involved. Going after the individual actors has been de-emphasized in favor of prosecuting the corporation. Commentators have criticized the entire system as redundant and as straining the corporate fiction too far.

Even though most civil law jurisdictions like ours do not recognize a corporation as morally blameworthy, corporate deterrence must be recognized. The proposed dual system of policing corporations – the individual, criminally and the corporation, administratively – is a compromise between two extremes that meets this purpose more effectively. The common law principles of "acquiescence," "willful blindness" and "reckless supervision" contribute to a clearer definition of the responsible corporate actor. Methods of proving corporate guilt – collective knowledge, linking acts of subordinates to those of their superiors, establishing a pattern of corporate behavior – would be effective in the administrative setting. Substantial evidence would be sufficient as opposed to proof beyond reasonable doubt. Administrative agencies, more than the regular courts, would be better equipped to handle the intricacies of corporate crime.

The success of any program depends largely on the availability of funding and the dedication of our law enforcers to implementing the reforms. What this discourse on corporate criminality hopes to achieve is a sufficient degree of awareness in order to establish our priorities. The problem of corporate criminality clearly deserves a second look. For this reason, it is worth quoting Stanton Wheeler again:

> *It is necessary to urge that we redirect our attention from the petty thief to the Corporate Executive, from the offender who haunts the streets and alleys to those who inhabit the finest offices and restaurants, and from the Police to the FTC, SEC, and IRS. Or perhaps I should not say redirect for that implies that the problems of ordinary street crime and violent crimes are unimportant. It is a matter of balance.*[334]

[334] CORPORATE CRIME, *supra* note 1, 12-13 *citing* Stanton Wheeler, Trends and Problems in Sociological Study of Crime, 99 SOCIAL PROBLEMS, June (1976), at 532.

THE PROSPECTIVITY PRINCIPLE AS APPLIED TO JUDICIAL DECISIONS

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ABSTRACT

It is settled that, once the Supreme Court establishes the meaning to be attached to the words of the law, every citizen is bound by obedience. As far as everyone is concerned, the law is what the Supreme Court says it is. After a doctrine has been laid down, everyone must act accordingly.

Likewise, no one will contest the propriety, practicality, and even the necessity of giving the Supreme Court of the land the power to re-examine and reconsider its previous interpretation of a statute or a provision of the Constitution rendered in the context of an actual controversy resolved by it. Indeed, great injustice may result if the Supreme Court is deprived of the power to change its mind.

However, it appears that the Supreme Court has yet to realize the great impact the exercise of this power has on completed transactions and consummated acts. When the Supreme Court abandons, reverses, or modifies a doctrine it established in the past, does the new doctrine's application and binding effect extend to acts done by persons who relied on the prior doctrine? Can the Supreme Court, through a new doctrine, lay down new requisites for the legality of an act which was legal when performed, according to the prior doctrine? More importantly, can a man be imprisoned for the commission of an act which, when done, was lawful according to existing jurisprudence?

The Supreme Court has, more than once, decided a case on the basis of the prospective effect of its decisions. The Supreme Court has stated that judicial decisions effecting a change of existing doctrines have prospective effect only because persons have acted in reliance upon the old doctrine. Although this reasoning has been upheld in many cases, it is, to the author, extremely insufficient and unconvincing. Such a crucial and vital issue deserves a longer and more critical inquiry.

I. INTRODUCTION

A. Background and Objectives of the Study

The principle that laws should only have prospective effect and should not operate retrospectively is embodied in Article 4 of the Civil Code and Section 22, Article III of the Philippine Constitution. A further re-statement is made in Article 22 of the Revised Penal Code.

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In the process of exercising judicial power and fulfilling its duty of applying and interpreting the laws enacted by the Philippine Legislature, the Supreme Court has, in a limited number of cases, rendered a decision based on an application of the principle of prospectivity of laws to its own decisions. The Supreme Court has ruled that when it abandons a doctrine it has previously established, the decision containing the new doctrine can only have prospective effect. Either expressly or impliedly, the Supreme Court has relied upon the principle of prospectivity to justify its decision, and ruled that such principle equally applies to doctrines it lays down in judicial decisions.

In some of these cases, it seems that the applicability of the prospectivity principle to judicial decisions may have been too hastily dismissed as a foregone conclusion. There is a dearth in explanation as to how this conclusion was reached. Considering that judicial decisions are not laws and that the processes involved within the Supreme Court differ from the law-making process of the Legislature, a more serious and in-depth look into this proposition is necessary. The sound arguments in support of prospectivity of the effect of statutes may not entirely be reasonable when viewed with regard to the effect of judicial decisions.

It is the objective of this study to re-examine the rationale behind the prohibition against the retroactive effect of laws, and to determine whether such rationale is germane even to judicial decisions. The interplay among the concepts of prospectivity, *stare decisis*, ignorance of the law, presumption of innocence, and vested rights will be discussed for a complete view.

B. Scope and Limitations of the Study

This study focuses on whether the principle of prospectivity should apply to decisions of the Supreme Court which abandon, modify or reverse interpretations of statutes established in previous cases and considered doctrinal therein.

A discussion of *ex post facto* laws and laws with retroactive effect is material to understand the prospectivity principle itself, but this study should not be expected to contain a memorandum of existing jurisprudence on prospectivity of laws. Its concern is the prospectivity principle to the extent that it has been applied *to*, and not *in* or *by*, decisions of the Supreme Court.

This study does not deal with the operative fact theory. The operative fact theory was enunciated in the case of *Chicot County Drainage District v. Baxter State Bank*[1] and has been adopted by the Supreme Court of the Philippines in several cases.[2] Under the operative fact theory, the existence of a statute or executive act declared by the Supreme Court as unconstitutional, before such statute or act is rendered unconstitutional, is recognized as an operative fact.[3] The Supreme Court then acknowledges that persons may have acted in accordance with the statute. Although the Supreme Court may mention in these cases that its declaration of unconstitutionality applies prospectively only, this matter is more appropriately treated in a different study. When the Supreme Court declares a statute or an executive act unconstitutional, what it declares void is an act of another department of Government. When a doctrine embodying a statutory construction is abandoned, what the Supreme Court addresses is an error committed by itself.

[1] 308 US 371, 374 (1940).

[2] De Agbayani v. Philippine National Bank, 38 SCRA 429, 435 (1971); Fernandez v. P. Cuerva & Co., 21 SCRA 1095, 1102 (1967).

The study is limited to Supreme Court decisions which involve the interpretation of the words of statutes and of the Constitution. Decisions concerned with the Rules of Court and Supreme Court circulars have been intentionally excluded for the reason that, unlike in the case of statutes and the Constitution, the Supreme Court has the power to suspend its own rules of procedure.

The term "judicial decisions," whenever used in this study, should be understood to refer only to decisions rendered by the Supreme Court of the Philippines in the exercise of its power to construe the Constitution and statutes. Judicial decisions in the area of judicial review or judicial inquiry are not included. The whole field of decisions rendered by the Supreme Court from 1901 until the first half of the year 1995 has been surveyed in search of decisions which now form the bases of the analysis contained in this study.

A further clarification must be made. The author recognizes the existence and, in fact, cites several times in this thesis, Section 4(3), Article VIII of the 1987 Constitution.[4] In this jurisdiction, the Supreme Court may decide a case either *en banc* or in division. A doctrine laid down by the Supreme Court *en banc* or in division may be reversed or modified only by the Supreme Court in a decision rendered *en banc*.[5] Any doctrine, therefore, laid down by a division of the Supreme Court which is inconsistent with a previous doctrine laid down by the Supreme Court *en banc* does not operate to abandon such prior ruling. However, neither is the new doctrine laid down therein void.

The manner of deciding cases *en banc* and in division has been the subject of much criticism and the matter of the binding effect of one kind of decision as against

[3] The operative fact theory finds application when the Supreme Court, in the exercise of its power of judicial review, declares a statute unconstitutional. However, when the opportunity arises in later cases brought before it involving the statute before it was declared unconstitutional, the Supreme Court considers it practical and realistic to allow the parties to rely upon that law.

[4] "Cases or matters heard by a division shall be decided or resolved with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case, without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: Provided, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in a division may be modified or reversed except by the court sitting *en banc*."

[5] *See* Republic v. De los Angeles, 159 SCRA 264, 286 (1988).

the other has not yet been settled. For this reason, the author has chosen not to burden this study with a detailed discussion of the effect on the analysis contained herein of the fact that a particular case was decided by a division while another one was decided *en banc*. This study was conducted on the premise that the doctrinal value to be given to *en banc* decisions and decisions by divisions is a matter for the Supreme Court itself to determine, and not an issue for the public to speculate on. However, for the guidance of the reader, all citations will contain a notation as to whether the case was decided by a division or *en banc*.

C. *Methodology*

Section 22, Article III of the Constitution, Article 4 of the Civil Code, and select jurisprudence on them will be examined to define the principle of prospectivity. Decisions of the Supreme Court wherein the principle of prospectivity has been held to apply to its doctrines will be examined together with previous and following cases interpreting the identical provisions of law. This manner of grouping will allow for a clearer discussion of how the Supreme Court reached the conclusion that the principle of prospectivity applies to its decisions. American jurisprudence will be resorted to only in aid of the analysis of Philippine jurisprudence, not as bases of analysis.

The prospectivity principle will be evaluated *vis-à-vis* other legal principles and concepts ranging from the rules of statutory construction to the constitutional presumption of innocence.

II. THE PROSPECTIVITY PRINCIPLE

A. *Definition*

Section 22 of Article III of the 1987 Constitution mandates that "No *ex post facto* law... shall be enacted." Article 4 of the Civil Code provides that "Laws shall have no retroactive effect, unless the contrary is provided."[6] The principle embodied in both these important provisions of law is what is referred to in this study as the prospectivity principle. It is the principle that laws are intended to guide human conduct only from the moment of their effectivity and affect acts done and transactions entered into only after their effectivity.

B. *Section 22, Article III of the 1987 Constitution*

A law is an *ex post facto* law if it:

(1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act;

[6] A similar provision appears in Section 19 of the Administrative Code of 1987: "Laws shall have prospective effect unless the contrary is expressly provided."

(2) aggravates a crime, or makes it greater than it was, when committed;

(3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;

(4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense;

(5) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and

(6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.[7]

An *ex post facto* law has three essential characteristics: (1) it relates to criminal matters, (2) it is retroactive in its operation, and (3) it alters the situation of the accused to his disadvantage.[8] Every *ex post facto* law must necessarily be retrospective, although not every retrospective law is an *ex post facto* law.[9]

The prohibition is based on the principle *nula poena sine lege*. There is no penalty without a law. This same principle is reiterated in the Revised Penal Code, which provides that "no felony shall be punishable by any penalty not prescribed by law prior to its commission."[10]

C. *Article 4 of the Civil Code*

The constitutional prohibition against the enactment of *ex post facto* laws properly applies to criminal cases only.[11] It does not apply to laws which concern civil matters or laws which affect private rights.[12] Article 4 of the Civil Code is more encompassing. It is a general prohibition against statutes having an effect which reaches acts done or transactions entered into even before its effectivity. It is based on the maxim *lex prospicit, non respicit*. The law looks forward, not backward.

