Article 2. Effectivity of Laws

Tañada v. Tuvera

Facts: Invoking the people's right to be informed on matters of public concern, a right recognized in Section 6, Article IV of the 1973 Philippine Constitution, as well as the principle that laws to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated, petitioners seek a writ of mandamus to compel respondent public officials to publish, and/or cause the publication in the Official Gazette of various presidential decrees, letters of instructions, general orders, proclamations, executive orders, letter of implementation and administrative orders. The respondents, through the Solicitor General, would have this case dismissed outright on the ground that petitioners have no legal personality or standing to bring the instant petition. They contended that in the absence of any showing that petitioners are personally and directly affected or prejudiced by the alleged non-publication of the presidential issuances in question. The petitioners maintain that since the subject of the petition concerns a public right and its object is to compel the performance of a public duty, they need not show any specific interest for their petition to be given due course.

Issue: Whether or not publication under Article 2 is required for the presidential decrees to become valid and effective.

Ruling:

Yes.

This Court has ruled that publication in the Official Gazette is necessary in those cases where the legislation itself does not provide for its effectivity date-for then the date of publication is material for determining its date of effectivity, which is the fifteenth day following its publication-but not when the law itself provides for the date when it goes into effect. Considered in the light of other statutes applicable to the issue at hand, the conclusion is easily reached that said Article 2 does not preclude the requirement of publication in the Official Gazette, even if the law itself provides for the date of its effectivity.

The clear object of the above-quoted provision is to give the general public adequate notice of the various laws which are to regulate their actions and conduct as citizens. Without such notice and publication, there would be no basis for the application of the maxim *"ignorantia legis non excusat."* It would be the height of injustice to punish or otherwise burden a citizen for the transgression of a law of which he had no notice whatsoever, not even a constructive one. The publication of all presidential issuances "of a public nature" or "of general applicability" is mandated by law. Obviously, presidential decrees that provide for fines, forfeitures or penalties for their violation or otherwise impose a burden or. the people, such as tax and revenue measures, fall within this category. Other presidential issuances which apply only to particular persons or class of persons such as administrative and executive orders need not be published on the assumption that they have been circularized to all concerned. It is needless to add that the publication of presidential issuances "of a public nature" or "of general applicability" is a requirement of due process The Court therefore declares that presidential issuances of general application, which have not been published, shall have no force and effect.

De Roy vs. CA, 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 RTC rendered judgment finding petitioners guilty of gross negligence and awarding damages to private respondents. The CA affirmed the RTC's ruling in toto on August 17, 1987, thereafter, a copy of the CA decision 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. The Court found that CA correctly applied the rule laid down in Habaluyas Enterprises v. Japzon, that the fifteen-day period for appealing or for filing a motion for reconsideration cannot be extended.

The Court explained that petitioners' motion for extension of time was filed on September 9, 1987, more than a year after the expiration of the grace period on June 30, 1986. Hence, it is no longer within the coverage of the grace period.

Considering the length of time from the expiration of the grace period to the promulgation of the decision of the Court of

Appeals on August 25, 1987, petitioners cannot seek refuge in the ignorance of their counsel regarding said rule for their failure to file a motion for reconsideration within the reglementary period. Finally, the petitioners contend that the rule enunciated in the Habaluyas case should not be made to apply to the case at bar owing to the non-publication of the Habaluyas decision in the Official Gazette as of the time the subject decision of the Court of Appeals was promulgated.

Issue: WON the Habaluyas Case decision requires a prior publication in the Official Gazette to be effective

Ruling: NO, contrary to petitioners' view, there is no law requiring the publication of Supreme Court decisions in the Official Gazette before they can be binding and as a condition to their becoming effective. It is the bounden duty of counsel as lawyer in active law practice to keep abreast of decisions of the Supreme Court particularly where issues have been clarified, consistently reiterated, and published in the advance reports of Supreme Court decisions (G. R. s) and in such publications as the Supreme Court Reports Annotated (SCRA) and law journals. WHEREFORE, in view of the foregoing, the Court Resolved to DENY the instant petition for lack of merit.

People vs Que Po Lay 94 Phil 640

Subject Matter: Publication and effectivity
Summary: Que Po Lay was in possession of foreign exchange consisting of US dollars, US checks and US money orders but failed to sell the same to the Central Bank as required under Circular No. 20 (CN 20). Said circular was issued in 1949 but was published in the OG only in 1951 after the act or omission imputed to Que Po Lay. Que Po Lay appealed from the decision of the lower court finding him guilty of violating the circular in connection with Sec 34 of RA 265. WON Que Po Lay could be held liable under CN 20. The SC acquitted Que Po Lay.

Doctrines: As a rule, circulars and regulations which prescribes a penalty for its violation should be published before becoming effective, this, on the general principle and theory that before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties. In the present case, CN 20 was issued in 1949 but was not published until November

1951,or about 3 months after appellant's conviction of its violation. Appellant could not be held liable for its violation, for CN 20 was not binding at the time he was found to have failed to sell the foreign exchange in his possession.

Facts:

• In 1949, the Central Bank issued Circular No. 20 requiring persons in possession of foreign exchange to sell the same to the Central Bank.

• Appellant Que Po Lay was in possession of foreign exchange consisting of US dollars, US checks and US money orders amounting to about $7,000. However, he failed to sell the same to the Central Bank within one day following the receipt of such foreign exchange as required by Circular No. 20 (CN 20).

• CFI found him guilty of violating CN 20 in connection with sec. 34 of RA No. 265.

• Que Po Lay appealed and contended that: o CN 20 was not published in the Official Gazette prior to the act or omission imputed to Que Po Lay, consequently, the said circular had no force and effect. o CA 638 and Act 2930 both require said circular to be published in the Official Gazette, it being an order or notice of general applicability.

Issue: WON Que Po Lay can be penalized under CN 10 despite lack of publication. - NO

Ratio: NO – Que Po Lay cannot be penalized under CN 10. Que Po Lay was acquitted. ¬ Sec. 11 of the Revised Administrative Code provides that statutes passed by Congress shall, in the absence of special provision, take effect at the beginning of the 15th day after the completion of the publication of the statute in the Official Gazette. ¬ Article 2 of the new Civil Code (Republic Act 386) equally provides that laws shall take effect after 15 days following the completion of their publication in the Official Gazette, unless it is otherwise provided. o While CN 20 of the Central Bank is not a statute or law, it was however issued for the implementation of the law authorizing its issuance. It has the force and effect of law according to settled jurisprudence (US v. Molina).

¬ Moreover, as a rule, circulars and regulations which prescribes a penalty for its violation should be published before becoming effective, this, on the general principle and theory that before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties. o In the present case, although CN 20 of the Central Bank was issued in the year 1949, it was not published until November 1951, that is, about 3 months after appellant's conviction of its violation.

It is clear that said circular, particularly its penal provision, did not have any legal effect and bound no one until its publication in the Official Gazette or after November 1951. In other words, appellant could not be held liable for its violation, for CN 20 was not binding at the time he was found to have failed to sell the foreign exchange in his possession within one day following his taking possession thereof. We reverse the decision appealed from and acquit the appellant

NPC vs. Pinatubo Commercial, G.R. No. 176006, 26 March 2010

Internal rules or regulations of administrative agencies need not be published Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties. (National Power Corporation vs. Pinatubo Commercial, G.R. No. 176006, March 26, 2010)

x————x

Internal rules or regulations of administrative agencies need not be published

FACTS: Petitioner National Power Corporation (NPC) assails the RTC resolution denying its motion for reconsideration, finding two items of NPC Circular No. 99-75 unconstitutional. NPC Circular No. 99-75 set the guidelines in the "disposal of scrap aluminum conductor steelreinforced or ACSRs in order to decongest and maintain good housekeeping in NPC installations and to generate additional income for NPC." Items 3 and 3.1 of the circular provided for the qualification of its bidders. NPC published an invitation for the pre-qualification of bidders for the public sale of its scrap ACR cables. Respondent Pinatubo Commercial (Pinatubo) submitted a pre-qualification form to NPC, but was subsequently denied. Respondent Pinatubo filed a petition before the RTC for the annulment of NPC Circular No. 99-75 as it violated the due process and equal protection clauses of the constitution because it was not published. The RTC upheld Pinatubo's position and declared items 3 and 3.1 unconstitutional. Petitioner NPC insists that there was no need to publish the circular since it was not of general application. It was addressed only to particular persons or class of persons, namely the disposal committees, heads of offices, regional and all other officials involved in the disposition of ACSRs.

ISSUE: Does NPC Circular No. 99-75 have to be published for its effectivity?

HELD: No, NPC Circular No. 99-75 does not have to be published. In the case of Tanada vs. Tuvera, the SC held that interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties. In this case, NPC Circular No. 99-75 did not have to be published since it was merely an internal rule or regulation. It did not purport to enforce or implement an existing law but was merely a directive issued by the NPC President to his subordinates to regulate the proper and efficient disposal of scrap ACSRs to qualified bidders. Thus, NPC Circular No. 99-75 defined the responsibilities of the different NPC personnel in the disposal, pre-qualification, bidding and award of scrap ACSRS. These guidelines were addressed to the NPC personnel involved in the bidding and award of scrap ACSRs. It did not, in any way, affect the rights of the public in general or of any other person not involved in the bidding process. Assuming it affected individual rights, it did so only remotely, indirectly and incidentally

Article 3. Presumption of the Knowledge of the Law

Kasilag vs Rodriguez 69 Phil 217

Recit Ready Summary

The parties entered into a contract of mortgage of the improvements on the land acquired as homestead to secure the payment of the indebtedness for P1,000 plus interest. Ambrocio must pay the debt with interest, within 4 1/2 years, to settle the mortgage. The parties agreed that the tax on the land and its improvements, during the existence of the mortgage, should be paid by Ambrocio. They also agreed that within 30 days from the date of the contract, the owner of the land would file a motion in the CFI of Bataan asking that cert. of title no. 325 be cancelled and that in lieu thereof another be issued under the provisions of RA 496 (The Land Registration Act.). Furthermore, they agreed that should Ambrocio fail to redeem the mortgage within the stipulated period of 4 1/2 years, she would execute an absolute deed of sale of the land to Kasilag, the petitioner, for the same

amount of the loan including unpaid interest. It was also stipulated in the contract that in case the motion to be presented under clause VII should be disapproved by the CFI-Bataan, the contract of sale of sale would automatically become void and the mortgage would subsist in all its force. One year after the execution of the mortgage deed, it came to pass that Ambrocio was unable to pay the stipulated interest as well as the tax on the land and its improvements. For this reason, she and the petitioner entered into another verbal contract whereby she conveyed to Kasilag the possession of the land on condition that he would not collect the interest on the loan, would attend to the payment of the land tax, would benefit by the fruits of the land, and would introduce improvements thereon.

