interests paid by private respondents, which amounted to P233,361.50,including therein the regular interest, additional interest, penalty charges, and interest on advances, is more than the principal obligation in the amount of P207,000.00, which private respondents owed. Moreover, the additional interest of 18% alone amounted to ₱106,853.45, which is almost half of what was already paid by private respondents.
Article 1229 of the Civil Code states that "Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable." In *Barons Marketing Corp. v. Court of Appeals*, the Court reduced the 25% penalty charge to cover the attorney's fees and collection fees, which was in addition to the 12% annual interest, to 10% for being manifestly exorbitant. Likewise, in *Palmares v. Court of Appeals,* Court eliminated altogether the payment of the penalty charge of 3% per month for being excessive and unwarranted under the circumstances.
In the instant case, private respondents made regular payments to petitioner DBP in compliance with their principal obligation. They failed only to pay on the dates stipulated in the contract. This indicates the absence of bad faith on the part of private respondents and their willingness to comply with the terms of the contract. Moreover, of their principal obligation in the amount of ₱207,000.00, private respondents have already paid ₱289,600.00 in favor of petitioner. These circumstances taken together leads to the necessity to equitably reduce the interest due to petitioner and we do so by reducing to 10% the additional interest of 18% per annum computed on total amortizations past due. The penalty charge of 8% per annum is sufficient to cover whatever else damages petitioner may have incurred due to private respondents' delay in paying the amortizations, such as attorney's fees and litigation expenses.

NINA MEIJA

461. CBTC vs. CA| Carpio
G.R. No. 138569, September 11, 2003 |

FACTS

- L.C. Diaz & Company, CPA's, a private accounting firm, through its cashier Macaraya, filled up 2 savings deposit slips and asked Calapre to deposit the same in Solidbank. Calapre was also given the passbook.
- Teller No. 6 acknowledged the deposit slips by returning to Calapre the duplicate copies. However, since Calapre had to make another deposit with Allied Bank, he left the passbook with Solidbank.
- Upon returning to retrieve the passbook, Teller No. 6 informed him that somebody had gotten it but she could not remember to whom she gave the passbook, only saying that it was someone shorter than Calapre.
- The following day, L.C. Diaz called up Solidbank requesting to stop any transaction using the same passbook until L.C. Diaz could open a new account. It also formally wrote Solidbank with the same request.
- On that same day, however, it also discovered the unauthorized withdrawal the day before of P300,000 from its savings account. The withdrawal slip bore the signatures of its authorized signatories, Diaz and Murillo, but the two denied having signed the same. A certain Noel Tamayo was said to have received the money.
- L.C. Diaz then filed a complaint for recovery of a sum of money against Solidbank with the RTC, which dismissed the complaint. The CA reversed, and, upon motion for reconsideration, modified its decision by deleting the award for exemplary damages and attorney's fees. Hence, this petition.

ISSUES & ARGUMENTS

W/N the CA erred in not mitigating the damages awarded under Article 2197 of the Civil Code, notwithstanding its finding that the bank's negligence was only contributory.

HOLDING & RATIO DECIDENDI

AWARD OF ACTUAL DAMAGES MITIGATED. SOLIDBANK LIABLE FOR 60%, L.C. DIAZ LIABLE FOR 40%.

- The trial court believed that L.C. Diaz's negligence in not securing its passbook under lock and key was the proximate cause that allowed the impostor to withdraw the P300,000. For the appellate court, the proximate cause was the teller's negligence in processing the withdrawal without first verifying with L.C. Diaz. We do not agree with either court.
- L.C. Diaz was not at fault that the passbook landed in the hands of the impostor. Solidbank was in possession of the passbook while it was processing the deposit. After completion of the transaction, Solidbank had the contractual obligation to return the passbook only to Calapre, the authorized representative of L.C. Diaz.
- Solidbank's failure to return the passbook to Calapre made possible the withdrawal of the P300,000 by the impostor who took possession of the passbook. Thus, under the doctrines of proximate cause and last clear chance, Solidbank should be held liable for the unauthorized withdrawal.
- Nevertheless, the mitigation of damages is proper in this case. Under Article 1172, "liability (for culpa contractual) may be regulated by the courts, according to the circumstances." This means that if the defendant exercised the proper diligence in the selection and supervision of its employee, or if the plaintiff was guilty of contributory negligence, then the courts may reduce the award of damages.
- In this case, L.C. Diaz was guilty of contributory negligence in allowing a withdrawal slip signed by its authorized signatories to fall into the hands of an impostor. Thus, the liability of Solidbank should be reduced.

CA AFFIRMED WITH MODIFICIATION.