A retroactive law is "one intended to affect transactions which occurred, or rights which accrued, before it became operative, and which ascribes to them effects

[7] In re: Kay Villegas Kami, Inc., 35 SCRA 429, 431 (1970).

[8] RUPERTO G. MARTIN, PHILIPPINE CONSTITUTIONAL LAW 432 (1988).

[9] Calder *et* Wife v. Bull *et* Wife, 3 Dall. 386, 390 (1798).

[10] Article 21. *See* People v. Santos, 238 SCRA 503, 511 (1994).

[11] Santos, *et al* v. Secretary of Public Works and Communications, 19 SCRA 637, 644 (1967).

[12] Central Azucarera Don Pedro v. Court of Tax Appeals, 20 SCRA 344, 353 (1967).

not inherent in their nature, in view of the law in force at the time of their occurrence."[13]

A law is retroactive if it creates a new obligation, imposes a new duty or attaches a new disability in respect to a transaction already past. A statute is not made retroactive just because it draws on antecedent facts for its operation or, in other words, part of the requirements for its operation and application is drawn from a time antedating its passage.[14]

Article 4 complements Articles 2[15] and 3[16] of the Civil Code. While ignorance does not serve as an excuse for noncompliance with the law, such ignorance refers only to laws that have already been enacted.[17] No one can be punished or prejudiced by laws which have not yet come into effect when an act was committed.

There are several recognized exceptions to the rule that laws shall have prospective effect only. Article 2 itself provides for the first exception. A law has retroactive effect if the law itself expressly provides for such. Of course, that law must otherwise comply with the provisions of the Constitution, including Section 22 of Article III. Article 22 of the Revised Penal Code provides a second exception: "Penal laws shall have retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal..." Laws likewise have retroactive effect in the following instances: (1) when the law is a remedial statute, (2) when the law is curative and its purpose is precisely to cure errors under an existing law, and (3) when the law creates a substantive right for the first time, provided vested rights are not impaired.[18]

D. Beyond Statutes

In this jurisdiction, the prospectivity principle has been made to apply, not only to statutes, but even to administrative rulings and judicial decisions.[19] The Supreme Court has found that the reasons in support of the prospectivity of laws sufficiently support the conclusion that judicial decisions which reverse previous

[13] 1 ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 22 (1990).

[14] Camacho v. Court of Industrial Relations, 80 Phil. 848, 855 (1948); Salcedo v. Carpio, 89 Phil. 254, 258-259 (1951).

[15] "Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette or in a newspaper of general circulation in the Philippines, unless otherwise provided... ."

[16] "Ignorance of the law excuses no one from compliance therewith."

[17] 1 EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 25 (1989).

[18] *Id.* at 26-28; TOLENTINO, *supra* note 13, at 23-26; *See* also Oro Enterprises, Inc. v. NLRC, 238 SCRA 105, 112 (1994).

[19] Co v. Court of Appeals, 227 SCRA 444, 449 (1993).

doctrines likewise have prospective effect only. The first step in determining the soundness of this argument is a brief study of the Supreme Court and the significance of its pronouncements.

III. THE SUPREME COURT AND THE SYSTEM OF CASE LAW

Article 8 of the Civil Code states that judicial decisions form part of the legal system of the Philippines. This is the system of case law. It has two aspects: in its limited sense, it is called the rule on *res judicata* or law of the case, and in its broader sense, it is referred to as the doctrine of *stare decisis*.[20]

Res judicata means that a final judgment or order on the merits, rendered by a court having jurisdiction on the subject matter and over the parties, is conclusive in a subsequent case between the same parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity no matter how erroneous the decision may be.[21] The case of *VDA Fish Broker v. National Labor Relations Commission* clarifies *res judicata* as follows:

> The principle of *res judicata* actually embraces two different concepts: (1) bar by former judgment and (2) conclusiveness of judgment. 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.... But where between the first case wherein judgment is rendered and the second case wherein such judgment is invoked, there is identity of parties, but 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.[22]

Any final judgment which has become executory becomes the law of the case and can no longer be annulled through a special civil action of certiorari even if the judgment is erroneous.[23] The rule of immutability of final judgments is adhered to notwithstanding occasional errors that may result.[24] "Once a case has been decided one way, then another case involving exactly the same point at issue should be decided in the same manner."[25] And where there has been no change in the facts or the conditions of the parties, not even posterior changes in the doctrine of the Supreme Court can retroactively be applied to nullify a prior final ruling in the same proceeding

[20] David G. Nitafan, *Reprobation of Trial Judges*, 211 SCRA 816, 821 (1992).

[21] *Id.*

[22] 228 SCRA 681, 686 (1993).

[23] Enriquez v. Court of Appeals, 202 SCRA 487, 492 (1991).

[24] Development Bank of the Philippines v. NLRC, 236 SCRA 117, 129 (1994).

[25] Tay Chun Suy v. Court of Appeals, 229 SCRA 151, 163 (1994). *See also* Samalang Magsasaka, Inc. v. Chua Guan, 25 February 1955, G.R. No. L-7252, and Padilla v. Paterno, 93 Phil. 885, 887 (1953).

where the prior adjudication was had.[26] The rule is based on convenience, experience, and reason. Otherwise, "there would be no end to criticism, reagitation, reexamination, and reformulation.... (i)n short, there would be endless litigation."[27]

Although some inequity may sometimes result, the harshness of any such result must be balanced against the public policy involved. Otherwise, "litigation would become even more intolerable than the wrong and injustice it is designed to correct."[28]

The doctrine of *stare decisis*, on the other hand, means that "when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same, regardless of whether the parties and property are the same."[29] *Stare decisis et non quieta movere*. "Follow past precedents and do not disturb what has been settled."[30]

Res judicata concerns both factual and legal questions. *Stare decisis* is limited to legal doctrines. While *res judicata* sets in regardless of the court rendering the judgment, *stare decisis* applies only to doctrines laid down by the Supreme Court. While *res judicata* applies regardless of the correctness of the judgment, the continuing doctrinal validity of a decision of the Supreme Court is "dependent upon its continuing soundness and the continuity of the legal policy sought to be enforced."[31]

There is not much difficulty in the application of the principle of *res judicata*. The requisites for its application are well-settled and no one will disagree that a matter finally settled by the courts between particular persons is best left at that – finally settled. The main consideration in *res judicata* is to put an end to litigation.

When the Supreme Court lays down a doctrine, its underlying consideration is, and should be that, more important than anything, the doctrine should be correct. "The rule of stare decisis is entitled to respect. Stability in the law,... is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right."[32]

Because of this singular goal, the application of the doctrine of *stare decisis* is a more complex and problematic exercise. The matter of adhering to precedents

[26] Lee Bun Ting v. Aligaen, 76 SCRA 417, 426 (1977).

[27] Zarate v. Director of Lands, 39 Phil. 747, 750 (1919).

[28] Reinsurance Company of the Orient, Inc. v. Court of Appeals, 198 SCRA 19, 33 (1991).

[29] HENRY C. BLACK, BLACK'S LAW DICTIONARY 1261 (5th ed 1979).

[30] Luzon Brokerage Co., Inc. v. Maritime Building Co., Inc., 86 SCRA 305, 319 (1978).

[31] Nitafan, *supra* note 20, at 822.

[32] Philippine Trust Co. and Smith, Bell & Co. v. Mitchell, 59 Phil. 30, 36 (1933).

becomes complicated when the precedents have been abandoned by the Supreme Court itself.

IV. SUPREME COURT DECISIONS ON THE APPLICABILITY OF THE PROSPECTIVITY PRINCIPLE TO JUDICIAL DECISIONS

A. Decisions Interpreting Penal Statutes

Founded on the tenderness of the law for the rights of the individual and based on the theory that the power of punishment is vested in the Legislature and not in the Judiciary,[33] it is a rule that penal laws, in case of ambiguity, should be strictly construed in favor of the accused.[34] "No person should be brought within their terms who is not clearly within them, nor should any act be pronounced criminal which is not made clearly so by the statute."[35] This is only part and parcel of the presumption of innocence accorded by the Constitution[36] to all persons accused of having committed a crime.

The Supreme Court has used the presumption of innocence and the above rule of statutory construction, hand in hand with the *ex post facto* law prohibition to reach the conclusion that judicial decisions constituting a less favorable construction of a penal statute against the accused should likewise be applied prospectively. This seems only reasonable, for, after all, if the learned Justices of the Supreme Court have not been unanimous as to what the law means, to require perfect understanding from non-experts may be requiring too much. And to punish a layman's mistake with imprisonment or some other penalty may be unconscionable.

True, ignorance of the law is no excuse,[37] but ignorance as to what a difficult provision of law means should be an excuse where such ignorance is not based on negligence or is not accompanied by bad faith, especially when the liberty of a man is at stake.

1. ILLEGAL POSSESSION OF FIREARMS[38]

In the case of *People v. Jabinal*,[39] the Supreme Court had occasion to state that a new doctrine interpreting a penal statute "should be applied *prospectively*,

[33] United States v. Almond, 6 Phil. 306, 310 (1906).

[34] *Id.*

[35] United States v. Abad Santos, 36 Phil. 243, 246 (1917).

[36] PHILIPPINE CONSTITUTION, art. III, §14(2).

[37] The Civil Code of the Philippines, R. A. No. 386, art. 3 (1950).

[38] *See* Appendix 1 for a tabular comparison of the pertinent facts in the following cases.

[39] 55 SCRA 607 (1974).

and should not apply to parties who had relied on the old doctrine and acted on the faith thereof."[40] [Emphasis supplied.] This case involved illegal possession of firearms and the viability of an appointment as secret agent as defense against such charge. It was preceded by three other cases involving illegal possession of firearms similarly based on the provisions of the Revised Administrative Code.

In the 1958 case of *People v. Lucero*,[41] Ambrosio Lucero was appointed civilian confidential agent by the 1st Lt. Inf. Team Leader on 6 January 1953. He even possessed an agent identification card. One month later, on 7 February 1953, Lucero was caught in possession of a revolver. He was charged and convicted by the Court of First Instance of Rizal of illegal possession of firearm. On appeal, the Supreme Court took "judicial notice of the fact that the practice of appointing civilians as informers to help in the apprehension and arrest of Huks has been resorted to many times with success."[42] It ruled that Sections 887[43] and 888[44] of the Revised Administrative Code refer to "possession of

[40] *Id.* at 612.

[41] 103 Phil. 500 (1958); *En banc.*

[42] *Id.* at 503.