Facts:

PROCEDURAL FACTS: This is an appeal taken by the defendant-petitioner from the decision of the Court of Appeals which modified that rendered by the court of First Instance of Bataan. The said court held: that the contract is entirely null and void and without effect; that the plaintiffs-respondents, then appellants, are the owners of the disputed land, with its improvements, in common ownership with their brother Gavino Rodriguez, hence, they are entitled to the possession thereof; that the defendantpetitioner should yield possession of the land in their favor, with all the improvements thereon and free from any lien Marcial Kasilag (petitioner) and Emiliana Ambrocio (mother of respondents) entered into a contract of mortgage of the improvements on the land acquired as homestead to secure Ambrocio's payment of the indebtedness for P1,000 plus interest. In clause V of the contract, the parties stipulated that Ambrocio was to pay, within 4 1/2 years, the debt with interest thereon, in which event the mortgage would not have any effect.

In clause VI, the parties agreed that the tax on the land and its improvements, during the existence of the mortgage, should be paid by the owner of the land.

In clause VII, it was covenanted that w/in 30 days from the date of the contract, the owner of the land would file a motion in the CFI of Bataan asking that cert. of title no. 325 be cancelled and that in lieu thereof another be issued under the provisions of RA 496.

In clause VIII the parties agreed that should Ambrocio fail to redeem the mortgage w/in the stipulated period of 4 1/2 years, she would execute an absolute deed of sale of the land in favor of the mortgagee, the petitioner, for the same amount of the loan including unpaid interest.

And in clause IX, it was stipulated that in case the motion to be presented under clause VII should be disapproved by the CFI-Bataan, the contract of sale of sale would automatically become void and the mortgage would subsist in all its force.

One year after the execution of the mortgage deed, it came to pass that Ambrocio was unable to pay the stipulated interest as well as the tax on the land and its improvements. For this reason, she and the petitioner entered into another verbal contract whereby she conveyed to the latter the possession of the land on condition that the latter would not collect the interest on the loan, would attend to the payment of the land tax, would benefit by the fruits of the land, and would introduce improvements thereon.

Believing that there are no violations to the prohibitions in the alienation of lands, Kasilag, took possession of the land. To wit, he has no knowledge that the enjoyment of the fruits of the land is an element of the credit transaction of Antichresis, a violation of Section 116 of the Public Land Act. The CA held that petitioner acted in bad faith in taking possession of the land because he knew that the contract he made with Ambrocio was an absolute sale, and further, that

Ambrocio could not sell the land because it is prohibited by Sec. 116 of Act 2874.

Issue: Whether or not the petitioner should be deemed a possessor in good faith because he was unaware of any flaw in his title or in the manner of its acquisition by which it is invalidated. (In relation to the topic) Whether or not ignorance of the law may be a basis of good faith.

Rationale/Analysis/Legal Basis

From the facts found established by the Court of Appeals we can neither deduce nor presume that the petitioner was aware of a flaw in his title or in the manner of its acquisition, aside from the prohibition contained in section 116. This being the case, the question is whether good faith may be premised upon ignorance of the laws. Manresa, commenting on article 434 in connection with the preceding article, sustains the affirmative. He says: "We do not believe that in real life there are not many cases of good faith founded upon an error of law. When the acquisition appears in a public document, the capacity of the parties has already been passed upon by competent authority, and even established by appeals taken from final judgments and administrative remedies against the qualification of registrars, and the possibility of error is remote under such circumstances; but, unfortunately, private documents and even verbal agreements far exceed public documents in number, and while no one should be ignorant of the law, the truth is that even we who are called upon to know and apply it fall into error not infrequently.

However, a clear, manifest, and truly inexcusable ignorance is one thing, to which undoubtedly refers article 2, and another and different thing is possible and excusable error arising from complex legal principles and from the interpretation of conflicting doctrines. But even ignorance of the law may be based upon an error of fact, or better still, ignorance of a fact is possible as to the capacity to transmit and as to the intervention of certain persons, compliance with certain formalities and appreciation of certain acts, and an error of law is possible in the interpretation of doubtful doctrines.

(Manresa, Commentaries on the Spanish Civil Code. Volume IV, pp. 100, 101 and 102.) According to this author, gross and inexcusable ignorance of law may not be the basis of good faith, but possible, excusable ignorance may be such basis. It is a fact that the petitioner is not conversant with the laws because he is not a lawyer. In accepting the mortgage of the improvements, he proceeded on the well-grounded belief that he was not violating the prohibition regarding the alienation of the land. In taking possession thereof and in consenting to receive its fruits, he did not know, as clearly as a jurist does, that the possession and enjoyment of the fruits are attributes of the contract of antichresis and that the latter, as a lien, was prohibited by section 116.

These considerations again bring us to the conclusion that, as to the petitioner, his ignorance of the provisions of section 116 is excusable and may, therefore, be the basis of his good faith. We do not give much importance to the change of the tax declaration, which consisted in making the petitioner appear as the owner of the land, because such an act may only be considered as a sequel to the change of possession and enjoyment of the fruits by the petitioner, to about which we have stated that the petitioner's ignorance of the law is possible and excusable. We, therefore, hold that the petitioner acted in good faith in taking possession of the land and enjoying its fruits.

DISPOSITION

WHEREFORE, the appealed decision is reversed. (1) that the contract of mortgage of the improvements, set out in Exhibit 1, is valid and

binding (2) that the contract of antichresis agreed upon verbally by the parties is a real incumbrance which burdens the land and, as such, is a null and without effect (3) that the petitioner is a possessor in good faith (4) that the respondents may elect to have the improvements introduced by the petitioner by paying the latter the value thereof, P3,000, or to compel the petitioner to buy and have the land where the improvements or plants are found, by paying them its market value to be filed by the court of origin, upon hearing the parties (5) that the respondents have a right to the possession of the land and to enjoy the mortgaged improvements; and (6) that the respondents may redeem the mortgage of the improvements by paying to the petitioner within three months the amount of P1,000, without interest, as that stipulated is set off by the value of the fruits of the mortgaged improvements which petitioner received, and in default thereof the petitioner may ask for the public sale of said improvements for the purpose of applying the proceeds thereof to the payment of his said credit.

Consunji vs. CA, G.R. No. 137873, 20 April 2001

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. The victim was rushed to Rizal Medical Center in Pasig, Metro Manila where investigation disclosed 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. On May 9, 1991, 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. The employer raised, among other defenses, the widow's prior availment of the benefits from the State Insurance Fund. The petitioner argues that private respondent had previously availed of the death benefits provided under the Labor Code and is, therefore, precluded from claiming from the deceased's employer damages under the Civil Code, the election being equivalent to a waiver.

ISSUES:

Does the election made by the private respondent of one of the two inconsistent remedies equivalent to a waiver of the other?

Is there a valid waiver by the private respondent?

HELD:

Yes, the choice of a party between inconsistent remedies results in a waiver by election. Hence, a claimant cannot simultaneously pursue recovery under the Labor Code and prosecute an ordinary course of action under the Civil Code. The claimant, by his choice of one remedy, is deemed to have waived the other.

No, there is no valid waiver made by the private respondent in the case at bar because there was a mistake of fact. Waiver is the intentional relinquishment of a known right. It is an act of understanding that presupposes that a party has knowledge of its rights, but chooses not to assert them. It must be generally shown by the party claiming a waiver that the person against whom the waiver is asserted had at the time knowledge, actual or constructive, of the existence of the party's rights or of all material facts upon which they depended. Where one lacks knowledge of a right, there is no basis upon which waiver of it can rest. Ignorance of a material fact negates waiver, and waiver cannot be established by a consent given under a mistake or misapprehension of fact. It bears stressing that what negates waiver is lack of knowledge or a mistake of fact.

In this case, the "fact" that served as a basis for nullifying the waiver is the negligence of petitioner's employees, of which private respondent purportedly learned only after the prosecutor issued a resolution stating that there may be civil liability. There is no proof that private respondent knew that her husband died in the elevator crash when she accomplished her application for benefits from the ECC. There is also no showing that private respondent knew of the remedies available to her when the claim before the ECC was filed. On the contrary, private respondent testified that she was not aware of her rights. The case is remanded to the Regional Trial Court to determine whether the award decreed in its decision is more than that of the ECC. Should the award decreed by the trial court be greater than that awarded by the ECC, payments already made to private respondent pursuant to the Labor Code shall be deducted therefrom to prevent double recovery.

Prospective Application of Laws (Art. 4)

PNB vs Office of the President, G.R. No. 104528, 18 January 1996

FACTS:

Private respondents are buyers on installment of subdivision. However, the subdivision developer mortgaged the lands in favor of the petitioner even though the sale of land was already executed. Unaware of the foregoing facts, the private respondents continued to comply with their obligation as buyers. The subdivision developer later on defaulted and PNB foreclosed on the mortgage and became the owner of the lots. A decision by the HLURB and OAALA ruled that PNB may collect from private respondents only the remaining amortization payment and cannot compel them to pay again for the lots they had already bought from the subdivision developer. The Office of the President affirmed this decision by declaring Presidential Decree 957*.