CHRISSIE MORAL

462. Manchester Development vs Court of Appeals | Gancayco
G.R. No. 75919, May 7, 1987149 SCRA 562|

FACTS

- The present case is an action for torts and damages and specific performance with prayer for temporary restraining order, etc. The prayer is for the issuance of a writ of preliminary prohibitory injunction during the pendency of the action against the defendants' announced forfeiture of the sum of P3 Million paid by the plaintiffs for the property in question, to attach such property of defendants that maybe sufficient to satisfy any judgment that maybe rendered, and after hearing, to order defendants to execute a contract of purchase and sale of the subject property and annul defendants' illegal forfeiture of the money of plaintiff, ordering defendants jointly and severally to pay plaintiff actual, compensatory and exemplary damages as well as 25% of said amounts as maybe proved during the trial as attorney's fees and declaring the tender of payment of the purchase price of plaintiff valid and producing the effect of payment and to make the injunction permanent. The amount of damages sought is not specified in the prayer although the body of the complaint alleges the total amount of over P78 Million as damages suffered by plaintiff.
- The docket fee paid upon filing of complaint in the amount only of P410.00 by considering the action to be merely one for specific performance where the amount involved is not capable of pecuniary estimation is obviously erroneous. Although the total amount of damages sought is not stated in the prayer of the complaint yet it is spelled out in the body of the complaint totalling in the amount of P78,750,000.00 which should be the basis of assessment of the filing fee.
- When this under-re assessment of the filing fee in this case was brought to the attention of this Court together with similar other cases an investigation was immediately ordered by the Court. Meanwhile plaintiff through another counsel with leave of court filed an amended complaint for the inclusion of Philips Wire and Cable Corporation as co-plaintiff and by emanating any mention of the amount of damages in the body of the complaint. The prayer in the original complaint was maintained. After this Court issued an order on October 15, 1985 ordering the re-assessment of the docket fee in the present case and other cases that were investigated, on November 12, 1985 the trial court directed plaintiffs to rectify the amended complaint by stating the amounts which they are asking for. It was only then that plaintiffs specified the amount of damages in the body of the complaint in the reduced amount of P10,000,000.00. Still no amount of damages were specified in the prayer. Said amended complaint was admitted.

ISSUES & ARGUMENTS

W/N the filing fee should be based on the amount of damages although the same is not found in the prayer of the complaint?

HOLDING & RATIO DECIDENDI

ALTHOUGH THERE WAS NO SPECIFIC STATEMENT AS TO THE AMOUNT OF DAMAGES IN THE PRAYER OF THE COMPLAINT, THE DOCKET FEE SHOULD BE BASED ON THE ALLEGED TOTAL AMOUNT OF DAMAGES FOUND IN THE BODY OF THE COMPLAINT.

- The docketing fee should be assessed by considering the amount of damages as alleged in the original complaint. The Court of Appeals therefore, aptly ruled in the present case that the basis of assessment of the docket fee should be the amount of damages sought in the original complaint and not in the amended complaint.
- The Court cannot close this case without making the observation that it frowns at the practice of counsel who filed the original complaint in this case of omitting any specification of the amount of damages in the prayer although the amount of over P78 million is alleged in the body of the complaint. This is clearly intended for no other purpose than to evade the payment of the correct filing fees if not to mislead the docket clerk in the assessment of the filing fee. This fraudulent practice was compounded when, even as this Court had taken cognizance of the anomaly and ordered an investigation, petitioner through another counsel filed an amended complaint, deleting all mention of the amount of damages being asked for in the body of the complaint. It was only when in obedience to the order of this Court of October 18, 1985, the trial court directed that the amount of damages be specified in the amended complaint, that petitioners' counsel wrote the damages sought in the much reduced amount of P10,000,000.00 in the body of the complaint but not in the prayer thereof. The design to avoid payment of the required docket fee is obvious. The Court serves warning that it will take drastic action upon a repetition of this unethical practice.
- To put a stop to this irregularity, henceforth all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not bib accepted nor admitted, or shall otherwise be expunged from the record.

Petition denied for lack of Merit. Decision of the Court of Appeals Affirmed.

463 Davao Light v. Dinopol| Fernan
GR. No. 75195 August 29, 1988

FACTS

- On July 31, 1984, rivate respondent Abundio T. Merced doing business under the name and style of southern Engineering Works, filed an action in the trial court for damages with preliminary mandatory injunction against petitioner Davao Light and Power Co., Inc., for abruptly disconnecting his electric meter as a result of which he suffered moral damages, loss of business and credit standing, and loss of profits.
- On Dec. 11, 1985 and Jan. 27, 1986, petitioner filed a motion and supplemental motion, respectively, to require private respondent to pay additional docket fees on his qualified claims for damages. On Feb. 14, 1986, respondent Judge Dinopol denied two motions to require private respondent to pay additional docket fees. Upon motion for reconsideration, four months had elapsed without respondent judge resolving the same.
- Hence, this petition

ISSUES & ARGUMENTS

- **(1) WON the respondent judge committed grave abuse of discretion. (2) WON Abundio Merced should be awarded damages.**

HOLDING & RATIO DECIDENDI

Yes.

When respondent judge refused to order the re-assessment, he committed grave abuse of discretion. He acted in contravention of Rule 11 of the Interim Rules of court which was laready in effect when the complaint for damages was brought before his sala. Such actuation calls for the corrective writ of certiorari.

No.
Merced should specify the amount of damages being sought, not only in the body of the pleading but also in the prayer, or his action will be dismissed.