[43] "*License required for individual keeping arms for personal use — Security to be given* — Any person desiring to possess one or more firearms for personal protection or for use in hunting or other lawful purposes only, and ammunition thereof, shall make application for a license to possess such firearm or firearms or ammunition as hereinafter provided. Upon making such application, and before receiving the license, the applicant shall, for the purpose of security, deposit a (United States or) Philippine Government bond, or make a cash deposit in the Postal Savings Bank in the sum of forty pesos for each firearm for which the license is to be issued, and shall indorse the certificate of deposit therefor to the Philippine Treasurer, such deposit to bear no interest, or shall give a personal or property bond signed by two persons or by a surety company, in such form as the President may prescribe, payable to the Government of the Philippines, in the sum of one hundred pesos for each such firearm: *Provided, however,* That the existing bonds upon the approval of this Act shall continue as they are or, at the option of the interested party, the same can be renewed in accordance with the provisions hereof: *Provided, further,* That *bona fide* and active members of duly organized gun clubs and accredited by the Chief of Staff of the Philippine Army shall not be required to make the deposit or give the bond prescribed in this section."

[44] "*Mode of making application and acting upon the same.* — An application for a personal license to possess firearms and ammunition, as herein provided, made by a resident of the City of Manila, shall be directed to the Mayor of the said city, whose duty it shall be to forward the application to the President of the Philippines, with his recommendation. Applications made by residents of a province shall be directed to the governor of the same who shall make his recommendation thereon and forward them to the President of the Philippines, who may approve or disapprove any such application.

The President of the Philippines, upon receiving and approving the bond or receiving the certificate of deposit duly indorsed to the order of the Treasurer of the Philippines, shall issue the license and transmit the license direct to the applicant, and shall notify the chief of police of the City of Manila if the applicant resides in Manila, otherwise the (senior inspector) Provincial Inspector of Constabulary of the province in which the applicant resides. The Chief of Constabulary shall file the certificate of deposit in his office. It shall be the duty of all officers through whom applications for licenses to possess firearms are transmitted to expedite the same."

firearms by private persons for personal use, and not to a license for the temporary use of a firearm for the purpose of effecting the capture and apprehension of persons engaged in an uprising against the government."[45] Lucero was acquitted.

The *Lucero* case was followed in 1959 by the case of *People v. Moro Macarandang*.[46] Moro Sumaguina Macarandang was appointed secret agent by Governor Dimakuta of Lanao on 1 October 1953. On 8 June 1954, Moro Macarandang was caught in possession of a Riot Gun Winchester. He was charged with the crime of illegal possession of firearms and was convicted by the Court of First Instance of Lanao. The Supreme Court reversed his conviction, ruling that even as the Governor had no authority to issue firearm permits, Section 879 of the Revised Administrative Code reveals that peace officers are exempted from the requirements relating to the issuance of licenses to possess firearms.[47] The Supreme Court considered Moro Macarandang's appointment as secret agent as sufficient to place him within the category of peace officers, akin to a member of the municipal police force.[48]

In 1967, the Supreme Court, in the case of *People v. Mapa*,[49] abandoned the ruling in *People v. Moro Macarandang*. This case involved Mario Mapa, who was appointed secret agent to the Governor of Batangas on 2 June 1962. On 13 August 1962, Mapa was caught in possession of a *Paltik* and six rounds of ammunition. He was charged and convicted of illegal possession of firearm and ammunition.

On appeal, the Supreme Court upheld his conviction. The Supreme Court ruled that the law (referring to Section 878 of the Revised Administrative Code in relation to Commonwealth Act No. 56, as amended by Republic Act No. 4) was explicit that except as specifically allowed, it was unlawful for any person to possess any firearm or ammunition.[50] Section 879 of the Revised Administrative Code enumerated several government officials and public servants[51] who were

[45] *Lucero*, 103 Phil. at 504.

[46] 106 Phil. 713 (1959); *En banc.*

[47] *Id.* at 715.

[48] Section 879 of the Revised Administrative Code provides: "*Exception as to firearms and ammunition used by military and naval forces or by peace officers.* — This article shall not apply to firearms and ammunition regularly and lawfully issued to officers, soldiers, sailors, or marines of the United States Army and Navy, the Philippine Constabulary, guards in the employment of the Bureau of Prisons, municipal police, provincial governors, lieutenant governors, provincial treasurers, municipal treasurers, municipal mayors, and guards of provincial prisoners and jails, when such firearms are in possession of such officials and public servants for use in the performance of their official duties."

[49] 20 SCRA 1164 (1967); *En banc.*

[50] *Id.* at 1166.

[51] *See* note 48.

exempt from the coverage of Section 878. The Supreme Court noted that no provision was made for a secret agent. The law being clear, the conviction of Mapa was affirmed.

It was in the face of these divergent views that Jose Jabinal came to the Supreme Court in 1974.[52]

Jabinal was appointed secret agent by Governor Leviste of Batangas on 10 December 1962 and confidential agent by the PC Provincial Commander of Batangas on 15 March 1964. On 5 September 1964, he was caught in possession of a revolver and one live ammunition. He was prosecuted for illegal possession of firearm and ammunition and was convicted by the Municipal Court of Batangas.

On appeal, the Supreme Court adverted to its earlier decisions in *Lucero*, *Moro Macarandang*, and *Mapa*. The Supreme Court acquitted Jabinal on the ground that in 1962 when he was appointed special agent, and in 1964 when he was appointed confidential agent, the prevailing doctrine was that laid down in *Lucero* and *Moro Macarandang*. Although it was already in 1974 that the Supreme Court ruled on Jabinal's appeal, (seven years after *Mapa*) "the new doctrine should be applied *prospectively* [emphasis supplied] and should not apply to parties who had relied on the old doctrine and acted on the faith thereof."[53]

The Supreme Court came to this decision after a brief discussion on the significance of Supreme Court decisions. Supreme Court decisions, it was said, are not laws but are evidence of what the law means.[54] Article 8 of the Civil Code[55] was cited. The doctrine laid down in *Lucero* and *Moro Macarandang* was part of jurisprudence and the law of the land when Jabinal was found in possession of the firearm and when he was arraigned. "...(I)t is necessary that the punishability of an act be reasonably foreseen for the guidance of society."[56]

In 1975, the Supreme Court reiterated the ruling in *Jabinal* in the case of *People v. Licera*.[57]

Rafael Licera was appointed secret agent by Governor Leviste of Batangas on 11 December 1961. He was caught in possession of a Winchester rifle and was charged with illegal possession of firearm on 3 December 1965. He was convicted by both the Municipal Court and the Court of First Instance of Occidental Mindoro.

[52] People v. Jabinal, 55 SCRA 607 (1974); Second Division.

[53] *Id.*, at 612.

[54] *Id.*

[55] "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

[56] *Jabinal*, 55 SCRA at 612.

[57] 65 SCRA 270 (1975); First Division.

On appeal, the Supreme Court applied the reasoning in *Jabinal*. Since Licera was appointed secret agent and apprehended for illegal possession of firearm prior to the ruling in *People v. Mapa*, he likewise deserved the liberal treatment given to Jabinal. The Supreme Court stated that "where a new doctrine abrogates an old rule, the new doctrine should operate *prospectively* [emphasis supplied] only and should not adversely affect those favored by the old rule, especially those who relied thereon and acted on the faith thereof."[58]

In the case of *People v. Santayana*,[59] the conviction of Jesus Santayana was reversed by the Supreme Court on the basis of the *Moro Macarandang* doctrine. The Supreme Court found that Santayana was appointed special agent of the CIS in 1962 when the *Moro Macarandang* doctrine was in effect. He, therefore, did not incur criminal liability for the unlicensed possession of a firearm.[60]

It appears that applying the prospectivity principle to judicial decisions in connection with criminal cases is a practical way of avoiding what may be an unfair conviction. If the Supreme Court itself has encountered difficulty in interpreting penal legislation, how can "ordinary" citizens be burdened with complete comprehension of what the law means?

2. GUARANTEE CHECKS AND BATAS PAMBANSA BILANG 22[61]

Of similar vein are the decisions of the Supreme Court interpreting Batas Pambansa Bilang 22 (B.P. 22) or the Anti-Bouncing Checks Law in connection with the issuance of guarantee checks. First in line is the case of *Que v. People*[62] decided by the Supreme Court on 21 September 1987.

Victor Que issued two checks which were dishonored upon presentment for payment. Both checks were issued on 26 March 1981, one was post-dated 26 April 1981 while the other was post-dated 26 May 1981.[63] Que was charged with violation of B.P. 22 and was convicted by the Regional Trial Court of Quezon City on two counts. The Court of Appeals affirmed the conviction. The Supreme Court, likewise, denied Que's petition for review on certiorari. Que filed a motion for reconsideration. In ruling on his motion for reconsideration, the Supreme Court held that Que's act of issuing checks to guarantee payment of purchases made by Powerhouse Supply, Inc. of which he was the Manager fell within the ambit of B.P. 22[64] and was punishable therein.

[58] *Id.* at 273.

[59] 74 SCRA 25 (1976); Second Division.

[60] *Id.* at 29.

[61] *See* Appendix 2 for a tabular comparison of the pertinent facts in the following cases.

[62] 154 SCRA 160 (1987); Special Former Second Division.

[63] C.A.-G.R. Nos. 00754 and 00755.

[64] *Id.* at 164.

The 1993 case of *Co v. Court of Appeals*[65] likewise involved the issuance of guarantee checks. Albino Co delivered a check to Trans-Pacific Towage on 1 September 1983, covering the sum of P361,528.00. The check was post-dated 30 November 1983. Upon presentment for payment, it was dishonored on the ground of "Closed Account." A criminal complaint for violation of B.P. 22 was filed against Co and, he was convicted.

Co appealed to the Court of Appeals. He claimed that the Regional Trial Court erroneously relied upon the 1987 case of *Que v. People* which stated that a check issued merely to guarantee the performance of an obligation is covered by B.P. 22. Co raised in issue the fact that when he issued the checks four years prior to the promulgation of the *Que v. People* decision, there was a standing official pronouncement by the Ministry of Justice embodied in Circular No. 4[66] to the effect that the issuance of a bouncing check as part of an arrangement to guarantee or secure the payment of an obligation constitutes neither estafa nor a violation of B.P. 22.

This administrative circular was later reversed by Ministry Circular No. 12 issued 8 August 1984. This was, however, about one year after Co delivered the check to Trans-Pacific Towage. Ministry Circular No. 12 contained a statement that the new interpretation was to apply only prospectively. However, the Court of Appeals affirmed Co's conviction on the ground that the *Que* doctrine was merely the interpretation of a pre-existing law and not the passage of a new law.