ISSUE/S:

Whether Presidential Decree 957 applies to sale of land prior to its enactment

HELD/DECISION:

Under Article 4 of the Civil Code, there shall be no retroactive effect of the law unless the contrary is provided. PD 957, though implied, intended to include real estate mortgages executed prior to its enactment and therefore must take effect to protect the innocent purchasers from swindling and fraudulent manipulations and illegal scheme of subdivision developers. The court ascertained that they will not follow the letter of the statue if it will not reflect the intent and purpose of the legislature, which is to uphold social justice and the protection of human rights. It would also be illogical if PD 957 which seeks to oust the fraudulent practices would not be applied to existing mortgage contract due to some a technicality.

***Section 18**: Mortgages. 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 thereto;

ABS-CBN vs CTA, G.R. No. L-52306, 12 October 1981

Facts: The case revolves around the assessment of deficiency withholding income tax for the years 1965 to 1968, imposed by the Commissioner of Internal Revenue against ABS-CBN Broadcasting Corporation. ABS-CBN engaged in telecasting foreign films acquired from non-resident entities. According to the National Internal Revenue Code (NIRC), a 30% income tax was levied on such foreign corporations. ABS-CBN complied by withholding 30% of half of the film rentals paid to these corporations. This practice was based on General Circular No. V-334 issued by the Commissioner in 1961, in line with Section 24(b) of the NIRC as amended by RA 2343. However, in 1968, RA 5431 amended Section 24(b), changing the tax rate to 35% and the basis to "gross income." Following this, the Commissioner, in 1971, issued Revenue Memorandum Circular No. 4-71, revoking V-334, and insisting on taxation based on gross income without deductions. Subsequently, ABS-CBN received an assessment for deficiency withholding income tax for the years 1965-1968 amounting to P525,897.06. ABS-CBN requested a reconsideration of this assessment, which was ignored, leading to a warrant of distraint and levy against them. ABS-CBN then filed a petition for review with the Court of Tax Appeals (CTA), which upheld the assessment. Procedural Posture: The case reached the Supreme Court on a petition for review on certiorari by ABS-CBN contesting the CTA's decision which affirmed the Commissioner's deficiency tax assessment based on Revenue Memorandum Circular No. 4-71.

Issues: 1. Whether Revenue Memorandum Circular No. 4-71 can be applied retroactively, allowing for a deficiency assessment against ABS-CBN for the years 1965-1968. 2. Whether the Commissioner's right to assess deficiency withholding income tax for 1965 has prescribed.

Court's Decision: The Supreme Court reversed the decision of the CTA, concluding that the retroactive application of Memorandum Circular No. 4-71 was prejudicial to ABS-CBN and hence should not be applied. It was emphasized that the issue of the assessment being made three years after the tax year in question and based on a circular, which effectively altered the interpretation of the taxable base from "such amount" to "gross income," warranted the non-retroactivity of such ruling as per Section 338-A of the Tax Code. Additionally, because the reversal focused primarily on the retroactivity of tax rulings, the Court found it unnecessary to address the issue of prescription related to the 1965 assessment.

Doctrine: The Supreme Court reiterated the doctrine of non-retroactivity of tax rulings from Section 338-A (now Section 327) of the National Internal Revenue Code. This section establishes that revocations, modifications, or reversals of any tax rules, regulations, or circulars should not be given retroactive application if doing so would be prejudicial to the taxpayer, except in specific instances of fraud or misrepresentation.

Ortigas & Co., Limited vs. CA, 346 SCRA 748

FACTS:

In 1976, petitioner Ortigas & Company sold to Emilia Hermoso, a parcel of land known as Lot 1, Block 21, Psd-66759, with an area of 1,508 square meters, located in Greenhills Subdivision IV, San Juan, Metro Manila.

The contract of sale provided certain conditions, to wit: "(1) the lot shall be used exclusively for residential purposes only, and not more than one single-family residential building will be constructed thereon; (2) The buyer shall not erect any sign or billboard on the roof for advertising purposes; (3) Restrictions shall run with the land and shall be construed as real covenants until December 31, 2025 when they shall cease and terminate." -These and the other

conditions were duly annotated on the certificate of title issued to Emilia.

In 1981, the MMDA enacted MMC Ordinance No. 81-01, also known as the Comprehensive Zoning Area for the National Capital Region. The ordinance reclassified as a commercial area a portion of Ortigas Avenue from Madison to Roosevelt Streets of Greenhills Subdivision where the lot is located. -In 1984, private respondent Ismael Mathay III leased the lot from Emilia Hermoso and J.P. Hermoso Realty Corp. The lease contract did not specify the purposes of the lease. Thereupon, private respondent constructed a single story commercial building for Greenhills Autohaus, Inc., a car sales company.

In 1995, petitioner filed a complaint against Emilia Hermoso with the Regional Trial Court of Pasig, Branch 261. The complaint sought the demolition of the said commercial structure for having violated the terms and conditions of the Deed of Sale.

Petitioner's contention: Inasmuch as the restrictions on the use of the lot were duly annotated on the title it issued to Emilia Hermoso, said restrictions must prevail over the ordinance, specially since these restrictions were agreed upon before the passage of MMC Ordinance No. 81-01. Since the MMDA had failed to show that MMC Ordinance No. 81-01 had retroactive effect, said ordinance should be given prospective application only.

ISSUE:

Whether or not MMC Ordinance No. 81-01 nullified the building restrictions annotated on the certificate of title imposing exclusive residential use on the subject property.

RULING:

Yes. In general, we agree that laws are to be construed as having only prospective operation. Lex prospicit, non respicit.

Equally settled, only laws existing at the time of the execution of a contract are applicable thereto and not later statutes, unless the latter are specifically intended to have retroactive effect. A later law which enlarges, abridges, or in any manner changes the intent of the parties to the contract necessarily impairs the contract itself and cannot be given retroactive effect without violating the constitutional prohibition against impairment of contracts.

But, the foregoing principles do admit of certain exceptions. One involves police power. A law enacted in the exercise of police power to regulate or govern certain activities or transactions could be given retroactive effect and may reasonably impair vested rights or contracts. Police power legislation is applicable not only to future contracts, but equally to those already in existence. Non-impairment of contracts or vested rights clauses will have to yield to the superior and legitimate exercise by the State of police power to promote the health, morals, peace, education, good order, safety, and general welfare of the people. Moreover, statutes in exercise of valid police power must be read into every contract.

Noteworthy, in Sangalang vs. Intermediate Appellate Court, we already upheld MMC Ordinance No. 81-01 as a legitimate police power measure. Following our ruling in Ortigas & Co., Ltd. vs. Feati Bank & Trust Co., 94 SCRA 533 (1979), the contractual stipulations annotated on the Torrens Title, on which Ortigas relies, must yield to the ordinance. When that stretch of Ortigas Avenue from Roosevelt Street to Madison Street was reclassified as a commercial zone by the Metropolitan Manila Commission in March 1981, the restrictions in the contract of

sale between Ortigas and Hermoso, limiting all construction on the disputed lot to single-family residential buildings, were deemed extinguished by the retroactive operation of the zoning ordinance and could no longer be enforced. While our legal system upholds the sanctity of contract so that a contract is deemed law between the contracting parties, nonetheless, stipulations in a contract cannot contravene "law, morals, good customs, public order, or public policy." Otherwise such stipulations would be deemed null and void. Respondent court correctly found that the trial court committed in this case a grave abuse of discretion amounting to want of or excess of jurisdiction in refusing to treat Ordinance No. 81-01 as applicable to Civil Case No. 64931. In resolving matters in litigation, judges are not only duty-bound to ascertain the facts and the applicable laws, they are also bound by their oath of office to apply the applicable law.

Waiver of Rights (Art. 6)

Consunji v. CA, *supra*

FACTS: On November 2, 1990, around 1:30PM Jose Juergo, a construction worker of D.M. Consunji Inc. fell 14 floors from the Renaissance Tower, Pasig City. He was immediately rushed to Rizal Medical Center in Pasig City. The attending physician, Dr. Errol de Yzo, pronounce Jose dead on arrival (DOA) at around 2:15PM. Jose Juergo, together with Jessie Jaluag and DelsoDestajo, performing their work as carpenter at the elevator core of the 14th floor of Tower D, Renaissance Tower Building were on board a platform. Jose was crushed to death when the platform fell due to removal or looseness of the pin, which was merely inserted to the connecting points of the chain block and platform but without a safety lock. Luckily, Jessie and Delso jumped out of safety. PO3 Rogelio Villanueva of the Eastern Police District investigated the tragedy and filed report dated Nov. 25, 1990. Maria Juergo, Jose's widow filed a complaint on May 9, 1991 for damages in the RTC and was rendered a favorable decision to receive support from DMConsunji amounting to P644,000. DM Consunji seeks reversal of the CA decision.

ISSUE: WON the widow Fuego has waived her right to pursue for civil damages by electing a remedy by way availment of claims from the State Insurance Fund.

RULING: The Court ruled that the availment of claims from the State Insurance Fund by widow Fuego is an exemption of waiver by election because she was unaware of the petitioner's negligence when she filed her claims for death benefits from the State Insurance Fund. Had the claimant been aware, she would have opted to avail of a better remedy than that of what she already had. The lack of knowledge on the part of the claimant about the facts that led to her husband's death at the time she filed the claim was a factor in her choice of remedies.

Cui v. Arellano

FACTS:

Emetrio Cui (plaintiff) took up preparatory law course in Arellano University (defendant) and pursued his law studies in the said university up to and including the first semester of the fourth year. During all the time he was studying law in defendant university, plaintiff's uncle was the dean of the College of Law and Legal counsel. Also, he was awarded scholarship grants for scholastic merit so that his semestral tuition fees were returned to him after the ends of semester and when his scholarship grants were awarded to him. He was made to sign a contract covenant whereas he waived his right to transfer to another school without refunding the equivalent of his scholarship in cash.

When he enrolled for the last semester of his law studies, he failed to pay his tuition fee because he had to transfer to Abad Santos University where his uncle accepted deanship and

chancellorship of the College of Law. After graduating in law from Abad Santos University, he applied to take the bar examination. Plaintiff petitioned the defendant to issue his transcript but the latter refused not until he paid back the P1003.87-- the amount refunded by Arellano University. As he could not take the bar examination without those transcripts, plaintiff paid to defendant the said sum under protest. This is the sum which plaintiff seeks to recover from defendant in this case.