464. Sun Insurance vs. Asuncion | Gancayco, J.:
G.R. No. 79937, February 13, 1999 | 170 SCRA 274

FACTS

- Sun Insurance filed a complaint with the RTC for the consignation of a premium refund on a fire insurance policy with a prayer for the judicial declaration of its nullity against respondent Manuel Tiong.
- Respondent, on the other hand, filed a complaint in the RTC fro refund of premiums, writ of preliminary attachment & sought the payment of actual, compensatory, moral, exemplary & liquidated damages, attorney's fees, expenses of litigation & costs of suit against petitioner
- In the body of the original complaint, the total amount of damages sought amounted to about P50M
- In the prayer, the amount of damages asked for was not stated
- The action was for the refund of the premium and the issuance of a writ of preliminary attachment with damages
- The amount of only P210 was paid for the docket fee
- Respondent filed an amended complaint wherein in the prayer, it is asked that he be awarded no less than P10M as actual & exemplary damages but in the body of the complaint the amount of his pecuniary claim is approximately P44.6M.
- Such amended complaint was admitted & the respondent was re-assessed the additional docket fee of P39,786 based on his prayer of not less than P10M in damages, which he paid
- Subsequently, respondent filed a supplemental complaint alleging an additional claim of P20M in damages, making a total claim of P64.6M
- He then paid an additional docket fee of P80K
- The lower court ordered respondent to be re-assessed for additional docket fee & during the pendency of this case and after promulgation of the Manchester decision, respondent field an addition docket fee of P62K
- Though he appears to have paid a total amount of P182K for the docket fee, considering the total amount of his claim in the amended and supplemental complaint (amounting to about P64.6M), petitioner insists that respondent must pay a docket fee of P257.8K

ISSUES & ARGUMENTS

W/N a court acquires jurisdiction over a case when the correct and proper docket fee has not been paid

HOLDING & RATIO DECIDENDI

- The pattern and the intent to defraud the gov't of the docket fee due it is obvious not only in the filing of the original complaint but also in the filing of the 2nd amended complaint
- However, in this case, a more liberal interpretation of the rules is called for because unlike in Manchester, respondent demonstrated his willingness to abide by the rules by paying the additional docket fees as required
- Nevertheless, petitioner contends that the docket fee that was paid is still insufficient considering the total amount of the claim
- This is a matter which the clerk of court of the lower court and/or his duly authorized docket clerk or clerk in charge should determine and if any amount is thereafter found to be due, he must require the respondent to pay such amount
- Thus the SC rules as follows:
- It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a TC with jurisdiction over the subject matter/nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in not case beyond the applicable prescriptive or reglementary period
- The same rule applies to permissive counterclaims, third-party claims, and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefore is paid.
  - The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive/reglementary period
- Where the TC acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee, but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefore shall constitute a lien on the judgment.
  - It shall be the responsibility of the clerk of court or his duly authorized deputy to enforce aid lien and assess and collect the additional fee

Petition is dismissed for lack of merit

CEO OCAMPO

465. Ng Soon v. Hon. Alday, Billie Gan, China Banking Corporation | Melencio-Herrera
G.R. No.85879 September 29, 1989 | 178 SCRA 221

FACTS

- During his lifetime, Mr. Gan Bun Yaw opened a Savings Account in China Banking Corporation (CBC) wherein he deposited P900,000 more or less.
- Before his death, he lapsed into a coma until he finally died. His passbook still showed a deposit of P900,000 more or less.
- Petitioner Ng Soon claims to be the widow of Yaw. She looked for the deposit passbook to no avail. She discovered that CBC closed the savings account and that defendant Billie Gan connived and colluded with the officers of CBC to withdraw all the savings account of Yaw by forging his signature.
- Petitioner's complaint alleges that she suffered actual damages in the form of missing money in the savings account and expenses of litigation, moral damages and exemplary damages, the amount of which she leaves to the discretion of the court, and attorney's fees equivalent to 20%.
- For the filing of the complaint, petitioner paid P3,600 as docket fees. Respondent moved to expunge the complaint from the record for the alleged non-payment of the required docket fees. TC issued an order granting the motion to expunge complaint.

ISSUES & ARGUMENTS

W/N TC incorrectly applied the doctrine in the case of Manchester v. CA.
W/N TC acted with grave abuse of discretion in ordering the complaint expunged from the record although petitioner had paid the necessary filing fees.

HOLDING & RATIO DECIDENDI

YES. Complaint reinstated.

- Manchester laid down the rule that all complaints should specify the amount of damages prayed for not only in the body of the complaint but also in the prayer; that said damages shall be considered in the assessment of the filing fees; and that any pleading that fails to comply with such requirement shall not be accepted nor admitted, or shall, otherwise, be expunged from the record.
- While the body of the complaint was silent as to the exact amount of moral and exemplary damages and attorney's fees, the prayer did specify the amount of not less than P50,000 as moral and exemplary damages, and not less than P50,000 as attorney's fees. These amounts are definite enough and enabled the clerk of court to compute the docket fees payable.
- Also, the principal amount sought to be recovered as missing money was fixed at P900,000. The failure to state the rate of interest demanded was not fatal not only because it is the courts which ultimately fix the same, but also because Rule 141, Section 5(a) of the Rules of Court speaks of "the sum claimed, exclusive of interest." This clearly implies that the specification of the interest rate is not that indispensable. Furthermore, the amounts claimed need not be initially stated with mathematical precision. The same rule allows an appraisal "more or less." In other words, a final determination is still to be made by the court, and the fees ultimately found to be payable will either be additionally paid or refunded to the party concerned.
- The pattern in Manchester to defraud the government of the docket fees due is patently absent in this case. Petitioner demonstrated her willingness to abide by the Rules by paying the assessed docket fees of P3,600. She also asked the court to inform her of the deficiency, if any.
- Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive period.

Petition granted. Lower Court orders are set aside. Civil case reinstated for determination and proper disposition of the respective claims and rights of the parties.