The Supreme Court went on to engage in the most extensive discussion of the applicability of the prospectivity principle to judicial decisions found in Philippine jurisprudence. Citing several cases, it ruled that:

> The weight of authority is decidedly in favor of the proposition that the Court's decision of September 21, 1987 in *Que v. People,... should not be given retrospective effect* [emphasis supplied] to the prejudice of the petitioner and other persons similarly situated, who relied on the official opinion of the Minister of Justice....[67]

The Supreme Court also stated that there was no reason to make the doctrine of *mala prohibita* override the principle of prospectivity, considering especially that in a criminal action, all doubts must be resolved in favor of the accused.[68]

The Supreme Court, in effect, laid down two requisites before a person who issued a bouncing check as guarantee may be acquitted: (1) the check must have been issued before 21 September 1987, when the decision in *Que v. People* was promulgated, and (2) the drawer must have issued the check sometime between 15 December 1981 and before 8 August 1984.

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[65] 227 SCRA 444 (1993); Second Division.

[66] Dated 15 December 1981.

[67] *Co*, 227 SCRA at 455.

[68] *Id.* at 456.

The *Co* case provided an angle different from *Jabinal*. Administrative interpretations of B.P. 22 were involved. Another new aspect presented was the fact that the ruling in *Que v. People* was held to apply prospectively only even as it was the first, and only existing judicial determination as to the applicability of B.P. 22 to checks issued merely as guarantee. It seems that the Supreme Court postponed the application of its own judicial determination of what the law meant on the ground that it had to recognize the temporary existence of an administrative opinion to the contrary. It was from this point that *People v. Reyes*[69] was decided.

Cresencia Reyes issued three checks which were dishonored. One check was issued on 4 April 1986 but dated 10 April 1986, the other was issued 9 April 1986 but dated 15 April 1986, and the last was also dated 15 April 1986. The Regional Trial Court of Manila convicted Reyes of violation of B.P. 22. Reyes appealed to the Supreme Court. One of the errors she claimed the lower court committed was convicting her despite the fact that the checks were issued merely as guarantee. The Supreme Court ruled that, on the assumption that the checks were given merely as guaranty and not as payment, this circumstance still does not absolve Reyes.[70]

The Supreme Court decided this case based on *Que v. People*,[71] without any discussion as to prospectivity. There was no mention of the Circulars issued by the Ministry of Justice either. Since these checks were issued by Reyes after the issuance of Ministry Circular No. 12 but before the ruling in *Que v. People*, there is reason to hold that the prospectivity espoused in *Co v. Court of Appeals* truly applies only when the earlier mentioned requisites concur. Otherwise, there is no entitlement to the prospectivity benefit.

The case of *People v. Reyes* was a simple application of the principle that it is the Supreme Court which finally determines what the law means. Having previously held that guarantee checks are included within the ambit of B.P. 22 in the case of *Que v. People*, said interpretation was simply reiterated, without need for any discussion as to when the check was issued or when the accused was convicted. After all, what the Supreme Court does is simply state what the legislators had in mind when they enacted the statute.

B. Decisions Interpreting Statutes Affecting Civil and Labor Relations

The Supreme Court has also had occasion to apply the prospectivity principle to a number of decisions it rendered in connection with cases other than criminal cases.

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[69] 228 SCRA 13 (1993); First Division.

[70] *Id.* at 19.

[71] *Id.*

1. SECTION 119 OF COMMONWEALTH ACT NO. 141[72]

An interesting series of cases relates to the intent of legislators in providing for a five-year redemption period for lands acquired by homestead or free patent. Section 119 of Commonwealth Act No. 141 provides:

> Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, *within a period of five years from the date of conveyance.* [Emphasis supplied.]

The crucial issue is whether the period of five years provided by law should be counted from the date of conveyance even if the same is accompanied by its own separate period for repurchase (as in a sale with right to repurchase or a foreclosure sale). On 28 May 1952, faced with that issue in *Paras v. Court of Appeals*,[73] the Supreme Court ruled that the five-year period begins on the day after the expiration of the period of repurchase, when the deed of absolute sale is executed and the property formally transfers to the purchaser.

This case involved Lazaro Ledones and the parcel of land he acquired by homestead patent. On 31 July 1935, Ledones mortgaged his land to the Philippine National Bank (PNB) as security for a loan he acquired. Since he failed to pay his loan, PNB instituted extrajudicial foreclosure proceedings. At the auction sale dated 7 September 1940, PNB was the sole bidder.

Ledones failed to redeem his land within the one-year period provided for by Section 6 of Act No. 3135.[74] A Transfer Certificate of Title was issued in the name of PNB. One month after PNB consolidated its ownership over the land, Ledones made a written offer to repurchase the property. About one year later, PNB executed a deed of promise to sell the land to Paras. Ledones then withdrew his offer to repurchase the land after Paras promised to reconvey the land to him after the sale became absolute. A deed of absolute sale in favor of Paras was executed on 25 May 1943. A Transfer Certificate of Title was issued in the name of Paras. Ledones again offered to repurchase after the Liberation. Paras refused.

The Supreme Court noted that the certificate of sale issued to the purchaser at an auction sale is merely a memorandum of the purchase. The effective conveyance occurs after the period of redemption expires and the deed of absolute sale is executed. For this reason, the five-year period under Section 119 should be

[72] *See* Appendix 3 for a tabular comparison of the pertinent facts in the following cases.

[73] 91 Phil. 389 (1952); *En banc.*

[74] Section 6 reads: "In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property sold, may redeem the same at any time within the term of *one year from and after the date of the sale* [emphasis supplied],..."

counted only from the day after the expiration of the redemption period.[75] Ledones' offer to repurchase made as early as 1941 was clearly made on time.

On 24 May 1948 in *Monge et al v. Angeles et al*,[76] the facts of which are hereinafter stated, the Supreme Court ruled that the said five-year period should be counted from the date of sale even if the sale was with a right to repurchase.

On 30 July 1948, Monge *et al* executed a deed of sale of a parcel of land in favor of Angeles *et al*. The land was acquired by Monge *et al* under a homestead patent. The sale was with right to repurchase within one year from the date of sale. The sale became absolute a year later, 30 July 1949, for failure of Monge *et al* to exercise their right to repurchase. However, Angeles *et al* consolidated ownership over the land only on 17 January 1953, at which time Monge *et al* claimed that they were still entitled to repurchase the land since the five-year period under Section 119 counted from 30 July 1949 had not yet lapsed. Monge *et al* filed a complaint against Angeles *et al*.

Angeles *et al* moved to dismiss the complaint on the ground that it failed to state a cause of action and that, in any event, the action was not commenced within the period prescribed by law. The Court of First Instance of Camarines Sur dismissed the complaint. Monge *et al* appealed.

The Supreme Court, in that case, ruled in favor of Angeles *et al*, to the effect that:

> The language of the law is clear. It provides that the period of five years shall be counted from the *date of conveyance*, regardless of its nature. The word conveyance is of American origin. It may refer not only to an absolute sale but also to mortgage or any other transaction.[77] [emphasis supplied]

To further stress its point, the Supreme Court ruled that the five-year period is counted from the date of execution of the contract and not from the date of its registration since it is the former which is the actual date of conveyance.[78]

Two months after the Supreme Court ruled in the *Monge* case, on 31 July 1957, it was confronted with a similar issue. The case was *Manuel v. Philippine National Bank et al*.[79]

In that case, Manuel, the registered owner of a land acquired by homestead, mortgaged the land to PNB. After Manuel failed to pay his loan, PNB extrajudi-

[75] *Paras*, 91 Phil. at 394.

[76] 101 Phil. 563 (1957); *En banc.*

[77] *Id.* at 564-565.

[78] *Id.* at 565.

[79] 101 Phil. 968 (1957); *En banc.*

cially foreclosed the mortgage. At the public auction conducted on 8 September 1941, PNB was the buyer. The certificate of sale was registered 13 September 1941. The one-year redemption period provided under Act No. 3135 expired without Manuel exercising his right of redemption. However, it was not until nine years later or on 2 September 1950 that the final deed of sale was given by the sheriff and recorded in the Register of Deeds. The land was subsequently sold by PNB to Avena who later sold it to Barbaran. In October 1954, Manuel offered to repurchase the land. Since his offer was rejected, Manuel sued PNB and the subsequent buyers.

The issue raised by Manuel was whether the five-year period provided under Section 119 is counted from the date of the extrajudicial foreclosure sale or from the date of the sheriff's final deed of sale. The Supreme Court cited the contradictory rulings in *Monge* and *Paras* but realized that any attempt at reconciliation was unnecessary. Stressing that registration merely protects the buyer and is not necessary to give effect to the sale between the parties, the Supreme Court found that Manuel attempted to redeem his land thirteen years from the auction sale or twelve years from the expiration of his right of redemption under Act No. 3135, in any case, too late.[80]

On 31 October 1967, the Supreme Court decided the case of *Oliva v. Lamadrid*.[81] The issue in that case was really determining the applicable law: Section 119 of Commonwealth Act No. 141 or Section 5 of Republic Act No. 720, as amended by Republic Act No. 2670.

Laureano Oliva owned a parcel of land acquired by homestead patent. On 2 October 1958, he mortgaged the property to the Rural Bank of Daet as security for a loan. After defaulting in his payment, the mortgage was extrajudicially foreclosed and sold to the Bank at a public auction on 4 February 1961. The certificate of sale was issued on 6 February 1961 and contained a statement that the property could be redeemed within two years from the date of sale or until 4 February 1963.

Oliva was unable to redeem the property within such period. The deed of sale in favor of the Bank was issued on 27 February 1963. The Bank later sold the property to Nicolas Lamadrid.

Oliva offered to repurchase the property sometime before 31 May 1963. Since his offer was rejected, he sued Lamadrid to compel reconveyance of the property to him. Oliva claimed that he was entitled to redeem the property within five years from the date of the auction sale, applying Section 119 of Commonwealth Act No. 141. Lamadrid, on the other hand, claimed that Oliva had only until 4 February 1963 to redeem the property, applying Republic Act No. 2670. Lamadrid wanted the court to rule that Section 119 applied only to

[80] *Id.* at 971.

[81] 21 SCRA 737 (1967); *En banc.*

voluntary conveyances, and not to foreclosure sales which were governed by Republic Act No. 720. The main issue, therefore, was whether Section 119 applies even to involuntary conveyances.

The Supreme Court cited *Cassion v. Banco Nacional Filipino*[82] which had already clarified that Section 119 does not distinguish between the two kinds of conveyances and should be held to apply to both.[83] It also noted that the two-year period provided by Section 5 of Republic Act No. 720, as amended, applied to foreclosure sales involving lands not covered by a Torrens Title, homestead or free patent. Obviously, that provision was inapplicable.[84]

In carrying into effect its ruling, the Supreme Court held that: "It is, therefore, our considered view that plaintiff herein has the right to repurchase the property in question within five (5) years from the date of the conveyance or foreclosure sale, or up to February 4, 1966,..."[85] The date of conveyance referred to was the date of the auction sale, 4 February 1961, and Oliva was held to have exercised his right of redemption long before such period expired. The two-year period for redemption provided under the certificate of sale was not taken into account.