ISSUE:

WON the provision of the contract between plaintiff and the defendant, whereby the former waived his right to transfer to another school without refunding to the latter the equivalent of his scholarships in cash, is valid or not.

HELD:

The provision is not valid. If Arellano University understood clearly the real essence of scholarships and the motives which prompted the issuance of Memorandum No. 38, it should have not entered into a contract of waiver with Cui which is a direct violation of our Memorandum and an open challenge to the authority of the Director of Private Schools because the contract was repugnant to sound morality and civic honesty. And finally, in Gabriel vs. Monte de Piedad, In order to declare a contract void as against public policy, a court must find that the contract as to consideration or the thing to be done, contravenes some established interest of society, or is inconsistent with sound policy and good morals or tends clearly to undermine the security of individual rights. The policy enunciated in Memorandum No. 38, s. 1949 is sound policy. Scholarship are awarded in recognition of merit not to keep outstanding students in school to bolster its prestige. In the understanding of that university scholarships award is a business scheme designed to increase the business potential of an education institution. Thus conceived it is not only inconsistent with sound policy but also good morals.

Manresa defines morals as good customs;; those generally accepted principles of morality which have received some kind of social and practical confirmation. The practice of awarding scholarships to attract students and keep them in school is not good customs nor has it received some kind of social and practical confirmation except in some private institutions as in Arellano University. The University of the Philippines which implements Section 5 of Article XIV of the Constitution with reference to the giving of free scholarships to gifted children, does not require scholars to reimburse the corresponding value of the scholarships if they transfer to other schools. So also with the leading colleges and universities of the United States after which our educational practices or policies are patterned. In these institutions scholarships are granted not to attract and to keep brilliant students in school for their propaganda mine but to reward merit or help gifted students in whom society has an established interest or a first lien.

PNB vs. Nepomuceno Productions. G.R. No. 139479, 27 December 2002

Facts: Petitioner PNB granted respondents 4 million pesos of credit line to finance a movie project. The loan was secured by mortgages on respondents' real and personal properties. Respondents defaulted in their obligation. Petitioner sought foreclosure of the mortgaged properties. The auction sale was re-scheduled several times without need of republication of the notice of sale. Subsequently, the respondents filed an action for annulment of the foreclosure sale claiming that such was void because, among others, there was lack of publication of the notice of foreclosure sale. The trail court ordered the annulment and set aside the foreclosure proceedings. Upon appeal, the CA affirmed the lower court.

Issue: Whether or not publication of foreclosure sale can be validly waived by agreement of the parties.

Held: Act. No. 3135, as amended, governing extrajudicial foreclosure of mortgages on real property is specific with regard to the posting and publication requirements of the notice of sale, to wit: "Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city."

It is well settled that what Act No. 3135 requires is: (1) the posting of notices of sale in three public places; and, (2) the publication of the same in a newspaper of general circulation. Failure to publish the notice of sale constitutes a jurisdictional defect, which invalidates the sale. Petitioner, however, insists that the posting and publication requirements can be dispensed with since the parties agreed in writing that the auction sale may proceed without need of re-publication and re-posting of the notice of sale. The Supreme Court is not convinced. Petitioner and respondents have absolutely no right to waive the posting and publication requirements of Act No. 3135.

While it is established that rights may be waived, Article 6 of the Civil Code explicitly provides that such waiver is subject to the condition that it is not contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law. The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor's benefit, but for the public or third persons. In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated. As such, it is imbued with public policy considerations and any waiver thereon would be inconsistent with the intent and letter of Act No. 3135.

People vs Serzo, G.R. No. 118435, 20 June 1997

Facts:

1. Appellant Mario Serzo was convicted of murder by the lower court for the stabbing/killing of Alfredo Casabal after the latter rescued minors being held by the former.

2. Pre-trial was waived and the case proceeded to trial on the merits.

3. The accused alleged that he was denied the right to counsel. During the arraignment he appeared without counsel,so the court appointed a counsel de officio. Thereafter, he moved that the arraignment be reset so he can engage the services of his own counsel however, during the arraignment, he still appeared without one. The arraignment proceeded with him being assisted by the counsel de officio.

4. During the trial, the same counsel appeared and cross-examined for the accused.

Issue: Whether or not the accused was denied of his right to counsel

HELD: NO. Herein, the accused was provided with a *counsel de officio* who assisted him in all

stages of the proceedings. The option to hire ones counsel cannot be used to sanction reprehensible dilatory tactics, trifle with the Rules or prejudice the equally important right of the State and the offended party to speedy and adequate justice.

The right to counsel is guaranteed by the Constitution to minimize the imbalance in the adversarial system where an accused is pitted against the awesome prosecution machinery of the state. It is also a recognition of the accused not having the skill to protect himself before a tribunal which has the power to take his life or liberty.

The right covers the period from custodial investigation until judgment is rendered, even on appeal. RA 7438 provides that any person arrested or detained or under custodial investigation shall at all times be assisted by counsel.

The right is however not absolute and is waivable; a) the state must balance the private against the state's and offended party's equally important rightto speedy and adequate justice, and b) the right is waivable as long as the waiver is unequivocal, knowing, and intelligently made.

Gongon vs. Court of Appeals, 32 SCRA 412

FACTS: Lot 18-B, Block 23, with an area of 274 square meters, is a portion of the Tambobong Estate in Malabon, Rizal, which used to belong in its entirety to the Roman Catholic Church. The lot was originally leased to Amada Aquino. who in turn sublet it in 1934 to Matias Gongon for a term of 15 years at a nominal monthly rental of P6.00. The sublessee constructed his residential house on the property and since then has been living there, together with his family.

Meanwhile, the Tambobong Estate was purchased by the Government from the Roman Catholic Church on December 31, 1947 under the provisions of Section 1 of Commonwealth Act No. 539, which authorized the President of the Philippines." . . to acquire private lands or any interest, through purchase or expropriation, and to subdivide the same into home lots or small farms for resale at reasonable prices and under such conditions as he may fix to their bona fide tenants or occupants or to private individuals who will work the lands themselves and who are qualified to acquire and own lands in the Philippines." In due time Matias Gongon filed an application with the defunct **Rural Progress Administration** for the purchase of Lot 18-B, Block 23, **claiming preferential right as bona fide occupant**. The application was opposed by Amada Aquino, who also filed her own application, alleging that as bona fide tenant or lessee she had the preferential right to purchase the lot. After investigation, the Director of the Bureau of Lands having then taken over the functions of the Rural Progress Administration — rendered a decision on May 31, 1965 approving Gongon's application, he being the actual occupant. **On appeal to the Secretary of Agriculture and Natural Resources,** this official set aside the order of the Director of Lands and gave due course to Amada Aquino's application.

Matias Gongon moved for reconsideration, but his motion was denied by the **Land Tenure Administration**, which had meanwhile taken over the functions, powers and duties of the Landed Estate Division of the Bureau of Lands upon the enactment of Republic Act No. 1400. Matias Gongon then appealed to the Office of the President, which thereafter affirmed the decision of the Land Tenure Administration. Accordingly, on February 24, 1961 the Land Tenure Administration executed a deed of sale of Lot 18-B in favor of Amada Aquino, as a result of which she obtained, on March 10, 1961, Transfer Certificate of Title No. 84738 in her name.

On April 24, 1961 Matias Gongon filed the instant case in the Court of First Instance of Manila to annul the decisions of the Land Tenure Administration and of not in question to him; to cancel its registration in the name of Amada Aquino and to have it registered in his name instead. The complaint likewise contained a prayer for attorney's fees and costs.

Matias Gongon herein appellant said in his manifestation on may 27, 1961 that The Land Tenure Administration, that at the time it issued the said Order, the LTA Board of Administrators was newly constituted and had no sufficient time to study thoroughly the legality or wisdom of the Bureau of Lands policy giving preference right to tenants to purchase the lots leased by them over and above the actual occupants or sublessees hence, it just affirmed the decision of the Department of Agriculture and Natural Resources as a matter of sound administrative policy.

That after a serious study of the issues of facts and of law in cases identical to the case at bar, the LTA Board of Administrators found out that it would be more in keeping with the spirit and intention of the laws (Commonwealth Acts Nos. 20 and 539 and Republic Act No 1400) governing acquisition and disposition of the landed estates (including the Tambobong Estate) if it followed the doctrine laid down by the **Supreme Court in the case of Marukot, Et. Al. v. Jacinto, Et Al,** promulgated on December 20, 1955, giving the actual occupants or sublessees the preference to purchase the lots occupied by them as against tenants or lessees who do not occupy the same; hence answering defendant **subsequently reversed the policy followed by the Bureau of Lands and adopted by the doctrines laid down in the Marukot case**."

As heretofore stated, the lower court dismissed the complaint. In due time the plaintiff elevated the case to the Court of Appeals. In affirming the decision appealed from the appellate court pointed out (**1) that the finding of the Secretary of Agriculture and Natural Resources, as affirmed by the Office of the President, to the effect that appellant Matias Gongon had waived whatever right he might have had over the lot in question was factual in nature and could not be reviewed by the courts;** and (2) *that appellant could be not considered as a bona fide occupant of the lot because his possession as sublessee was in effect possession by the lessee, citing Article 524 of the Civil Code***.**

His motion for reconsideration having been denied by the Court of Appeals, Matias Gongon filed the present petition for review, contending that the appellate court erred in failing to recognize his right as sublessee-tenant to the lot in question and in not cancelling the sale thereof to respondent Amada Aquino as well as its registration in her name; in holding that he had waived his right to the lot in question in favor of respondents-spouses Amada Aquino and Rufino Rivera; and in ordering him to pay rentals at the rate of P6.00 a month from 1949, plus attorney's fees and costs.

ISSUES:

(1) whether or not petitioner has the preferential right to purchase the lot in question;

(2) if he has, whether or not the alleged waiver of whatever right he might have had over said lot is valid.

The first issue involves a conflict of claims between a lessee and a sublesee insofar as the right to purchase the property is concerned. Several decisions of this Court have been cited and discussed by the parties. Parenthetically, it may be noted that in those cases the concept of possession by a sublessee under the Civil Code, which according to the Court of Appeals in its decision under review was in effect possession by the lessee sublessor, was not considered by

this Court applicable at all in construing the term "occupant" under Commonwealth Act No. 539.