TIN OCAMPO-TAN

466. Tacay vs RTC of Tagum |
GR Nos. 88075-77 | December 20, 1989

FACTS

- These were 2 separate cases originally filed by Godofredo Pineda at the RTC of Tagum for recovery of possession (acciones publiciana) against 3 defendants, namely: Antonia Noel, Ponciano Panes, and Maximo Tacay.
- Pineda was the owner of 790 sqm land evidenced by TCT No. T-46560. The previous owner of such land has allowed the 3 defendants to use or occupy the same by mere tolerance. Pineda, having himself the need to used the property, has demanded the defendants to vacate the property and pay reasonable rentals therefore, but such were refused.
- The complaint was challenged in the Motions to Dismiss filed by each defendant alleging that it did not specify the amounts of actual, nominal, and exemplary damages, nor the assessed value of the property, that being bars the determination of the RTC's jurisdiction in deciding the case.
- The Motions to Dismiss were denied but the claims for damages in the complaint were expunged for failure to specify the amounts. Thus, the defendants filed a Joint Petition for certiorari, mandamus, prohibition, and temporary restraining order against the RTC.

ISSUES & ARGUMENTS

Whether or not the amount of damages claimed and the assessed value of the property are relevant in the determination of the court's jurisdiction in a case for recovery of possession of property?

HOLDING &RATIO DECIDENDI

Determinative of the court's jurisdiction in a recovery of possession of property is the nature of the action (one of accion publicaina) and not the value of the property, it may be commenced and prosecuted without an accompanying claim for actual, nominal or exemplary damages and such action would fall within the exclusive original jurisdiction of the RTC. The court acquired jurisdiction upon the filing of the complaint and payment of the prescribed docket fees.

467. Ayala Corporations vs. Honorable Madayag |Gancayco
G.R. No. 88421, January 30, 1990 | 181 SCRA 687

FACTS

- Private respondents filed against petitioner an action for specific performance with damages in the RTC of Makati
- Ayala Corp, in turn, moved to dismiss the case on the basis of failure to pay prescribed docket fees and failure to specify amount exemplary damages claimed.
- RTC denied both motion and MR, hence this petition.

ISSUES & ARGUMENTS

W/N the lower court should dismiss the case

HOLDING & RATIO DECIDENDI

THE COURT SHOULD EITHER EXPUNGE THE CLAIM FOR EXEMPLARY DAMES OR GIVE TIME FOR RESPONDENTS TO AMEND THE COMPLAINT.

- Docket fees should be computed on the amount of damages stated in the complaint.
- According to *Sun Insurance vs. Judge Asuncion,* where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but not beyond prescriptive or reglementary period. Or if the claim is not specified in the pleading or is to be determined by the court then the filing fee would constitute as a lien of the judgment.
- However, in the case of *Tacay vs. RTC of Tagum,* the Court said that the phrase "awards of claims not specified in the pleading" refers only to "damages arising after the filing of the complaint or similar pleading." Thus, in the case at bar, there was a need to specify the amount of the exemplary damages claimed.
- As ruled in *Tacay* the trial court may either order said claim to be expunged from the record as it did not acquire jurisdiction over the same or on motion, it may allow, within a reasonable time, the amendment of the amended and supplemental complaint so as to state the precise amount of the exemplary damages sought and require the payment of the requisite fees therefore within the relevant prescriptive period.

468 General v. Claravall | Narvasa, J.
G.R. No. 96724 March 21, 1991 |

FACTS

- Benneth Thelmo filed with the Office of the Public Prosecutor of Rizal a sworn complaint accusing Honesto General and another person of libel, and alleged that by reason of the offense he (Thelmo) had suffered actual, moral and exemplary damages in the total sum of P100 million. The information for libel subsequently filed with the RTC at Pasig, after preliminary investigation, did not however contain any allegation respecting the damages due the offended party.
- At the trial, the defense raised the issue of non-payment of the docket fees corresponding to the claim of damages contained in Thelmo's sworn complaint before the fiscal, as a bar to Thelmo's pursuing his civil action therefor. The trial Court overruled the objection, by Order dated March 28, 1990. It also denied the defendants' motion for reconsideration and motion for suspension of proceedings, by another Order dated May 17, 1990.
- General and his co-accused are now before this Court applying for a writ of *certiorari* to annul the aforesaid Orders of the Trial Court on the theory that they had been rendered with grave abuse of discretion.

ISSUES & ARGUMENTS

- **W/N the filing fees should first be paid so that the civil liability arising from the offense will be deemed to have been impliedly instituted with the criminal action**

HOLDING & RATIO DECIDENDI

The were no errors on the challenged order.

Manchester laid down the doctrine the specific amounts of claims of damages must be alleged both in the body and the prayer of the complaint, and the filing fees corresponding thereto paid at the time of the filing of the complaint; that if these requisites were not fulfilled, jurisdiction could not be acquired by the trial court; and that amendment of the complaint could not "thereby vest jurisdiction upon the Court." *Sun Insurance* and *Tacay* affirmed the validity of the basic principle but reduced its stringency somewhat by providing that only those claims as to which the amounts were not specified would be refused acceptance or expunged and that, in any case, the defect was not necessarily fatal of irremediable as the plaintiff could on motion be granted a reasonable time within which to amend his complaint and pay the requisite filing fees, unless in the meantime the period of limitation of the right of action was completed.

The 1985 Rules on Criminal Procedure incorporated a new provision in light of this Court's Resolution of September 13, 1984 in Adm. Matter No. 83-6-389-0 requiring increased court filing fees effective October 1, 1984, which required the filing fees on all kinds of damages, first be paid to the clerk of court where the criminal action is filed

The purpose of the Resolution, according to the late Chief Justice Claudio Teehankee, was to discourage the "gimmick of libel complainants of using the fiscal's office to include in the criminal information their claim for astronomical damages in multiple millions of pesos without paying any filing fees. This was the same consideration that underlay the *Manchester* ruling: the fraudulent practice, manifested by counsel in omitting the amount of damages in the prayer. It was clearly intended for no other purpose than to evade the payment of the correct filing fees if not to mislead the docket clerk in the assessment of the filing fee.