In the case of *Tupas v. Damasco*,[86] decided by the Supreme Court on 23 October 1984, the Supreme Court applied *Oliva v. Lamadrid* as the case in point. It held that the Tupas Spouses, who were the ones who acquired the land under the homestead provisions of the Public Land Act, had five years from the date of the execution sale to repurchase the land. Since the execution sale was dated 4 April 1959, the Tupas Spouses had until 4 April 1964 to repurchase the land.[87]

However, the Supreme Court added that even if the five-year period had to be computed from the expiration of the period within which the judgment debtor had the right to redeem, the action filed by the Tupas Spouses to repurchase the land was still filed out of time.[88] The action was instituted on 10 June 1965. Counting the five years from the expiration of the one-year period of redemption, the Tupas Spouses had only until 4 April 1965 to redeem.

[82] 89 Phil. 560 (1951).

[83] *Oliva*, 21 SCRA at 740.

[84] *Id.* at 742.

[85] *Id.* Note that the date 4 February 1966 was arrived at, not by multiplying 365 days by 5, but by directly adding 5 years to 1961. This means an additional day due to the single leap year.

[86] 132 SCRA 593 (1984); Second Division.

[87] *Id.* at 602. Note that, in this case, the Supreme Court likewise failed to consider the occurrence of leap years in its computation.

[88] *Id.*

A different ruling was reached by the Supreme Court on 30 August 1988, in the case of *Belisario v. Intermediate Appellate Court*.[89] In this case, the Supreme Court cited *Manuel v. PNB* as basis for ruling that Belisario, who was awarded the piece of land subject of the controversy by homestead patent, had five years from the expiration of the redemption period under Act No. 3135 within which to exercise his right to repurchase under Section 119 of Commonwealth Act No. 141. The Supreme Court ruled that Belisario was still entitled to repurchase his property.[90]

It must be remembered, however, that the Supreme Court in *Manuel v. PNB* cited both conflicting rulings in *Monge* and *Paras*, and ruled without reconciling these cases because it found no need to. In that case, the attempt to repurchase was made more than 10 years after the expiration of the five-year period provided by Section 119, regardless of when the period is deemed to have commenced. The reliance upon *Manuel v. PNB* was, thus, misplaced because there was no categorical ruling in that case that the correct interpretation of Section 119 was that which the Supreme Court employed in *Belisario*.

The Supreme Court had the opportunity to resolve these conflicting views in the 1992 case of *Benzonan v. Court of Appeals*.[91] This case involved a parcel of land acquired by Benito Pe by free patent. Barely three months after Pe acquired the land, he mortgaged it to the Development Bank of the Philippines (DBP) to secure a commercial loan. DBP foreclosed the mortgage on 28 June 1977 after Pe failed to pay his loan after more than seven years. DBP was the highest bidder at the foreclosure sale. The Certificate of Sale was registered with the Registry of Deeds on 24 January 1978. Pe failed to redeem the property within the one-year period. On 24 September 1979, DBP sold the land to the Benzonan Spouses.

On 12 July 1983, Pe offered in writing to repurchase the land. Pe and DBP disagreed as to the total amount due from Pe. Pe filed a complaint for repurchase on 4 October 1983 under Section 119. The Regional Trial Court of General Santos City allowed Pe to repurchase the lot. As this decision was affirmed by the Court of Appeals, the Benzonan Spouses and DBP filed separate petitions for review on *certiorari*.

The Supreme Court held that Pe was not entitled to repurchase the property. The first reason given in support of this ruling was that Pe never intended to use the land for agricultural purposes. Not being the poor farmer for whom homesteads and free patents were intended by law, he was not entitled to the benefit of Section 119.[92] Second, the Supreme Court discussed the conflicting

[89] 165 SCRA 101 (1988); First Division.

[90] *Id.* at 107. Note also that in this case, *citing* PNB v. Court of Appeals (94 SCRA 357 [1979]), the one-year redemption period under Act No. 3135 was counted from the date the Sheriff's Certificate of Sale was registered and not the date of the auction sale. This conflicts with the ruling on this aspect in the same case of Manuel v. PNB.

[91] 205 SCRA 515 (1992); Third Division.

[92] *Id.* at 523.

doctrines found in the case of *Belisario*, on the one hand, and the cases of *Monge* and *Tupas*, on the other.

The Supreme Court, in disallowing Pe's attempt to repurchase his lot, sustained the position of the Benzonan Spouses and DBP to the effect that, in this particular case, the five-year period provided by Section 119 should be counted from the date of conveyance or foreclosure sale even as the Supreme Court already handed down the *Belisario* ruling. The Supreme Court held that "*Belisario* should only be applied *prospectively* [emphasis supplied] or after 1988 since it established a new doctrine."[93] It reasoned in this manner:

> It is undisputed that the subject lot was mortgaged to DBP on February 24, 1970. It was acquired by DBP as the highest bidder at a foreclosure sale on June 18, 1977, and then sold to the petitioners on September 29, 1979. At that time, the prevailing jurisprudence interpreting section 119 of R.A. 141 as amended was that enunciated in *Monge* and *Tupas* cited above. The petitioners Benzonan and respondent Pe and the DBP are bound by these decisions for pursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided."...The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional (*Francisco v. Certeza*, 3 SCRA 565 [1961]).[94]

The Supreme Court likewise relied upon the discussion contained in *People v. Jabinal*. The Benzonan Spouses, who were buyers in good faith, were said to have had the right to rely on the *Monge* and *Tupas* rulings when they purchased the property.[95] It seems, then, that it was the Benzonan Spouses who were considered to have acquired vested rights under the *Monge* and *Tupas* rulings.

Curiously, the Supreme Court failed to note that when Pe offered to repurchase the property on 12 July 1983, the five-year period would have already expired whether it was counted from the date of the foreclosure sale, 18 June 1977, or one year thereafter. The Supreme Court simply stated that the period to repurchase given to Pe expired on 18 June 1982, clearly with reference to the date of the actual sale.[96]

[93] *Id.* at 527.

[94] *Id.*

[95] *Id.* at 528.

[96] *Id.* Note again that leap years were not taken into account. Note also that if the ruling in *Belisario citing* PNB v. Court of Appeals to the effect that the crucial date is not the date of the actual foreclosure sale but the date of the registration of the Certificate of Sale (in this case, 24 January 1978) is followed, the issue as to when the five-year period begins to run gains significance. Is it to be understood that the ruling in *Belisario* to this effect was likewise being affirmed except that it also should be prospectively applied?

It is interesting to note that in the *Belisario* case, there was no pretense that the Supreme Court was establishing a new doctrine. In fact, the Supreme Court cited *Manuel v. PNB* as basis for its ruling. As earlier noted, this reliance was misplaced. Does this mean that the Supreme Court in *Benzonan* was admitting to this oversight by mentioning *Belisario* and not *Manuel*?

On 27 January 1993, seemingly oblivious to the *Benzonan* decision decided exactly a year before, the Supreme Court reiterated its ruling in *Paras* and *Belisario*. The case was *Rural Bank of Davao City, Inc. v. Court of Appeals*.[97]

Gabriel Abellano owned a parcel of land which he acquired through a homestead patent. As security for a loan Abellano obtained in 1978, he mortgaged the land to the Rural Bank of Davao City. In the same year, the National Housing Authority (NHA) filed a complaint for the expropriation of several parcels of land located in Davao City, which included the mortgaged parcel of land. Abellano failed to pay his loan. The Bank caused the extrajudicial foreclosure of the land. The foreclosure sale was held on 9 November 1979 and the bank submitted the highest bid. The Certificate of Sale was registered in the Registry of Deeds on 7 December 1979.

Abellano failed to exercise his right to redeem the foreclosed property within two years from the date of registration, as provided by Section 5 of the Rural Banks' Act. The Bank gave him an extension but he still failed to redeem. A Transfer Certificate of Title in the Bank's name was issued on 3 November 1982.

On 9 November 1983, Abellano notified the Bank of his intention to repurchase the foreclosed property pursuant to Section 119 of Commonwealth Act No. 141. Since the Bank refused, Abellano filed a complaint for reconveyance against the Bank on 9 February 1984. By this time, the court in the expropriation case already allowed the expropriation. The trial court, finding that reacquisition by Abellano of the property had been rendered impossible, declared him entitled to the price paid by the NHA for the property. This decision was affirmed by the Court of Appeals.

The Supreme Court ruled that the five-year repurchase period under Commonwealth Act No. 141 should begin to run only from the expiration of the two-year period under the Rural Banks' Act.[98] This was what the Supreme Court considered as consistent with its *Paras* and *Belisario* rulings and the rationale of its *Oliva*[99] ruling. Thus, Abellano had the right to repurchase the property for a total of seven years from 7 December 1979, the date the Certificate of Sale was registered. Abellano timely exercised his right to repurchase when he so notified the Bank on

[97] 217 SCRA 554 (1993); Third Division.

[98] *Id.* at 566.

[99] Note that *Oliva* was decided prior to the effectivity of Republic Act No. 5939 which amended Section 5 of the Rural Banks' Act, as amended. Section 5 now reads: "When a homestead or free patent land is foreclosed, the homesteader or free patent holder, as well as their heirs shall have the right to redeem the same within two years from the date of foreclosure in case of a land not covered by a Torrens title or two years from the date of the registration of the foreclosure in the case of a land covered by a Torrens title:....."

9 November 1983, barely four years from such date of registration. Abellano was declared entitled to the just compensation in connection with the expropriation proceedings.

In this case, Abellano clearly exercised his right to repurchase under Section 119 on time, even if the two-year period granted by the Rural Banks' Act is not considered separately. He sent his notice to the Bank four years after the foreclosure sale.

The case of *Sta. Ignacia Rural Bank, Inc. v. Court of Appeals*[100] is of similar tenor. In permitting the exercise of the right of the grantees of the free patent to repurchase their land, the Supreme Court relied on the *Rural Bank of Davao* case.[101]

The *Sta. Ignacia* case involved a mortgage, a foreclosure sale, a registration of a Certificate of Sale, and an attempt to repurchase which all took place before the Supreme Court rendered the *Belisario* ruling. Likewise, the complaint for repurchase was instituted less than five years after the date of the foreclosure sale. Regardless, therefore, of which among the conflicting doctrines of the Supreme Court was applied, and regardless of the applicabilitty of the prospectivity principle, the right to repurchase was timely exercised.

2. ARTICLE 223 OF THE LABOR CODE[102]

The Supreme Court again applied the principle of prospectivity in the series of cases involving the interpretation of Article 223 of the Labor Code.

Article 223 of the Labor Code, in part, provides:

> Decisions, awards, or orders of the Labor Arbiters or compulsory arbitrators are final and executory unless appealed to the Commission by any or both of the parties within ten *(10) days* from receipt of such awards, orders, or decisions. [Emphasis supplied.]