In interpreting Section 1 of Commonwealth Act No. 539, this Court said that "the intendment of the law is to award the lots to those who may apply in the order mentioned", that is, "the first choice is given to the bona fide 'tenants', the second to the 'occupants' and the last to 'private individuals.'" The Court also took into consideration the fact that the sublessees executed a document expressly agreeing to vacate the lots anytime the tenant so required, together with the affidavit of one of the sublessees acknowledging the right of the tenant to purchase the lot and renouncing whatever rights he might have to purchase it.

In the case at bar it is not disputed that respondent spouses have their house on another lot (lot No. 34, block No. 7) in the Tambobong Estate. Furthermore, respondent Rufino Rivera is the registered bona fide tenant of still another lot, also in Tambobong, with an area of 2,761 square meters, which is considerably bigger than the lot in question, where petitioner and his family constructed their residence and where they have been living since 1934. It cannot be said, therefore, that the parties herein stand on an equal footing or under equal circumstances. Justice and equity command that petitioner be given the preferential right to purchase in order to carry out the avowed policy of the law to give land to the landless.

On the second issue petitioner's position is that his preferential right could not be validly waived, such waiver being against public policy. ***Under Article 6 of the new Civil Code "rights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person with a right recognized by law."*** The old Civil Code (Art. 4) carried a similar provision, although it mentioned only public interest or public order. Being contrary to public policy, the alleged waiver of his right made by herein petitioner should be considered null and void.

HELD: The decision appealed from is reversed. The award of the lot in question to respondent Amada Aquino is set aside; transfer certificate of title No. 84738 of the Registry of Deeds of Rizal is ordered cancelled; and petitioner is declared to have the preferential right to purchase the said lot. Costs against respondents.

Repeal of Laws (Art. 7)

Navarro vs Judge Domagtoy, 259 SCRA 129

Facts: Rodolfo Navarro was the Municipal Mayor of Dapa, Surigao del Norte. He submitted evidence in relation to two specific acts committed by Municipal Circuit Trial Court Judge Hernando Domagtoy, which, he contends, exhibits gross misconduct as well as inefficiency in office and ignorance of the law. First, on September 27, 1994, said judge solemnized the wedding between Gaspar Tagadan and Arlyn Borga, despite the knowledge that the groom is merely separated from his first wife. On his part, Domagtoy claimed that he merely relied on an affidavit acknowledged before him attesting that Tagadan's wife has been absent for seven years. The said affidavit was alleged to have been sworn to before another judge. Second, it is alleged that he performed a marriage ceremony between Floriano Dador Sumaylo and Gemma G. del Rosario outside his court's jurisdiction on October 27, 1994. Domagtoy counters that he solemnized the marriage outside of his jurisdiction *upon the request of the parties.*

ISSUE: Whether or not Domagtoy acted without jurisdiction.

HELD: Yes. Domagtoy's defense is not tenable and he did display gross ignorance of the law. Tagadan did not institute a summary proceeding for the declaration of his first wife's

presumptive death. Absent this judicial declaration, he remains married to Ihis former wife. Whether wittingly or unwittingly, it was manifest error on the part of Domagtoy to have accepted the joint affidavit submitted by the groom. Such neglect or ignorance of the law has resulted in a bigamous, and therefore void, marriage. On the second issue, the request to hold the wedding outside Domagtoy's jurisdiction was only done by one party, the bride, NOT by both parties. More importantly, the elementary principle underlying this provision is the authority of the solemnizing judge. Under Article 3, one of the formal requisites of marriage is the "authority of the solemnizing officer." Under Article 7, marriage may be solemnized by, among others, "any incumbent member of the judiciary *within the court's jurisdiction*." Article 8, which is a directory provision, refers only to the venue of the marriage ceremony and does not alter or qualify the authority of the solemnizing officer as provided in the preceding provision. Non-compliance herewith will not invalidate the marriage.

Beso vs Dagunan, 323 SCRA 566

Facts:

Petitioner Zenaida Beso and Bernardito Yman got married on August 28, 1997. After the marriage was solemnized, the man just abandoned his wife without any reason. Because of this, the woman had to go to the registrar to secure their marriage contract but to her surprised, no marriage contract that had been registered in the office of the registrar. The registrar gave advice to Zenaida Beso to write the judge who solemnized their marriage but likewise to her surprised, Judge Daguman who solemnized their marriage told her that her husband got all the copies of their marriage certificate and none was even left to him or was retained to the judge.

This is the reason why Zenaida learned that the judge solemnized their marriage out of his jurisdiction and was negligent in not retaining a copy and likewise in not registering their marriage to the civil registrar as prescribed by law.

In this administrative complaint, respondent Judge stands charged with Neglect of Duty and Abuse of Authority. In a Complaint-Affidavit dated December 12, 1997, Zenaida S. Beso charged Judge Juan J. Daguman, Jr. with solemnizing marriage outside of his jurisdiction and of negligence in not retaining a copy and not registering the marriage contract with the office of the Local Registrar with the following facts:

(a) On August 28, 1997, the complainant and complainant's fiancée, Bernardito A. Yman, got married under the solemnization of the respondent in the respondent's residence in Calbayog City, Samar;

(b) That after the wedding, Yman abandoned the complainant;

(c) That when Yman left, the complainant inquired to the City Civil Registrar to inquire regarding her Marriage Contract. The complainant found out that her marriage was not registered;

(d) The complainant wrote to the respondent to inquire and the former found out that all the copies were taken by Yman and no copy was retained by the respondent.

The respondent averred with the following rationale:

(a) Respondent solemnized the marriage because of the urgent request of the complainant and Yman. He also believed that being a Filipino overseas worker, the

complainant deserved more than ordinary official attention under present Government policy;

(b) Respondent was also leaning on the side of liberality of the law so that it may be not too expensive and complicated for citizens to get married;

(c) Respondent's failure to file the marriage contract was beyond his control because Yman absconded with the missing copies of the marriage certificate.

(d) Respondent, however, tried to recover custody of the missing documents.

The Office of the Court Administrator (OCA) in an evaluation report dated, August 11, 1998 found the respondent Judge "…committed non-feasance in office" and recommended that he be fined Five Thousand Pesos (P5,000).

Issues:

Whether or not the respondent solemnized a marriage outside of his jurisdiction; and,

Whether or not the respondent committed negligence by not retaining a copy and not registering the complainant's marriage before the office of the Local Civil Registrar.

Held:

Yes. The judge solemnized a marriage outside of his jurisdiction.

Article 7 of the Family Code provides that marriage may be solemnized by, "Any incumbent member of the judiciary with the court's jurisdiction". In relation thereto, according to Article 8 of the Family Code, there are only three instances with which a judge may solemnize a marriage outside of his jurisdiction:

1.1. when either or both the contracting parties is at the point of death;

1.2. when the residence of either party is located in a remote place;

1.3. where both of the parties request the solemnizing officer in writing in which case the marriage may be solemnized at a house or place designated by them in a sworn statement to that effect.

In this case, none of the three instances is present.

2. Yes. The judge committed negligence.

Pursuant to Article 23 of the Family code, such duty to register the marriage is the respondent's duty. The same article provides, "It shall be the duty of the person solemnizing the marriage… to send the duplicate and triplicate copies of the certificate not later than fifteen (15) days after the marriage, to the local civil registrar of the place where the marriage was solemnized. Proper receipts shall be issued by the local civil registrar to the solemnizing officer transmitting copies of the marriage certificate. The solemnizing officer shall retain in his file the quadruplicate copy of the marriage certificate,

the original of the marriage license, and in proper cases, the affidavit of the contracting party regarding the solemnization of the marriage in a place other than those mentioned in Article 8".

Mecano vs COA, G.R. No. 103928, 11 December 1992

Facts: Antonio Mecano, petitioner, a Director II of the National Bureau of Investigation, filed a petition for certoriari to nullify the decision of Commission of Audit (COA) in the 7th Indorsement denying him of reimbursement anchored on the provisions of Section 699 of the Revised Administrative Code (RAC) in the amount of Php 40,831.00. Earlier, the petitioner was hospitalized because of cholecystitis and incurred the abovementioned amount. Under Sec. 699 of RAC, he is entitled to allowances in case of injury, sickness, death incurred in the performance of duty. Hence, the petitioner requested reimbursement for his expenses to NBI Director Alfredo Lim forwarding the request to the Secretary of Justice. The request was returned due to the comments of the COA Chairman stating that the RAC being relied upon was already repealed by the Administrative Code of 1987. The petitioner resubmitted the request asserting that the Administrative Code did not operate to repeal or abrogate in its entirety the RAC, including Section 699. Director Lim transmitted the request to the Justice Secretary who recommended the payment to the COA Chairman. The COA Chairman again denied the request asserting the same reason and furthered that Section 699 was not restated nor re-enacted in the Administrative Code of 1987. According to the COA Chairman, the claim may be filed with the Employees' Compensation Commission, considering that the illness of Director Mecano occurred after the effectivity of the Administrative Code of 1987. Eventually, the request was again returned to Director Lim with an advice of elevating the matter in the Supreme Court if he so desires.

Issue: Whether or not the Administrative Code of 1987 repealed or abrogated Section 699 of the Revised Administrative Code of 1917.

Ruling: No. The legislature did not intend, in enacting the new Code, to repeal Sec. 699 of the old code. The new Code did not expressly repeal the old as the new Code fails to identify or designate the act to be repealed. Repeal by implication proceeds on the premise that where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given effect. Hence, before there can be a repeal, there must be a clear showing on the part of the lawmaker that the intent in enacting the new law was to abrogate the old one. The intention to repeal must be clear and manifest; otherwise, at least, as a general rule, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue so far as the two acts are the same from the time of the first enactment. It is a well-settled rule of statutory construction that repeals of statutes by implication are not favored. The presumption is against inconsistency and repugnancy for the legislature is presumed to know the existing laws on the subject and not to have enacted inconsistent or conflicting statutes. The two Codes should be read in pari materia.