The Court adopted further amendments to the 1985 Rules on Criminal Procedure, with effect on October 1, 1988. Among the provisions revised was Section 1, Rule 111 which stated that:

XXX

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate or exemplary damages, the filing fees for such civil action as provided in these Rules shall constitute a first lien on the judgment except in an award for actual damages.

In cases wherein the amount of damages, other than actual, is alleged in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial.

In any event, the Court now makes that intent plainer, and in the interests of clarity and certainty, categorically declares for the guidance of all concerned that when a civil action is deemed impliedly instituted with the criminal in accordance with Section 1, Rule 111 of the Rules of Court—because the offended party has NOT waived the civil action, or reserved the right to institute it separately, or instituted the civil action prior to the criminal action—the rule is as follows:

1) when "the amount of damages, other than actual, is alleged in the complaint or information" filed in court, then "the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial;"

2) in any other case, however—*i.e.*, when the amount of damages is not so alleged in the complaint or information filed in court, the corresponding filing fees need not be paid and shall simply "constitute a first lien on the judgment, except in an award for actual damages.

VP PADILLA

469. Original Development and Construction v. CA | Paras.
G.R. No. 94677, October 15, 1991 |

FACTS

- Original Development (ODECOR) filed a case against Home Insurance Guaranty Corp (HIGC) National Home Mortgage Finance Corp (NHMFC) Caloocan City Public School Teachers Association (CCPSTA) for breach of contract and damages
- ODECOR built a housing project for CCPSTA under sponsorship of HIGC, there was delay of payment by HIGC and refused to allow ODECOR to build smaller lots requiring it to go through NHMFC for clearance.
- ODECOR's project was financed by its president personally in order to save it from collapse as HIGC refused to pay.
- Despite damands NHMFC paid only 5.366M to ODECOR in 5 years causing unnecessary expenses to ODECOR. ODECOR has been unpaid by HIGC NHMFC of 2.272M which represents loan take out proceeds
- ODECOR asked RTC to make defendants pay, ODECOR paid filing fees in amount of 4,344.00 4,344.00 and 86.00 based on loan take out proceeds of 2.272M which is allegedly in possession of defendants, the rest prays for unspecified amount of damages(actual, consequential, exemplary and moral).HIGC filed motion to dismiss for non-payment, RTC denied ordering ODECOR to pay reassessed amount and in case unspecified claims are awarded in judgment filing fees constitute lien on judgment .ODECOR was heard by Clerk but deficiency could not be included because prayer for attorney's fees was not reiterated in prayer. Docket fees paid did not include amount of attorney's fees. COC moved to amend complaint, HIGC moved for reconsideration to dismiss or amend complaint. ODECOR amended complaint including all allegations plus attorney's fees of 25% of total monthly liability and expenses. HIGC filed petition for certiorari in CA after answer, joining of issues and pre-trial conference date set, questioning jurisdiction of RTC for failure to pay docket fees.
- CA ruled that RTC failed to acquire jurisdiction

ISSUES & ARGUMENTS

W/N Court acquires jurisdiction over case even if complaint does not specify amount of damages

HOLDING & RATIO DECIDENDI

ODECOR failed to allege with specificity denying RTC of jurisdiction

- ODECOR prayed for unspecified amounts of damages and 25% of attorney's fees "which will be proved at trial" there is not enough to support a proper assessment of docket fees. Plaintiff must ascertain sums he wants even if not exact amount.
- Rule is TC now allowed to allow payment of fee within a reasonable time and within prescriptive or reglamentary period.
- Petitioner did not manifest willingness to pay docket fees as seen in Sun Insurance case
- As to awards of claims not specified in the pleadings — this Court had already clarified that they refer only to damages arising after the filing of the complaint or similar pleading, to which the additional filing fee shall constitute a lien on the judgment. The amount of any claim for damages, therefore, arising on or before the filing of the complaint or any pleading, should be specified. The exception contemplated as to claims not specified or to claims although specified are left for the determination of the court is limited only to any damages that may arise after the filing of the complaint or similar pleading for then it will not be possible for the claimant to specify nor speculate as to the amount thereof

470. Phil. Pryce Assurance Corp. vs. CA and Gegroco, Inc., February 21, 1994

FACTS

Petitioner, Interworld Assurance Corporation (now the Philippine Pryce Assurance Corporation), was the butt of the complaint for collection of sum of money, filed by respondent Gegroco, Inc. The complaint alleged that petitioner issued two surety bonds in behalf of its principal Sagum General Merchandise.

Petitioner then filed a "Motion with Leave to Admit Third-Party Complaint" with the Third-Party Complaint attached. The trial court admitted the Third Party Complaint and ordered service of summons on third party defendants.

The case was set for pre-trial conference several times but Pryce was absent each time. Thus, Pryce was declared in default.

Gegroco, Inc. then presented evidence ex parte and the trial court ruled that Pryce was liable to Gegroco, Inc. This ruling was affirmed by the Court of Appeals.

Pryce, meanwhile, claims that the case should not have been set for pre-trial because there was a 3rd-party complaint.

ISSUE

Whether or not the 3rd party complaint is a mere scrap of paper for failure to pay docket fees?

RULING

YES The court of Appeals properly considered the third-party complaint as a mere scrap of paper due to petitioner's failure to pay the requisite docket fees.