Section 7, Rule XIII, Book V of the old Implementing Rules of the Labor Code interpreted this provision to mean ten (10) working days and not calendar days. In the case of *Fabula v. National Labor Relations Commission*[103] (NLRC), the Supreme Court adopted the "working-day" mode of computation embodied in the Implementing Rules. The validity of such rule in the face of the provision found in the statute was not seen as a problem. The issue was simply how to compute the 10 working

[100] 230 SCRA 513 (1994); Third Division.

[101] *Id.* at 526.

[102] *See* Appendix 4 for a tabular comparison of the pertinent facts in the following cases.

[103] 101 SCRA 785 (1980); Second Division.

days when two weekends, a typhoon, and two holidays intervened between the date of receipt of the decision and the date the appeal was filed.

However, on 20 July 1982, in the case of *Vir-Jen Shipping and Marine Services, Inc. v. NLRC*,[104] the Supreme Court struck down the interpretation contained in the Implementing Rules. It ruled that Article 223 contemplates calendar days, not working days. The Supreme Court took into account that it was in the interest of labor that its cases be promptly disposed of.[105]

The Supreme Court could have ended its discussion there and then, for the case was a petition for certiorari to review the decision of the NLRC on an appeal filed 14 calendar days after a copy of the decision of the National Seamen's Board (NSB) was received. However, it continued with the following:

> All the foregoing notwithstanding, and bearing in mind the peculiar circumstances of this case, particularly, the fact that private respondents must have been misled by the implementing rules aforementioned, We have opted to just the same pass on the merits of the substantial issues herein, even as We admonish all concerned to henceforth act in accordance with our foregoing view.[106]

Still, in the end, the Supreme Court upheld the decision of the National Seamen's Board, setting aside the NLRC decision.[107] The effect would, thus, have been just the same had the Supreme Court stopped at ruling that the NLRC had no jurisdiction to entertain the belated appeal and held that the decision of the NSB had attained finality. However, the Supreme Court found it necessary to discuss important matters relating to employment contracts and economic sabotage by Filipino seamen.

In *RJL Martinez Fishing Corporation v. NLRC*,[108] the Supreme Court was again faced with an appeal that was filed out of time. The private respondents in that case were stevedores of the petitioner RJL Martinez who filed a complaint for illegal dismissal against the latter. The Labor Arbiter ruled that private respondents were mere extra workers who worked on contractual basis, not employees. The private respondents received a copy of the decision of the Labor Arbiter on 1 April 1982. On 19 April 1982, they filed an appeal before the NLRC. The NLRC eventually reversed the decision of the Labor Arbiter, finding that an employer-employee relationship existed among the parties. RJL Martinez filed a petition for certiorari with the Supreme Court. One of the issues it raised was the timeliness of the appeal by the private respondents, considering that it was filed eighteen (18) days after

[104] 115 SCRA 347 (1982); Second Division.

[105] *Id.* at 361.

[106] *Id.*

[107] *Id.* at 379.

[108] 127 SCRA 454 (1984); First Division.

a copy of the decision was received.

The Supreme Court noted that, if the ruling in the *Vir-Jen* case was applied, the appeal would be considered as filed out of time, but it continued to say that:

> However, it was clear from Vir-Jen that the calendar day basis of computation would apply only "henceforth" or to future cases.... When the appeal herein was filed on April 19, 1982, the governing proviso was found in Section 7, Rule XIII of the Rules and Regulations Implementing the Labor Code along with NLRC Resolution No. 1, Series of 1977, which based the computation on "working days."[109]

The Supreme Court further considered the fact that the very face of the Notice of Decision received by the private respondents indicated that they could appeal within 10 working days. In effect, the Supreme Court interpreted its own "henceforth" admonition to mean that the "calendar day" interpretation of Article 223 applies only to appeals taken from Labor Arbiters to the NLRC from 20 July 1982, the date the *Vir-Jen* case was promulgated. Whether this meant decisions rendered by Labor Arbiters beginning 20 July 1982 or appeals filed with the NLRC beginning the said date, the Supreme Court did not clarify.

On 18 June 1987, in the case of *MAI Philippines, Inc. v. NLRC*,[110] the Supreme Court held that the NLRC acted with grave abuse of discretion when it refused to consider the fact, clearly shown by the record and raised in issue by MAI Philippines, that the appeal was belatedly filed. The complaint for pecuniary benefits and damages was filed by the employee Rodolfo Nolasco on 16 August 1982. On 12 September 1984, Nolasco's counsel received notice of the decision of the Labor Arbiter to the effect that the complaint filed was not Nolasco's appropriate remedy. Twelve (12) days later, on 24 September 1984, Nolasco filed an appeal with the NLRC. In so ruling, the Supreme Court simply cited Article 223 of the Labor Code and stated that the reglamentary period for appeal under the Labor Code was 10 days.[111]

On 28 October 1987, the Supreme Court decided the case of *Narag v. NLRC*.[112] This case involved a complaint filed with the NLRC on 5 August 1983. Airborne Security Services, against whom the Labor Arbiter decided the case, received notice of the decision on 30 April 1984. Airborne Security filed an appeal with the NLRC on 11 May 1984, eleven (11) days after receipt of notice. The Supreme Court held that the appeal was filed beyond the 10-day reglamentary period and was, therefore, belatedly filed under the ruling in *Vir-Jen*.[113]

[109] *Id.* at 459.

[110] 151 SCRA 196 (1987); First Division.

[111] *Id.* at 206.

[112] 155 SCRA 199 (1987); First Division.

[113] *Id.* at 106.

The decision of the Supreme Court in the cases of *John Clement Consultants, Inc. v. NLRC*[114] and *MLQU Association v. MLQU*[115] were likewise to the effect that the appeals involved therein were filed beyond the 10-calendar day reglamentary period established by the *Vir-Jen* case. In both these cases, the complaints were filed before the promulgation of the decision in *Vir-Jen*, although the decisions appealed were rendered and notices of such were received after 20 July 1982.[116]

In the 1990 case *Dizon, Jr. v. National Labor Relations Commission*,[117] the Supreme Court said: "It is well settled that the ten-day period fixed by Article 223 of the Labor Code for such appeal contemplates calendar days, not working days."[118] The *Vir-Jen* and *Narag* cases were used to buttress this statement.

The *Dizon* case involved a decision by the Labor Arbiter which was received on 23 February 1983 and for which an appeal filed on 4 March 1983. The Supreme Court held that an appeal filed 14 calendar days after receipt is filed beyond the mandatory period. The *RJL Martinez* case was not at all mentioned therein.

Again, the issue as to the breadth of the applicability of the *Vir-Jen* ruling was dealt with by the Supreme Court in the case of *American Express Philippines Local Employees Association v. Leogardo, Jr.*[119]

In that case, the private respondent American Express International, Inc. (AMEXCO) received notice of the order of the Regional Director on 4 August 1982. AMEXCO filed a motion for extension of time to file a motion for reconsideration on 18 August 1982. In ruling that the appeal from the decision of the Regional Director was timely filed, the Supreme Court ruled that the "working day" manner of computation applied to AMEXCO.[120]

It appears that the ruling of the Supreme Court in *Vir-Jen* was made the subject of three motions for reconsideration.[121] Although the Supreme Court never

[114] 157 SCRA 635 (1988); First Division.

[115] 172 SCRA 597 (1989); First Division.

[116] In the *John Clement* case, the complaint was filed on 25 September 1980, the decision of the Labor Arbiter was rendered on 29 November 1982 and notice of such was received by the losing party on 29 December 1982. The appeal was filed on 134 January 1983. In the *MLQU Association* case, the complaint was filed on 24 April 1979. The Director of the DOLE rendered a decision on 15 June 1983. Notice was received by the MLQU Association on 22 June 1983 and an appeal was filed with the Minister of Labor on 25 July 1983.

[117] 181 SCRA 472 (1990); Second Division.

[118] *Id.* at 477-478.

[119] 222 SCRA 216 (1993); Third Division.

[120] *Id.* at 213.

[121] The first motion for reconsideration was denied by the Supreme Court on 29 September 1982. The second motion for reconsideration was denied by the Supreme Court on 20 December 1982. The disposition of the third motion for reconsideration appears in 125 SCRA 577, promulgated on 18 November 1983. The third motion for reconsideration was granted but the decision limited itself to discussing the effects of the decision of the Supreme Court in Wallem Shipping, Inc. v. Hon. Minister of Labor (102 SCRA 835 [1981]) on the merits of the *Vir-Jen* case.

reconsidered its ruling in *Vir-Jen* as regards the 10-day appeal period, entry of that 20 July 1982 judgment was effected only on 9 April 1984. The Supreme Court agreed with AMEXCO's contention that the 10-calendar day appeal period contemplated in *Vir-Jen* cannot as yet apply to AMEXCO because entry of judgment was made only in 1984. The Supreme Court even added that the clarifications made in the *RJL Martinez* case regarding the effectivity of the *Vir-Jen* case as of 20 July 1982 should not prejudice AMEXCO since its counsel could not have anticipated the 1984 pronouncement in 1982.[122]

Note, however, that Article 223 of the Labor Code is not exactly the applicable provision to the *American Express* case since it did not involve an appeal from the Labor Arbiter to the NLRC. It involved an order by the Regional Director being appealed to the Secretary of Labor but the Supreme Court still opted to discuss the rulings in *Vir-Jen* and *RJL Martinez*.

The ruling of the Supreme Court in the *American Express* case, instead of clarifying the *Vir-Jen* and *RJL Martinez* cases, leaves a few matters in confusion. Although it is clear that Article 223 of the Labor Code provides for a 10-calendar day appeal period, when exactly does the Supreme Court expect the public to be bound by that construction?

3. JURISDICTION UNDER THE WARSAW CONVENTION[123]

The Supreme Court had the opportunity to further expound on the effect of its own rulings in the following three cases involving the interpretation of Article 28(1) of the Warsaw Convention. Article 28(1) reads:

> An action for damages must be brought at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

The first of these cases is *Pan American World Airways, Inc. v. Intermediate Appellate Court*[124] which was in connection with the travels of a multimillionaire businesswoman named Teofista Tinitigan.

Tinitigan was the holder of a San Francisco-Miami-Haiti-San Francisco PanAm ticket. While in Haiti, she inquired with PanAm as to how she could

[122] *American Express*, 222 SCRA at 213-214.

[123] *See* Appendix 5 for a tabular comparison of the pertinent facts in the following cases.

[124] 153 SCRA 521 (1987); First Division.

proceed to San Juan, Puerto Rico. She was informed that her ticket was valid until the Dominican Republic, from which point she could make arrangements to proceed to San Juan. Tinitigan proceeded to the Dominican Republic where she bought a PanAm plane ticket to San Juan. While standing in line at the airport for boarding, a PanAm employee ordered her, in a loud voice, to step out of line because she was not the holder of a confirmed plane ticket. She was not allowed to board the plane and her seat was given to a Caucasian man.