Judicial Decisions (Art. 8)

People vs Licera, G.R. No. L-39990, July 2, 1975

NATURE OF THE CASE: Appeal on the decision of the Court of First Instance convicting the defendant of the crime of illegal possession of fire arm and sentencing him to imprisonment of five (5) years.

RULING: ACQUITTED. The judgment of the Court of First Instance is reversed acquitting the defendant.

LEGAL DOCTRINE/JURISPRUDENCE: 1. People vs. Macarandang – Possession of Winchester Rifle as an agent without license or permit is an exemption on the required permit or license (remained valid until the issuance of the decision in the People vs. Mapa) 2. Judicial decisions as part of the legal system of the Philippines (Article 8 of Civil Code of the Philippines).

FACTS: This is an appeal, on a question of law, by Rafael Licera from the judgment dated August 14, 1968 of the Court of First Instance of Occidental Mindoro convicting him of the crime of illegal possession of firearm and sentencing him to imprisonment of five (5) years. We reverse the judgment of conviction, for the reasons hereunder stated. On 3 December 1965, the case was filed in the Municipal Court against the petitioner alleging him of the illegal possession of fire arms particularly the Winchester Rifle (Model 55 and Caliber 30), by the Chief of Police of Abra de Ilog, Occidental Mindoro. Such court rendered the decision on 13 August 1966 convicting the defendant of the crime with an indeterminate penalty ranging five (5) years and one (1) day to six (6) years and eight (8) months of imprisonment. The defendant filed an appeal against the decision of the court to the Court of First Instance of Occidental Mindoro. Another case of "assault upon an agent of a person in authority" was filed against the defendant by the same person. The parties agreed to the joint trial for the cases of illegal possession of fire arms and assault upon an agent of a person in authority. The court decided the case acquitting the defendant of the charge of assault upon an agent of a person in authority but convicting him of illegal possession of fire arm. The defendant then filed an appeal to the Court of Appeals involving only one question of law on whether statutory construction prevails over the Judicial Legislation.

The defendant invoked the justification of his possession of Winchester Rifle being the secret agent of Gov. Feliciano Leviste of Batangas since 1961, which made him exempted from the requirements of securing license or permit being a "peace officer" in relation to the case of People vs. Macarandang. Allegedly, the court erred in relying on the later case of People vs. Mapa which held that section 879 of the Revised administrative Code provides no exemption for persons appointed as secret agents by provincial governors from the requirements relating to firearm licenses

ISSUE: Whether the decision in the cases of People vs. Macarandang or People vs. Mapa should apply in the case at bar.

RULING: The decision that should be applied in the case at bar is the rule in People vs. Macarandang. The defendant's designation as secret agent was in 1961 while his apprehension from exempting him of being required to secure license or permit was in 1965. Therefore, the rule in People vs. Macarandang shall prevail over the rule of People vs. Mapa precedent only in 1967, but the latter revoked the rule of People vs. Macarandang after such year. Since under the rule of Statutory Construction, a new doctrine/statute abrogates an old rule; the new doctrine should operate prospectively only and should not adversely affect those favored by the old rule. In court's decision in People vs. Macarandang, formed part of our jurisprudence and; hence, of this jurisdiction' legal system which conformed to Article 8 of the Civil Code of the Philippines: "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines". Accordingly, the judgment of the Court of the First Instance is reversed and the defendant is hereby acquitted. Costs de oficio.

People vs. Jabinal, G.R. No. L-30061, February 27, 1974

Facts: Appeal from the judgment of the Municipal Court of Batangas, in Criminal Case

No. 889, finding the accused guilty of the crime of Illegal Possession of Firearm and Ammunition which raises in issue the validity of his conviction based on a retroactive application of our ruling in People vs. Mapa. The accused admitted that on Sep. 5, 1964, he was in possession of the revolver and the ammunition described in the complaint, without the requisite license or permit. He, however, claimed to be entitled to exoneration because, although he had no license or permit, he had an appointment as Secret Agent from the Provincial Governor of Batangas and an appointment as Confidential Agent from the PC Provincial Commander, and the said appointments expressly carried with them the authority to possess and carry the firearm in question. The law cannot be any clearer. No provision is made under Sec. 879 of the Revised Administrative Code for a secret agent. As such he is not exempt. The accused contended before the court a quo that in view of his above-mentioned appointments as Secret Agent and Confidential Agent, with authority to possess the firearm subject matter of the prosecution, he was entitled to acquittal on the basis of the Supreme Court's decision in People vs. Macarandang.

Issue: Whether or not appellant shall be acquitted on the basis of our rulings in Macarandang.

Held: Yes. Judgement appealed from is reversed. Appellant is acquitted. Ratio: The doctrine laid down in Macarandang was part of the jurisprudence, hence of the law, of the land, at the time appellant was found in possession of the firearm in question and when he arraigned by the trial court. It is true that the doctrine was overruled in the Mapa case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. It follows, therefore, that considering that appellant conferred his appointments as Secret Agent and Confidential Agent and authorized to possess a firearm pursuant to the prevailing doctrine enunciated in Macarandang, under which no criminal liability would attach to his possession of said firearm in spite of the absence of a license and permit therefor, appellant must be absolved. Certainly, appellant may not be punished for an act which at the time it was done was held not to be punishable.

Short Analysis: The case of People vs. Mapa expressly abandoned the Macarandang doctrine in 1967, the court then expressly abandoned the decision in People vs. Mapa in deciding the case in People vs. Jabinal because the court said that case was arraigned in September 1964 and therefore the Macarandang doctrine still applies in the case of People vs. Jabinal. It may seem unfair for Mapa because he was convicted and the Macanrandang doctrine was not applied to his case. Therefore, the Supreme Court may, in an appropriate case, change or overrule its previous construction. Judicial rulings have no retroactive effect.

Duty to Render Judgment (Art. 9)

Chuayan vs Bernas, 34 Phil 631

Facts: Plaintiff Chu Jan brought suit against the defendant when on their cockfight match on the afternoon of June 26, 1913, defendant Lucio Bernas was declared the winner. Each of said persons had to put up a wager of P160 before the cockfight. Plaintiff prayed before the justice of the peace court of the said pueblo, that his own rooster be declared the winner. Justice of the peace court decided that bout was a draw. Defendant appealed to Court of First Instance. Plaintiff filed his complaint, praying before the court to render judgment ordering defendant to abide and comply with rules and regulations governing cockfights, to the stipulated wager of P160 and return the other amount which is in

safekeeping of the Cockpit owner. Defendant denied all allegations and moved to dismiss cost against plaintiff. On September 11, 1913, the Court of First Instance dismissed the appeal without special findings. Defendant excepted to this judgment as well as to an order dictated by the same court on November 8th of the same year, on the plaintiff's motion, an order ordering provincial treasurer and if possible, Municipal Treasurer of Tabaco to release deposit of P160 and return to plaintiff Chu Jan. Proceedings was forwarded to Supreme Court by means of proper bill of exceptions.

Issue: Whether or not insufficiency of the laws is an acceptable ground for a judge or court to dismiss a case without deciding the issues.

Held: Ignorance of the court or his lack of knowledge regarding the law applicable to a case submitted to him for decision, the fact that the court does not know the rules applicable to a certain matter that is the subject of an appeal which must be decided by him and his not knowing where to find the law relative to the case, are not reasons that can serve to excuse the court for terminating the proceedings by dismissing them without deciding the issues. Therefore the judgment and the order appealed from, are reversed and to record of the proceedings shall remanded to the court from where they came for due trial and judgment as provided by law. In case of doubt, obscurity or insufficiency of the laws, the court can resort to observe the customs known to the place and in the absence thereof, the general principles of law

People vs Veneravion, 249 SCRA 251

FACTS

Respondent Judge Lorenzo Veneracion of the RTC of Manila presided two consolidated criminal cases of Rape with Homicide.

Trial ensued and it was proven that the two accused in the criminal cases committed Rape with Homicide.

At that time, 1995, if Rape is committed with Homicide, it is punishable only by Death.

However, Judge Veneracion refused to impose the death penalty and instead meted out reclusion perpetua, even though he found the two accused guilty beyond reasonable doubt.

The City Prosecutor of Manila filed a motion for reconsideration, to which Judge Veneracion denied.

Hence, petitioner People of the Philippines filed a petition against him for grave abuse of discretion for not imposing the death penalty.

Judge Veneracion, meanwhile, invoked his religious convictions for refusing to impose the said penalty.

ISSUE

Whether or not Judge Veneracion committed grave abuse of discretion.

RULING

YES, Judge Veneracion committed grave abuse of discretion.

Obedience to the rule of law forms the bedrock of our system of justice.

A government of laws, not of men excludes the exercise of broad discretionary powers by those acting under its authority. Under this system, judges are guided by the Rule of Law, and ought "to protect and enforce it without fear or favor," resist encroachments by governments, political parties, or even the interference of their own personal beliefs.

While this Court sympathizes with his predicament, it is its bounden duty to emphasize that a court of law is no place for a protracted debate on the morality or propriety of the

sentence, where the law itself provides for the sentence of death as a penalty in specific and well-defined instances. The discomfort faced by those forced by law to impose the death penalty is an ancient one, but it is a matter upon which judges have no choice. Courts are not concerned with the wisdom, efficacy, or morality of laws.

DISPOSITIVE PORTION

WHEREFORE, PREMISES CONSIDERED, the instant petition is GRANTED. The case is hereby REMANDED to the Regional Trial Court for the imposition of the penalty of death upon private respondents in consonance with respondent judge's finding that the private respondents in the instant case had committed the crime of Rape with Homicide under Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, subject to automatic review by this Court of the decision imposing the death penalty.

SO ORDERED.

Caltex Inc. vs. Palomar 18 SCRA 247

FACTS: This is a petition of declaratory relief filed by Petitioner Caltex Philippines, Inc. against Respondent Postmaster General Enrico Palomar. In 1960, the Petitioner devised a contest to increase patronage for their products called "Caltex Hooded Pump Contest", in which participants are to estimate the number of liters a hooded gas pump at each Caltex station will dispense during a specified period. No fee nor purchase is required to join the contest – participants must only secure a form available upon request at stations. Foreseeing the extensive use of mail for the contest, Caltex, through a representative, attempted to secure clearance for mailing, on the grounds that their contest does not violate the anti-lottery provisions of the Postal Law. Respondent, however, declined the grant, prompting the petitioner to seek reconsideration. Respondent then maintained that if the contest was pursued, a fraud order will be issued against Caltex.