Note that: *A third-party complaint is one of the pleadings for which Clerks of court of Regional Trial Courts are mandated to collect docket fees pursuant to Section 5, Rule 141 of the Rules of Court. The record is bereft of any showing that the appellant paid the corresponding docket fees on its third-party complaint. Unless and until the corresponding docket fees are paid, the trial court would not acquire jurisdiction over the third-party complaint (Manchester Development Corporation vs. Court of Appeals, 149 SCRA 562). The third-party complaint was thus reduced to a mere scrap of paper not worthy of the trial court's attention. Hence, the trial court can and correctly set the case for pre-trial on the basis of the complaint, the answer and the answer to the counterclaim.*

In Sun Insurance vs. Asuncion, the following rules were laid down:

1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time, but in no case beyond the applicable prescriptive or reglamentary period.

2. The same rule applies to permissive counterclaims, *third-party claims* and similar pleadings, *which shall not be considered filed until and unless the filing fee prescribed therefor is paid.* The court may also allow payment of said fee within a prescriptive or reglementary period.

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee, but subsequently, the judgment awards a claim nor specified in the pleading, or if specified the same has not been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the clerk of court or his duly authorized deputy to enforce said lien and assess and collect the additional
fee.

It should be remembered that both in Manchester and Sun Insurance plaintiffs therein paid docket fees upon filing of their respective pleadings, although the amount tendered were found to be insufficient considering the amounts of the reliefs sought in their complaints.

In the present case, petitioner did not and never attempted to pay the requisite docket fee. Neither is there any showing that petitioner even manifested to be given time to pay the requisite docket fee, as in fact it was not present during the scheduled pre-trial on December 1, 1988 and then again on February 1, 1989. Perforce, it is as if the third-party complaint was never filed.

471. Kaw vs. Anunciacion | Medoza
ADM MTJ-93-811, March 1, 1996 | 242 SCRA 1

FACTS

- Pending before the Sala of Judge Anunciacion was an ejectment case filed by Italy Marketing Corporation (IMC) against George Kaw. IMC was the new owner of the building where Kaw was renting a space for his store.
- The Summons with a copy of the complaint was served on Kaw on May 9, 1990 requiring him to file his answer within a non-extendible period of 10 days. Kaw asked for a 15 day extension on May 18 as he still had not engaged counsel and another 10 day extension on June 1 to file the answer.
- The judge did not act on the motions and ordered Kaw to vacate the premises and to pay monthly rental of P1500 until he vacates.
- The Kaws received the decision on June 7 and were served a writ of execution the following day.

ISSUES & ARGUMENTS

1. **W/N Judge was ignorant of the law by fixing monthly rental at P1500**
2. **W/N Judge was ignorant of the law by not acting on motions for extension**
3. **W/N Judge was ignorant of the law in ordering the execution**
4. **W/N Judge was ignorant of the law is designating a special deputy sheriff**
5. **W/N Sheriff was ignorant of the law in enforcing writ of execution**

HOLDING & RATIO DECIDENDI

No
- IMC had no way of determining how much rent to charge Kaw as they had no pre-existing lease contract and so they left it to the determination of the Judge. Also, it cannot be claimed that such was the amount set to evade payment of docket fees as the fee is a straight fee of P100

No
- Kaw was served the complaint with a warning the the 10 day period is non-extendible.

Yes
- The fact that the MeTC's decision in ejectment cases is immediately executory does not dispense with the requirement for notice of the motion for execution.

Yes
- The regular deputy sheriff was not shown to have been absent or on leave. The special deputy sheriff who was the deputy sheriff of the clerk or court could not be appointed special deputy sheriff unless the regular deputy sheriff is absent or on leave.

Yes
- The sheriff failed to comply with the requisite 3 to 5 day notice to vacate the premises. Also he levied on tools and implements used in the bakery which are exempt from execution.

472. Manuel vs. Alfeche, Jr.| Panganiban
G.R. No. 115683, July 26, 1996 | 259 SCRA 475

FACTS

- The City Prosecutor of Roxas City filed with the RTC and Information for libel against Celino (writer/author), Fajardo (editor-in-chief), Fernandez (associate editor), and Tia (assistant editor) of the regional newspaper "Panay News" for allegedly publishing an article entitled "Local Shabu Peddler Now a Millionaire."
- According to the Information, the said article stated that Delia Manuel was the "Shabu Queen" of Western Visayas, and has been raking in millions since she started peddling prohibited drugs, thereby (unjustly) besmirching her reputation, good name, and character as a private person and as a businesswoman.
- Thus, as a direct consequence of the publication, it was also alleged that Manuel suffered actual, moral, and exemplary damages in the amount of TEN MILLION PESOS.
- The respondent judge finding three of the accused guilty and acquitting the fourth. However, he dismissed the civil indemnity (by way of moral damages) for lack of jurisdiction, on the ground that Manuel did not pay the filing fees therefor. Hence this petition.

ISSUES & ARGUMENTS

W/N Manuel is entitled to recover damages through an independent civil action, and despite non-payment of filing fees.

- **Petitioner:** Under the New RoC, it is only when the amount of damages other than actual has been specified in the information that the filing fees is required to be paid upon filing, and that since in this case the amount of damages stated in the information partakes firstly of actual damages and is not entirely other than actual, there is no need to pay such fees upon filing.
- **Respondents:** The present petition is premature because there is a pending appeal of the conviction for libel before the CA, filed by respondents.