Tinitigan filed a complaint for damages against PanAm in the Philippines. The lower court ruled in her favor, disbelieving the claim of PanAm that she was a mere chance passenger. The Court of Appeals affirmed this ruling which the Supreme Court affirmed upon review.

In the 1992 case *Santos III v. Northwest Orient Airlines*,[125] the Supreme Court upheld the dismissal of a complaint for damages on the ground that Philippine courts did not have jurisdiction over the subject matter of the action.

This case involved Santos, a Philippine resident who sued Northwest Orient Airlines, a Minnesota corporation licensed to do business in the Philippines, for damages arising from the alleged failure of the said airline company to recognize the confirmed ticket of Santos. The round-trip San Francisco-Manila via Tokyo ticket was purchased in San Francisco.

Recognizing that the Warsaw Convention has the force and effect of law in the Philippines, and holding that Article 28(1) is a provision on jurisdiction and not merely a venue, the Supreme Court ruled that the Philippines had no jurisdiction over the action since the Philippines was neither the ultimate place of destination of the plaintiff, nor the domicile of Northwest Orient, nor its principal place of business, nor the place where the contract was made.

The Supreme Court confined the significance of the *Santos III* case in the *Lopez v. Northwest Airlines, Inc.*[126] case decided on 17 June 1993.

Maria Lopez purchased a New York-Seattle-Manila-Tokyo-New York ticket from Northwest Orient Airlines in New York. While in the Philippines, she was informed that her booking for her trip to Tokyo was cancelled. She was not allowed to take the flight as scheduled and was accommodated only the following day. Lopez filed a complaint for damages against Northwest Orient with the Regional Trial Court of Makati.

Northwest Orient filed a motion to dismiss on the ground that the court did not have jurisdiction under the Warsaw Convention. The plea of Northwest Orient for a dismissal eventually reached the Supreme Court, which, in a 21 March 1990 Resolution found no error in the decision of the Court of Appeals to the effect that the Regional Trial Court had jurisdiction. Trial on the merits ensued. After

[125] 210 SCRA 256 (1992); *En banc.*

[126] 223 SCRA 469 (1993); Third Division.

the trial was terminated and the court ordered the parties to file their memoranda, Northwest Orient filed a second motion to dismiss on the ground that the ruling with regard to its initial motion to dismiss cannot stand in view of the decision promulgated by the Supreme Court in the 1992 case of *Santos III*. The trial court dismissed the case. Lopez filed a special civil action for *certiorari*.

The Supreme Court ordered the Regional Trial Court to render a decision in the case. It ruled that the trial court had at least *prima facie* jurisdiction in view of the earlier Resolution of the Supreme Court. The Supreme Court noted that it had already affirmed a similar award for damages in the *Pan Am* case. It ruled that the decision in the *Santos III* case "cannot be invoked to peremptorily oust the trial court of jurisdiction"[127] and continued to say that "posterior changes in the doctrine of this Court cannot *retroactively* [emphasis supplied] be applied to nullify a prior final ruling in the same proceeding where the prior adjudication was had, whether the case should be civil or criminal in nature."[128]

4. THE CONTRACT OF ENROLLMENT[129]

The prospectivity principle was found to be applicable to judicial decisions in cases which determine the term of contracts of enrollment in academic institutions.

In 1988, the Supreme Court decided the case of *Alcuaz v. PSBA, QC Branch*.[130] Alcuaz and his co-petitioners in the case were all *bona fide* students of the Philippine School of Business Administration in Quezon City. After the students and the School had entered into an agreement concerning the conduct of protest actions within the school, the Petitioners demanded the negotiation of a new agreement. Since the School refused to heed to such demand, mass assemblies were conducted. The Petitioners were given notices requiring them to explain their acts. They were later not allowed to enroll for the second semester of schoolyear 1986-1987.

The Petitioners filed an original action before the Supreme Court alleging that the School had violated their constitutional rights of expression and assembly and that they have been barred from re-enrolling without due process. The PSBA Faculty Union were allowed to intervene for the reason that certain faculty members appeared to have been terminated on account of their participation in the demonstrations.

In dismissing the Petition for Certiorari, the Supreme Court pronounced that "a student once admitted by the school is considered enrolled for one semester."[131]

[127] *Id.* at 476.

[128] *Id.* at 477.

[129] *See* Appendix 6 for a tabular comparison of the pertinent facts in the following cases.

[130] 161 SCRA 7 (1988); Second Division.

[131] *Id.* at 17.

Paragraph 137 of the Manual of Regulations for Private Schools provides that when a college student registers in a school, he is deemed to be enrolling for the entire semester. Likewise, written contracts for college teachers are for one semester. The contracts having been terminated, there was no basis for any claim of denial of due process. The School cannot be compelled to enter into another contract with the students and the teachers.[132] The Supreme Court also found that the noisy protests staged by the students were in violation of the Rules and Regulations of the School which the students were duly informed of.

In the case of *Non v. Dames II*,[133] the Supreme Court *en banc* expressly abandoned the "termination of contract theory" adopted in the *Alcuaz* case. The Petitioners in this case were not allowed to re-enroll for the schoolyear 1988-1989 for having participated in mass actions against the school during the preceding semester. They filed petitions before the trial court seeking re-enrollment. The trial court dismissed the petitions based on the *Alcuaz* doctrine which was found to be exactly at point.

The Supreme Court found that the "termination of contract theory" was not supported by the provision of the Manual of Regulations for Private Schools cited in the *Alcuaz* case.[134] Paragraph 137 was merely a clarification with regard to the collection of tuition fees. The words of Paragraph 137[135] did not support the conclusion that, after the end of a semester, the re-enrollment of a student depends solely on the sound discretion of the school. To the contrary, Paragraph 107 of the Manual states that: "except in the case of academic delinquency and violation of disciplinary regulation, the student is presumed to be qualified for enrollment for the entire period he is expected to complete his course..." In addition, the Education Act of 1982[136] provides that students have the right to continue their course up to graduation, except in cases of academic deficiency or violation of disciplinary regulations.

The Supreme Court held that the Petitioners were denied the opportunity to re-enroll without due process and that any administrative sanctions forthcoming for whatever violation of school regulations they have committed had become moot since they had been effectively excluded from the Mabini Colleges for four semesters. This was sufficient penalty. Mabini College was ordered to re-admit the Petitioners.

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[132] *Id.* at 18.

[133] 185 SCRA 523 (1990); *En banc.*

[134] *Id.* at 537.

[135] When a student registers in a school, it is understood that he is enrolling for the... entire semester for collegiate courses. A student who transfers or otherwise withdraws, in writing, within two weeks after the beginning of classes and who has already paid the pertinent tuition and other school fees in full or for any length of time longer than one month may be charged ten per cent of the total amount due for the term if he withdraws within the first week of classes, or twenty per cent if within the second week of classes, regardless of whether or not he has actually attended classes...."

[136] Batas Pambansa Bilang 232, Section 9 (1982).

Applying the prospectivity principle, the Supreme Court decided the case of *Unciano Paramedical College, Inc. v. Court of Appeals*[137] based on the "termination of contract theory" espoused by the *Alcuaz* case.

This case arose from the refusal of the President of Unciano Paramedical College to allow the enrollment of Respondents-students due to their insistence upon forming a student council. The Respondents filed an injunction suit against the College. The trial court granted the application for a writ of preliminary mandatory injunction and ordered the College to allow their re-enrollment for the first semester of 1990-1991. On the issue of the propriety of the writ of preliminary mandatory injunction, the matter reached the Supreme Court.

The Supreme Court ruled that the *Non v. Dames II* doctrine "should not be given a retroactive effect to cases that arose before its promulgation on May 20,1990, as in this case, which was filed on April 16, 1990."[138] The Supreme Court found that the *Non* case was promulgated when the termination of the contract of enrollment upon the end of the first semester of schoolyear 1989-1990 had long been a *fait accompli*.[139] The pronouncement in *Jabinal*, that when a doctrine of the Supreme Court is overruled and a different view is adopted the new doctrine should be applied prospectively, was reiterated.

C. Decisions Interpreting the Constitution

The interpretation of the Constitution[140] has also been the subject of the application of the prospectivity principle to judicial decisions. Two such instances involve the interpretation of the extent of the right of a person being subjected to custodial investigation to be assisted by counsel, and the interpretation of the coverage of the civil service.

1. WAIVING THE RIGHT TO COUNSEL[141]

Section 20, Article IV of the 1973 Constitution of the Republic of the Philippines provides:

> No person shall be compelled to be a witness against himself. Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right.... Any confession obtained in violation of this section shall be inadmissible in evidence.

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[137] 221 SCRA 285 (1993); Second Division.

[138] *Id.* at 292.

[139] *Id.*

[140] The 1973 Constitution was the concern of the following cases.

[141] *See* Appendix 7 for a tabular comparison of the pertinent facts in the following cases.

Unlike the 1987 Philippine Constitution which explicitly provides that a waiver of the right to counsel can be made only with the assistance of counsel,[142] as can be gleaned from the above-cited provision, the 1973 Constitution was not as specific. However, in the case of *Morales, Jr. v. Enrile*,[143] the Supreme Court laid down several guidelines regarding the rights of a person under arrest or under detention and one such guideline was the following:

> The right to counsel may be waived but the waiver shall not be valid unless made with the assistance of counsel.[144]

In 1985, the mandatory review of the death sentence imposed on Francisco Galit by the Circuit Criminal Court for the crime of robbery with homicide was before the Supreme Court.[145] The Supreme Court set aside his conviction on the ground that it was based entirely on an extrajudicial confession which was inadmissible in evidence, having been executed through force and intimidation, and without the benefit of counsel. The Supreme Court cited the guidelines set out in *Morales* and noted that Galit was not assisted by counsel during the taking of his confession even if there was no showing that he had waived his right to counsel. The confession was executed on 9 September 1977.

In 1986, the Supreme Court decided the case of *People v. Sison*.[146] This case involved the prosecution of Jocelyn de Asis for the crime of subversion. During trial, the Fiscal attempted to offer in evidence the extrajudicial confession executed by the accused on 19 May 1983, wherein she admitted being a member of the New People's Army. The counsel for De Asis vehemently objected. Judge Sison of the Regional Trial Court of Antique rejected this offer on the ground that, even as De Asis waived her right to counsel, her waiver was not done with the assistance of counsel. Judge Sison based his ruling on the *Morales* case.

The Fiscal filed a petition for certiorari, questioning this Order. The Fiscal claimed that the *Morales* ruling had no doctrinal value because it was a mere *obiter dictum*.

The Supreme Court dismissed the petition on the ground that the Supreme Court already put to rest all questions regarding the said ruling in *Morales* in the

[142] Section 12(1) of Article III of the Constitution provides: "Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel."

[143] 121 SCRA 538 (1983); *En banc*.