ISSUE: (1) Whether or not petition has sufficient cause for declaratory relief. (2) Whether or not the Caltex Hooded Pump contest is violative of the anti-lottery provision of the Postal Law as provided by Section 1954 (a) of the Revised Administrative Code

RULING: (1) Yes. Per Section 1 Rule 66 of the old Rules of Court, declaratory relief is available to any person "whose rights are affected by statute… to determine any question of construction or validity arising under the… statute and for a declaration of his rights thereunder". This is the case here, as the question of the promo violating the Postal Law requires an inquiry to the intent of the legislation, which is the act of construction – the art or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where that intention is rendered doubtful, amongst other, by reason of the fact that the given case is not explicitly provided for in the law (Black, Interpretation of Laws). This petition, then, warrants a declaratory relief. (2) No. The Court held that the contest does not violate the anti-lottery provision, which makes absolutely non-mailable "any information concerning any lottery, gift enterprise or similar scheme depending in whole or in part upon a lot or chance, or any scheme, device, or enterprise for obtaining any money or property of any kind by means of false or fraudulent pretenses, representations, or promises". Lottery in this case was described as having three (3) requisites: consideration, chance, and prize; chance and prize being clear as is, while consideration referring to the need of participants to pay for a chance to win. The term "gift enterprise" was disputed but resolved by applying the principle of "noscitur a sociis" in which terms under construction shall be understood by the words

preceding and following it. In this case, promo does not qualify as a lottery nor a gift enterprise for lack of element of consideration.

CONCLUSION: Caltex Hooded Pump Contest does not violate the Postal Law. The decision appealed from is AFFIRMED.

Floresca vs. Philex Mining Corporation 136 SCRA 136

Facts: Petitioners are the heirs of the deceased employees of Philex Mining Corporation who, while working at its copper mines underground operations at Tuba, Benguet on June 28, 1967, died as a result of the cave-in that buried them in the tunnels of the mine. Specifically, the complaint alleges that Philex, in violation of government rules and regulations, negligently and deliberately failed to take the required precautions for the protection of the lives of its men working underground. However, the respondent Judge dismissed the case for lack of jurisdiction and ruled that in accordance with the established jurisprudence, the Workmen's Compensation Commission has exclusive original jurisdiction over damage or compensation claims for work-connected deaths or injuries of workmen or employees, irrespective of whether or not the employer was negligent, adding that if the employer's negligence results in work-connected deaths or injuries, the employer shall, pursuant to Section 4-A of the Workmen's Compensation Act, pay additional compensation equal to 50% of the compensation fixed in the Act.

Issue: Whether or not the lower court failed to consider the distinction between claims for damages under the Civil Code and claims for compensation under the Workmen's Compensation Act.

Ruling: Yes, it should be underscored that the petitioners' complaint is not for compensation based on the Workmen's Compensation Act, but a complaint for damages. The workmen's compensation refers to liability for compensation for loss resulting from injury, disability or death of the working man through industrial accident or disease, without regard to the fault or negligence of the employer, while the claim for damages under the Civil Code which petitioners pursued in the regular court, refers to the employer's liability for reckless and wanton negligence resulting in the death of the employees and for which the regular court has jurisdiction to adjudicate the same.

Petitioners did not invoke the provisions of the Workmen's Compensation Act to entitle them to compensation thereunder. The complaint instead alleges gross and reckless negligence and deliberate failure on the part of Philex to protect the lives of its workers as a consequence of which a cave-in occurred resulting in the death of the employees working underground. Settled is the rule that in ascertaining whether or not the cause of action is in the nature of workmen's compensation claim or a claim for damages pursuant to the provisions of the Civil Code, the test is the averments or allegations in the complaint.

Fallo: Wherefore, the trial court's order of dismissal is hereby reversed and set aside and the case is remanded to it for further proceedings. Should a greater amount of damages be decreed in favor of herein petitioners, the payments already made to them pursuant to the workmen's compensation act shall be deducted.

Presumption & Applicability of Custom (Arts. 10-12)

People Vs Purisima 86 SCRA 542

FACTS:

Pursuant to P.D. 9, penalizing the illegal possession of deadly weapons, a total of 26 people were charged for the mere act of carrying deadly weapons. Respondent Judge Purisima, et.

al. dismissed or quashed all the informations filed in their respective courts for failing to allege that the carrying outside of the accused's residence of a bladed, pointed or blunt weapon is in furtherance of or on the occasion of, connected with or related to subversion, insurrection, or rebellion, organized lawlessness or public disorder. Based on the literal import P.D. 9, the People argue that the prohibited acts need not be related to subversive activities as such are essentially a *malum prohibitum* penalized for reasons of public policy.

ISSUE:

Whether or not the mere carrying of deadly weapons constitute a crime under P.D. 9.

HELD:

No, it is not the intention of P.D. No. 9 to punish the mere carrying of deadly weapons.

In the construction or interpretation of a legislative measure, the primary rule is to search for and determine the intent and spirit of the law. Legislative intent is the controlling factor. Whatever is within the spirit of a statute is within the statute, and this has to be so if strict adherence to the letter would result in absurdity, injustice and contradictions.

In this case, when P.D. No. 9 was promulgated, there was no intent to work a hardship or an oppressive result, a possible abuse of authority or act of oppression, arming one person with a weapon to impose hardship on another, and so on. The act of carrying a blunt or bladed weapon must be with a motivation connected with the desired result of Proclamation 1081 (suppressing criminality, etc.) that is within the intent of P.D. No. 9.

As regards the purpose of P.D. 9 contemplated in its preamble, the carrying of deadly weapons outside the residence must be related to subversive or criminal activities to constitute a crime. Penalizing the mere act of carrying deadly weapons would lead to injustice, hardships and unreasonable consequences, never intended by a legislative measure. Hence, the mere carrying of deadly weapons do not constitute a crime under P.D. 9.

In re: Padilla, 74 Phil 377

FACTS: This case is an incident of the settlement of the testate estate of the late Narciso Padilla. In order that his property may be divided according to his last will and testament, it is necessary first to liquidate the conjugal partnership. • December 12, 1912 – Narciso Padilla and Concepcion Paterno were married. The husband, being a medical student contributed a small capital to the conjugal partnership while the wife brought to the marriage considerable property in real estate, cash and jewelry • February 12, 1934 – Narciso died. Having no children, he executed a will giving his whole estate to his mother, Isabel Bibby vda. De Padilla. The property included in the inventory was appraised at P 261,000. 7 pieces of the real estate are in controversy since the remaining 10 were left by Narciso as part of the conjugal partnership • Concepcion filed a petition praying that her paraphernal property be segregated from the inventoried estate and delivered to her together with the corresponding reimbursements and indemnities; that she be given ½ of the conjugal partnership property and that the usufructuary right1 over ½ of the portion pertaining to the heir in Narciso's will be recognized • CFI ordered that certain pieces of real estate property , jewelry and cash were paraphernal and as such should be delivered to Concepcion ISSUE: Whether or not the properties in question are conjugal owing to the improvements made which came from conjugal funds; whether or not improvements made on the paraphernal properties could be reimbursed to the wife HELD: Art. 1404 (2) of the Spanish

Code provides that the improvements made on the separate property of the spouses through advancements from the partnership or through the industry of either the husband or wife, belong to the conjugal partnership. Buildings constructed, at the expense of the partnership, during the marriage on land belonging to one of the spouses also pertain to the partnership, but the value of the land shall be reimbursed to the spouse who owns the same. In the instant case, the husband constructed buildings on the wife's lots. Isabel alleged that the CFI erred in since from the time of the construction of the buildings, the conjugal partnership became the owner of the whole property, that any increase in value should accrue to the conjugal partnership and any depreciation should be suffered by the same. Based on the above provision, the ownership of the land is retained by the wife until she is paid the value of the lot, as a result of the liquidation of the conjugal partnership. Mere construction of a building from common funds does not automatically convey the ownership of the wife's land to the conjugal partnership. Construction and improvements are simply an exercise of the usufruct pertaining to the conjugal partnership over the wife's land. Subsequently, the conjugal partnership is not bound to pay any rent during the occupation of the wife's land. Before the payment of the value of land is made from the common funds, all the increase or decrease in its value must be for her benefit or loss and she can only demand payment after the conjugal partnership is liquidated. Furthermore, the wife should not be allowed to demand payment of the lot during the marriage and before liquidation because this would disturb the husband's management of the conjugal partnership. Whether the value of the paraphernal buildings which were demolished to construct new ones using conjugal funds, are reimbursable to the wife. Concepcion maintains that is doubtful if the demolished buildings were of any value. However, the SC maintained that however small the value of the buildings at the time of the demolition should be, considering the principle of justice equity, reimbursed to the wife. There is also the issue of money borrowed by the husband for horse race, pastime and for payment of personal debt of the husband. Applying Art. 1386 of the Spanish Code which reads, the personal obligations of the husband cannot be enforced against the fruits of the paraphernal property, unless it is proven that they redounded to the benefit of the family, said amount cannot be applied to the conjugal partnership and should be paid by the 1 Right that allows the use of property that belongs to another. husband alone. While it is true that under Art. 1408, all debts and obligations contracted by the husband during the marriage are chargeable to against the conjugal partnership, Art. 1386 is an exception and exempts the fruits of the paraphernal property from the payment of the personal obligations of the husband unless there is proof that the redounded to the benefit of the family. In this case, it clearly did not and as a result, they should be taken from the husband's funds. If the conjugal partnership assets are derived almost entirely, if not entirely, from the fruits of the paraphernal property, as in this case, it is neither lawful nor equitable to apply article 1411 because by so doing, the fruits of the paraphernal property would in reality be the only kind of property to bear the husband's gambling losses. In other words, what the husband loses in gambling should be shouldered by him and not by the conjugal partnership if the latter's assets come solely from the fruits of the paraphernal property. This is but just, because gambling losses of the husband cannot by any process of reasoning be considered beneficial to the family. By the same token, to charge the gambling losses against the conjugal partnership in such a situation would fly in the case of the stern prohibition of article 1386, which protects the fruits of the paraphernal property precisely

against expenses of the husband that are of no help to the family.