HOLDING & RATIO DECIDENDI

MANUEL NOT ENTITLED TO RECOVER DAMAGES UNDER AN INDEPENDENT CIVIL ACTION.

- The award of moral and exemplary damages by the trial court is inextricably linked and necessarily dependent upon the factual finding of basis therefore, i.e. the existence of the crime of libel. Since such fact is pending determination before the CA, this court cannot entertain the petition of Manuel, in order to avoid an absurd situation wherein the CA reverses the decision of the RTC but this court awards damages in favor of Manuel. Hence, Manuel should have brought the petition before the CA first.
- Petitioner's contention that Article 33 of the NCC allows an independent civil action for damages in cases of defamation, fraud, and physical injuries is misplaced. Here, the civil action had been actually instituted with the criminal prosecution, given that Manuel took an active part in the proceedings by presenting evidence and even filing a Petitioner's Memorandum. Hence, there can be no longer any independent civil action to speak of.
- Petitioner also cites the case of *General vs. Claraval*[28] to prove that there is no need to pay filing fees for moral and exemplary damages if the amounts for such claims are not specified in the Information. However, it must be noted that this ruling was intended to apply to a situation wherein either:
  c) the judgment awards a claim not specified in the pleading, or
  d) the complainant expressly claims moral, exemplary, temperate, and/or nomial damages but has not specified ANY amount at all, leaving it entirely to the trial court's discretion.
- In the present case, since Manuel claimed an amount of TEN MILLION PESOS as damages, the doctrine under *General* has been rendered inapplicable to her petition.

Petition DISMISSED.

CHRISSIE MORAL

[28] "The Manchester doctrine requiring payment of filing fees at the time of commencement of the action is applicable to impliedly instituted civil actions under Section 1, Rule 111 *only when the amount of damages, other than actual, is alleged in the complaint or information."*

473. Alday v. FGU Insurance Corp. | Gonzaga-Reyes
G.R. 138822, Jan. 23, 2001

FACTS

- FGU filed a complaint against Evangeline Alday alleging that the latter owed it P114,650.76 representing unliquidated cash advances, unremitted costs of premiums and other charges incurred by petitioner in the course of her work as an insurance agent for respondent. Petitioner answered and by way of counterclaim, asserted her right for the payment of P104,893.45, representing direct commissions, profit commissions and contingent bonuses earned.
- FGU filed a motion to dismiss Alday's counterclaim contending that the trial court never acquired jurisdiction over the same because of the non-payment of docket fees by petitioner. Petitioner asked the trial court to declare her counterclaim as exempt from payment of docket fees since it is compulsory and that respondent be declared in default for having failed to answer such counterclaim.
- The trial court grated FGU's motion. Petitioner's motion for reconsideration was subsequently denied. On appeal, the CA affirmed the RTC ruling.

ISSUES & ARGUMENTS

W/N petitioner's counterclaim is only permissive and requiring the payment of docket fees.

HOLDING & RATIO DECIDENDI

- Yes. A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.
- Tests that may be used in determining whether a counterclaim is compulsory or permissive, summarized as follows:
    - 1. Are the *issues of fact and law* raised by the claim and counterclaim largely the same?
    - 2. Would *res judicata* bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule?
    - 3. Will *substantially the same evidence* support or refute plaintiff's claim as well as defendant's counterclaim?
    - 4. Is there any *logical relation* between the claim and the counterclaim?
- Another test is the "compelling test of compulsoriness" which requires "a logical relationship between the claim and counterclaim, that is, where conducting separate trials of the respective claims of the parties would entail a substantial duplication of effort and time by the parties and the court."
- Petitioner's counterclaim for commissions, bonuses, and accumulated premium reserves is merely permissive. The evidence required to prove petitioner's claims differs from that needed to establish respondent's demands for the recovery of cash accountabilities from petitioner, such as cash advances and costs of premiums. The recovery of respondent's claims is not contingent or dependent upon establishing petitioner's counterclaim, such that conducting separate trials will not result in the substantial duplication of the time and effort of the court and the parties. This conclusion is further reinforced by petitioner's own admissions since she declared in her answer that respondent's cause of action, unlike her own, was not based upon the Special Agent's Contract. However, petitioner's claims for damages, allegedly suffered as a result of the filing by respondent of its complaint, are compulsory.

- *There is no need for petitioner to pay docket fees for her compulsory counterclaim. On the other hand, in order for the trial court to acquire jurisdiction over her permissive counterclaim, petitioner is bound to pay the prescribed docket fees*

- Although the payment of the prescribed docket fees is a jurisdictional requirement, its non-payment does not result in the automatic dismissal of the case provided the docket fees are paid within the applicable prescriptive or reglementary period. *Absent allegation and showing that petitioner has attempted to evade the payment of the proper docket fees for her permissive counterclaim, the trial court should have instead given petitioner a reasonable time, but in no case beyond the applicable prescriptive or reglementary period, to pay.*

AYEN QUA

474 Go v. Tong| Panganiban
G.R. No. 151942. November 27, 2003

FACTS

- Juana Tan Go purchased a cashier's check from the Far East Bank and Trust Company (FEBTC) Lavezares, Binondo Branch in the amount of P500,000.00, payable to Johnson Y. Tong.
- The check bore the words 'Final Payment/Quitclaim' after the name of payee to insure that Tong would honor his commitment that he would no longer ask for further payments for his interest in the 'informal business partnership' which he and she had earlier dissolved.
- Tong deposited it with the words 'Final Payment/Quitclaim' already erased, hence, it was not honored.
- Tong's counsel wrote the manager of FEBTC Lavezares Branch informing that the words 'Final Payment/Quitclaim' on the check had been 'inadvertently erased without being initialed by your bank or the purchaser thereof' and thus requesting that the check be replaced with another payable to 'Johnson Tong-Final Settlement/Quitclaim' with the same amount,
- FEBTC did not grant the request, hence, Tong filed a complaint against FEBTC and Juana and her husband Gregorio Go at the Manila RTC, for sum of money, damages, and attorney's fees, subject of the case at bar.
- The son of the spouses Go filed a criminal case against Tong for falsification of the check but the same was dismissed by the Prosecutor.
- Tong filed a supplemental complaint [to be included in his original complaint for collection of sum of money] to increase his claim for damages from 2.5 million to 55 million alleging that the spouses Go used their son to file a criminal case against him, causing him damage.
- Tong, however, had not been able to pay filing fees. The court allowed him to pay in a staggered basis. To first deposit P25,000.00 on or before December 15, 1999 and P20,000.00 every month thereafter until the full amount of docket fees is paid, and 'only then shall the deposits be considered as payment of docket fees

ISSUES & ARGUMENTS

W/N the court was correct in allowing Tong to pay his filing fees in a staggered basis, therefore, allowing the case to push through even without full payment of these docket fees.

HOLDING & RATIO DECIDENDI

YES. NON-PAYMENT OF DOCKET FEES DOES NO AUTOMATICALLY CAUSE THE DISMISSAL OF THE CASE.

- Generally, where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court cannot be vested with jurisdiction over the case. The court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
- Since the cause of action of Tong was supposed to prescribe in four (4) years he was allowed to pay; and he in fact paid the docket fee in a year's time. This period can be deemed unreasonable. Moreover, on his part there is no showing of any pattern or intent to defraud the government of the required docket fee.

475. Planters Products vs. Fertiphil Corp. |

FACTS

- Pres. Ferdinand Marcos issued Letter of Instruction No.1465. Pursuant to this, Fertiphil paid P10 per bag of fertilizer sold to the Fertilized and Pesticide Authority which in turn, remitted said amount to Planters Products Incorporated for its rehabilitation.
- A series of events triggered the Edsa Revolution which ultimately led to the ouster of President Marcos. Subsequently,Fertiphil filed an action against PPI to collect the amounts it was paid and for damages.
- RTC rendered the judgment in favor of Fertiphil and declared LOI 1465 unconstitutional
- PPI elevated the case to the CA on appeal (with Notice of Appeal filed before RTC)
- Fertiphil moved to dismiss the appeal alleging the PPI did not pay appellate docket fee within the period prescribed for taking an appeal in accordance with the 1997 Rules on Civil Procedure even if PPI filed its appeal in 1992
- The CA ruled that 1997 Rules on Civil Procedure should still be followed because it is intended to be applied to actions pending and undetermined at the time of its passage

ISSUES & ARGUMENTS

1. **Should the 1997 Rules on Civil Procedure be applied retrospectively?**
2. **Should PPI's appeal be dismissed due to non payment of appellate docket fees**

HOLDING & RATIO DECIDENDI

No to both.

- General Rule: Rules of Procedure apply to actions pending and undetermined at the time of their passage but this retrospective application only applies if no vested rights are impaired.
- The rules retrospective application will impair PPI's right to appeal because at the time they filed their appeal all that was necessary to perfect an appeal was to file a notice of appeal with the court that rendered the judgment 15 days from notice thereof.
- Failure to pay proper appelate docket fees will not automatically result in dismissal of an appeal. The dismissal would depend on the discretion of the court.

476. La Sallette College Represented by Its President, vs. Victor Pilotin *[G.R. No. 149227. December 11, 2003] PANGANIBAN*

FACTS

- Respondent herein, Pilotin is a student of the La Sallette College. When he tried to enrol for the second semester of 1993, he was denied re-enrolment, since the period for enrolment was already over.
- Pilotin then filed a complaint asking for the issuance of a writ of preliminary mandatory injunction to compel La Sallete to re-admit him. The trial court ruled for Pilotin. La Sallete received the decision on November 26,1998. It filed on the same date a Notice of Appeal. However, Pilotin moved for a reconsideration of such on the ground that La Sallete failed to pay the docket fees within the reglementary period.
- The trial court denied the motion for reconsideration. The CA then dismissed the appeal of La Salette for failure to pay the required docketing fee.

ISSUES & ARGUMENTS

Whether or not the appeal was seasonably filed by La Sallete?

HOLDING & RATIO DECIDENDI

No. The appeal was filed out of time.

- In order to perfect an appeal from a decision rendered by the RTC in the exercise of its original jurisdiction, the following requirements must be complied with.
    - First, within 15 days, a notice of appeal must be filed with the court that rendered the judgment or final order sought to be appealed;
    - Second, such notice must be served on the adverse party;
    - Third, within the same 15-day period, the full amount of appellate court docket and other legal fees must be paid to the clerk of the court that rendered the judgment or final order.

- The payment of docket fees is necessary to defray court expenses in the handling of cases. For this reason, and to secure a just and speedy disposition of every action and proceeding, the Rules on Civil Procedure mandates the payment of docket and other lawful fees within the prescribed period. Otherwise, the jurisdiction of the proper court to handle a case is adversely affected.

- In the present case, it was proven that the petitioners indeed did not fail the docket fees, and they have not shown any satisfactory reason to warrant the relaxation of the Rules.