People vs. Amigo 252 SCRA 43

Facts:

On December 29, 1989 at around 1:00 Pm, Benito Ng Suy was driving their gray Ford Fiera back home, with his daughters, Jocelyn Ng Suy and a younger one together with his two year old son. An accidental head on collision occurred between the Fiera and the Tamaraw being driven by one Virgillio Abogado, with Abogado was the accused, Patricio Amigo alias "Bebot". The collision caused slight damage to the right bumper of the Tamaraw.

While Abogado and Benito were having a verbal confrontation, Patricio approached Benito asking the latter to leave the incident as it was only a minor incident. However, Benito said that Patricio should not interfere, which made Patricio irritated and caused the latter to stab Benito, rendering the victim into a critical condition which later caused his death due to a sepsis infection that has already circulated in his body.

Patricio Amigo was charged initially with Frustrated murder, but was modified to the crime of murder to which he was convicted with a penalty of Reclusion Perpetua. Accused-Appellant claims that the penalty of reclusion perpetua is too cruel and harch as a penalty and pleads for sympathy.

Issue:

Whether or Not the penalty imposed upon the accused "Reclusion Perpetua" be modified or reduced by virtue of Section 19 (1) of Article III of the Constitution which prohibits the imposition of death penalty.

Held:

No. The Supreme Court hold that Article III, Section 19 (1) does not change the penalty periods prescribed by Article 248 of the Revised Penal Code except only in so far as it prohibits the imposition of death penalty. The range of the medium and minimum penalties remain the same.

Thus, a person originally subject to death penalty and another who committed the murder without the attendance of any modifying circumstances will now be both punishable with the same medium period although the former is conceitedly more guilty than the latter. But that is the will of the constitution and the duty of the court is to apply the law, disregarding the sympathy or pity for an accused. Dura Lex Sed Lex.

Mendiola vs. CA 258 SCRA 492

FACTS: ¬ 1987, Ms. Norma S. Nora convinced Rogelio Mendiola to enter into a joint venture with her for the export of prawns. As proposed by Ms. Nora, they were to secure financing from private respondent Philippine National Bank. The credit line was to be secured by collaterals consisting of real estate properties of the petitioner, particularly two (2) parcels of land, situated in Marikina. ¬ 1988, Mendiola signed a Special Power of Attorney authorizing Ms. Norma S. Nora to mortgage his aforementioned properties to PNB in order to secure the obligations of the joint venture with the said bank of up to 5 Million Pesos. ¬ The planned joint venture became a failure even before it could take off the ground. But, in the meantime, Ms. Norma S. Nora, on the strength of the special power of attorney issued in her favor, obtained loans from PNB in the amount of P8,101,440.62 for the account of petitioner and secured by the parcels of land hereinabove described. ¬ 1988, Mendiola belatedly revoked the special power of

attorney in favor of Ms. Nora and requested PNB to release his properties from mortgage. Petitioner was notified that PNB had initiated foreclose proceedings against the properties of the petitioner. ¬ 1989, Mendiola filed injunction case against PNB. PND moved to dismiss.

¬ RTC RULED: o Granted PNB's motion to dismiss because the complaint does not state a sufficient cause of action, it follows therefore that the prayer, for issuance of the writ of preliminary injunction has no leg to stand on. ¬ CA dismissed the appeal.

ISSUE: Whether or not CA erred in dismissing the petition? Whether or not res judicata has already set in the case?

HELD: No. Yes. RATIO: ¬ The instant petition has now become moot and academic, because the first case, which is an application for injunction filed by herein petitioner Regional Trial Court, Pasig City against private respondent PNB to prevent the latter from foreclosing his real properties, and which was then pending appeal before the court a quo at the time the second action was filed, has now been finally dismissed by the respondent Court of Appeals. ¬ Consequently, the instant petition which prays for the declaration of nullity of the auction sale by PNB of private respondent's properties becomes dismissible under the principle of res judicata. ¬ There is "bar by former judgment" when, between the first case where the judgment was rendered, and the second case where such judgment is invoked, there is identity of parties, subject matter and cause of action. When the three identities are present, the judgment on the merits rendered in the first constitutes an absolute bar to subsequent action. It is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. But where between the first case wherein judgment is rendered and the second case wherein such judgment is invoked, there is no identity of cause of action, the judgment is conclusive in the second case, only as to those matters actually and directly controverted and determined, and not as to matters merely involved therein. This is what is termed conclusiveness of judgment.

Martinez vs Van Buskirk 18 Phil 79

FACTS:

- On September 11, 1908, Carmen Ong de Martinez, was riding in a carromata on Calle Real, Ermita, Manila, Philippines, when a delivery wagon belonging to William Van Buskirk, came along the street in the opposite direction at a great speed, and run over to carromata severely wounding Carmen Ong with a serious cut upon her head.
- Van Buskirk presented evidence to the effect that the cochero, who was driving his delivery wagon at the time the accident occurred, was a good servant and was considered a safe and reliable cochero;
- That upon the delivery of some forage, the defendant's cochero tied the driving lines of the horses to the front end of the delivery wagon and then went back inside the wagon to unload the forage.
- While unloading the forage, another vehicle drove by, the driver of which cracked a whip and made some other noise, which frightened the horses attached to the delivery wagon and they ran away. The driver was thrown out from the wagon and was unable to stop the horses resulting to a collision with the carromata.

Upon these facts the court below found the defendant guilty of negligence and gave judgment against him for P442.50, with interest thereon at the rate of 6 per cent per annum from the 17th day October, 1908, and for the costs of the action. The case is before us on an appeal from that judgment.

ISSUE

- Whether or Not the defendant be liable for the negligence of his cochero?

HOLDING

- No. The Court of appeals ruled in favor of the defendant. This is because the occurrence that transpired therein was an accident resulted from an ordinary acts of life. The prima facie case was already destroyed from the start when the defendant presented his evidence to the court by employing all the diligence of his cochero proving that the latter was not a negligent. Hence, it proves that the defendant is not liable for any accusations.

RULINGS

- It was held that the cochero of the defendant was not negligent in leaving the horses in the manner described by the evidence in this case. The act of defendant's driver in leaving the horses in the manner proved was not unreasonable or imprudent. Acts that the performance of which has not proved destructive or injurious and which have, therefore, **been acquiesced in by society for so long a time that they have ripened into custom**, can not be held to be of themselves unreasonable or imprudent. In fact, the very reason why they have been permitted by society is that they are beneficial rather than prejudicial.
- It is the universal practice to leave the horses in the manner in which they were left at the time of the accident. Those conditions showing of themselves that the defendant's cochero was not negligent in the management of the horse.

Yao Kee vs Sy-Gonzales, 167 SCRA 736

Facts:

Sy Kiat, a chines national died in Caloocan City, leaving behind his real and personal properties in the Philippines worth P 300,000 more or less. Aida Sy-Gonzales, et. al. filed a petition for the grant of letters of administration claiming among other things that they are children of the deceased with Asuncion Gillego, a Filipina. The petition was opposed by Yao kee who alleged that she is the lawful wife of the deceased whom he married in China and that one of her children, Sze Sook Wah, should be the administrator of the deceased. The CFI decided in favor of Yao Kee's petition but was modified and set aside by the court of appeals.

Issue:

Whether or not Sy Kiat's marriage to Yao Kee in accordance with Chinese Law and Custom conclusive.

Held:

The Supreme Court ruled that evidence may prove the fact if marriage between Sy Kiat and Yao Kee is valid, but it is not sufficient to establish the validity of said marriage in accordance with Chinese law and custom. A

custom must be proved as a fact according to the rules of evidence and that a local custom as a source of right cannot be considered by a court of justice unless such custom is properly established by competent evidence. In the case at bar, petitioners did not present any competent evidence relative to the law of China on marriage. In the absence of proof of the Chinese law on marriage, it should be presumed that it is the same as that of the Philippines.

The Supreme Court affirmed (all of them were acknowledged as natural children, hence given equal rights) the decision of the Court of Appelas.

In the Matter of the Petition for Authority to Continue the Use of the Firm Name Ozaeta

Facts: The surviving parters of Atty. Herminio Ozaeta filed a petition praying that they be allowed to continue using, in the name of their firm, the names of their partner who passed away. One of the petitioners' arguments stated that no local custom prohibits the continued use of a deceased partner's name in a professional firm's name in so far as Greater Manila Area is concerned. No custom exists which recognizes that the name of a law firm necessarily identifies the individual members of the firm. They also stated that the continued use of a deceased partner's name in the firm name of law partnerships has been consistently allowed by U.S. Courts and is an accepted practice in the legal profession of most countries in the world. Issue: Whether or not the law firm "Ozaeta, Romulo, De Leon, Mabanta & Reyes" is allowed to sustain the name of their deceased partner, Atty. Herminio Ozaeta, in the name of their firm. Held: NO. Canon 33 of the Canons of Professional Ethics adopted by the American Bar Association stated the following: "The continued use of the name of a deceased or former partner when permissible by local custom, is not unethical but care should be taken that no imposition or deception is practiced through this use." No local custom permits or allows the continued use of a deceased or former partner's name in the firm names of law partnerships. Firm names, under Philippine custom, identify the more active or senior partners in a firm. Firm names in the Philippines change and evolve when partners die, leave or a new one is added. It is questionable to add the new name of a partner and sustain the name of the deceased one since they have never been, technically, partners in the first place. When it comes to the arguments of the petitioners stating that U.S. Courts grant the continued use of the deceased partner's name, this is so because in the U.S., it is a sanctioned custom as stated in the case of Mendelsohn v. Equitable Life Assurance Society (33 N.Y.S 2d 733). This does not apply in the Philippines. The petition filed herein is denied and petitioner is advised to drop the name "OZAETA" from the firm name.