[144] *Id.* at 554.

[145] People v. Galit, 135 SCRA 465 (1985); *En banc*.

[146] 142 SCRA 219 (1983); Second Division.

case of *People v. Galit*. The Supreme Court noted that the *Galit* case was decided *en banc* and concurred in by all Justices except one, who took no part.[147]

One month later, the Supreme Court was confronted with the case of *People v. Nabaluna*.[148] The accused therein, Juan Nabaluna and Edgardo Empuerto, executed two extrajudicial statements each. They were both informed of their right to be assisted by counsel, which both were found to have waived. They were both convicted.

On appeal to the Supreme Court, one of the errors imputed to the Circuit Criminal Court was its having admitted the extrajudicial statements in evidence against the accused. The Supreme Court held that the trial court did not err in admitting such confessions into evidence. It justified noncompliance with the *Morales* guideline reiterated in *Galit* by reasoning that:

> The stated requirements were laid down in the said cases, to serve as governing guidelines, only after the judgment in this case had already been rendered by the trial court.... The trial court was then sufficiently convinced that the accused had waived assistance of counsel and there was at that time no pronounced guidelines requiring that the waiver of counsel by accused can be properly made only with the presence and assistance of a counsel.[149]

The Supreme Court also added that, unlike in *People v. Galit*, there was sufficient evidence to support the conviction of the accused even if the extrajudicial statements were not admitted in evidence.

The Supreme Court then decided the case of *People v. Ponce*[150] in 1991. This case involved the extrajudicial confession executed by Alfredo Ponce, admitting to the commission of the crime of robbery with homicide. The confession was executed after the accused waived his right to be assisted by counsel. Even if it was found that the waiver of the right to be assisted by counsel was not itself made with the assistance of counsel, the Supreme Court upheld the admissibility in evidence of the confession on the ground that when Ponce waived his right to counsel on 16 March 1977, the guideline in *Morales* had not yet been enunciated. The Supreme Court remarked that:

> It was only after the pronouncement of the *Galit* doctrine that this Court *prospectively* [emphasis supplied] applied the said rule in its decisions. The requirements and restrictions under this doctrine, however, have no retroactive effect and do not apply to confessions taken before the date of its pronouncement.[151]

[147] *Id.* at 221.

[148] 142 SCRA 446 (1986); *En banc*.

[149] *Id.* at 455-456.

[150] 197 SCRA 746 (1991); Second Division.

[151] *Id.* at 757.

In this case, the Supreme Court also found that there were findings independent of the confession sufficient to establish the guilt of Ponce.

In the case of *People v. Dacoycoy*,[152] however, the Supreme Court saw no impediment in the application of the guideline laid down in *Morales* even to confessions executed before 23 April 1983. In that case, the Supreme Court reversed the conviction of Angeles Latoga for robbery with homicide, based solely on the extrajudicial confession he executed without the benefit of counsel prior to July 1982. There was no definite finding, however, by either the trial court or the Supreme Court that Latoga intended to waive his right to be assisted by counsel.

Two months after the decision in *Dacoycoy* was promulgated, the Supreme Court reverted to the *Nabaluna-Ponce* view that the date 26 April 1983 was operative insofar as determining the necessity for counsel assistance in order to waive the right to counsel. In the case of *People v. Luvendino*,[153] the Supreme Court held that:

> While the *Morales-Galit* doctrine eventually became part of Section 12(1) of the 1987 Constitution, that doctrine affords no comfort to appellant Luvendino for the requirements and restrictions outlined in *Morales* and *Galit* have *no retroactive effect* [emphasis supplied] and do not reach waivers made *prior to 26 April 1983*, the date of promulgation of *Morales*.[154]

The Supreme Court considered Luvendino to have validly waived his right to counsel, even if such waiver was not made with the assistance of counsel. His extrajudicial confession was, thus, admissible in evidence against him. Note that, here, the same statement was again signed by Luvendino at the office of the Provincial Fiscal. At the time of the second subscription, he was assisted by counsel, and both the Fiscal and his mother were then present.[155] Also, the Supreme Court upheld the credence given by the trial court to the testimonial evidence presented by the prosecution.

2. THE COVERAGE OF THE CIVIL SERVICE[156]

The 1973 Constitution[157] circumscribed the coverage of the Civil Service as follows:

> The Civil Service embraces every branch, agency, subdivision, and instrumentality of the Government, including every government-owned or controlled corporation.

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[152] 208 SCRA 583 (1992); First Division.

[153] 211 SCRA 36 (1992); *En banc*.

[154] *Id.* at 50.

[155] *Id.* at 47.

[156] *See* Appendix 8 for a tabular comparison of the pertinent facts in the following cases.

[157] PHILIPPINE CONSTITUTION, art. XII-B, sec. 1.

In the case of *National Housing Corporation v. Juco*,[158] the Supreme Court held that the employees of the National Housing Corporation (NHC), a one hundred percent government-owned corporation organized under the Uniform Charter of Government Corporations,[159] are embraced by the civil service.

This case originated in the termination of the services of Benjamin Juco as project engineer of the NHC after he was implicated in the crime of theft or malversation. Juco filed a complaint for illegal dismissal. The Labor Arbiter dismissed the complaint for lack of jurisdiction. Faced with the question of jurisdiction, the NLRC remanded the case to the Labor Arbiter, ruling that it did have jurisdiction.

This decision was brought to the Supreme Court on review. Even as the Secretary of Justice[160] issued an opinion in 1976 to the effect that the constitutional provision contemplated only those government-owned or -controlled corporations created by special law, the Supreme Court held that jurisdiction was vested with the Civil Service Commission.

In 1988, the Supreme Court decided the case of *National Service Corporation v. NLRC*.[161]

That case involved Eugenia Credo, Chief of Property and Records of the National Service Corporation (NASECO). For failing to comply with a memorandum issued by her superior, Credo was placed on "forced leave" status. On 18 November 1983, Credo filed a complaint against NASECO on the ground that she was placed on "forced leave" status without due process. She was then terminated so she filed a supplemental complaint for illegal dismissal on 6 December 1983.

On 9 May 1984, the Labor Arbiter dismissed Credo's complaint and ordered NASECO to pay her separation pay. Both parties appealed. On 28 November 1984, the NLRC directed NASECO to reinstate Credo with backwages. In its Comment filed with the Supreme Court, NASECO argued that the NLRC had no jurisdiction over the complaint against it since it was a government-owned corporation, being a subsidiary of the National Investment and Development Corporation which was a wholly-owned subsidiary of the PNB.

In resolving the matter of jurisdiction against NASECO, the Supreme Court first noted that NASECO belatedly raised this issue.[162] The Supreme Court then

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[158] 134 SCRA 172 (1985); *En banc*.

[159] Executive Order No. 399, dated 5 January 1951.

[160] In 1985, when the NHC v. Juco case was decided by the Supreme Court, Mr. Justice Abad Santos, who issued the Opinion as Secretary of Justice, was sitting as Justice of the Supreme Court. He entered his dissent.

[161] 168 SCRA 122 (1988); *En banc*.

[162] *Id.* at 132.

ruled that the NLRC had jurisdiction. First, the Supreme Court said that:

> It would appear that, in the interest of justice, the holding in said case should *not be given retroactive effect* [emphasis supplied], that is, to cases that arose before its promulgation on 17 January 1985. To do otherwise would be oppressive to Credo and other employees similarly situated, because under the same 1973 Constitution but prior to the ruling in *National Housing Corporation v. Juco*, this Court had recognized... the authority of the NLRC to exercise jurisdiction over, disputes involving terms and conditions of employment in government-owned or controlled corporations.[163]

Second, the Supreme Court ruled that it was the 1987 Constitution that applied since it was that in effect *at the time of the decision*. Under the new Constitution,[164] the Civil Service embraces:

> all branches, subdivisions, instrumentalities, and agencies of the Government, including every government-owned or controlled corporations *with original charter*. [emphasis supplied]

The NLRC, thus, had jurisdiction over the matter.

This latter principle was modified by the Supreme Court in the 1989 case of *Lumanta v. NLRC*.[165] Luz Lumanta was an employee of the Food Terminal, Inc. (FTI). On 20 March 1987, she filed a complaint for money claims against FTI after she was retrenched. On the question of jurisdiction over the complaint, the Supreme Court held that the 1987 Constitution applied and not the *Juco* doctrine. Jurisdiction is determined at the *time the complaint is filed*. When Lumanta filed her complaint, the 1987 Constitution was already in effect.

Five months later, the Supreme Court decided the case of *Philippine National Company-Energy Development Corporation v. Leogardo*.[166]

On 20 January 1978, the Philippine National Company-Energy Development Corporation (PNOC-EDC), a subsidiary of the Philippine National Oil Company (PNOC), applied for a clearance to dismiss Vicente Ellelina, a contractual employee. Initially, the Ministry of Labor and Employment (MOLE) granted the clearance but it later ordered the reinstatement of Ellelina. PNOC-EDC appealed to the Minister of Labor who, on 14 August 1981, affirmed the order of reinstatement. PNOC-EDC filed a petition for *certiorari* and one of the grounds it raised was the MOLE's lack of jurisdiction over it.

[163] *Id.*

[164] PHILIPPINE CONSTITUTION, art. IX-B, §2(1).

[165] 170 SCRA 79 (1989); Third Division.

[166] 175 SCRA 26 (1989); Second Division.

The Supreme Court upheld the jurisdiction of the MOLE. Since the PNOC-EDC was incorporated under the Corporation Code and not by special charter, the Supreme Court ruled that it did not fall under the coverage of the civil service. The Supreme Court applied the ruling in *NASECO v. NLRC* to the effect that the 1987 Constitution governs because it was the Constitution in place at the *time of decision*, even if the case of Ellelina arose when the 1973 Constitution was still in effect.[167]

The *PNOC-EDC v. Leogardo* case could have been the perfect opportunity for the Supreme Court to apply its ruling in *NASECO v. NLRC* to the effect that *NHC v. Juco* should not affect cases which arose before it was promulgated on 17 January 1985. In *PNOC-EDC*, the application for clearance was filed in 1978. The clearance was granted by the MOLE but the Minister of Labor later, in 1981, ordered the reinstatement of the employee sought to be terminated. This was a case which arose before 17 January 1985, and under the 1973 Constitution. The Supreme Court could have upheld the applicability of the Labor Code to PNOC-EDC on the above-mentioned ground. Instead, the Supreme Court, still relying on *NASECO*, based its decision on the fact that the 1987 Constitution was already in effect when it decided the case in 1989. The retroactivity espoused in *NASECO* was not even mentioned therein and remains untested to this day.

V. PROSPECTIVITY AND RETROACTIVITY COMPARED

A. Adhering To The Prospectivity Principle

1. IN SUPPORT OF THE PROSPECTIVITY PRINCIPLE

A perusal of the cases discussed in the preceding Chapter reveals that three reasons have been proffered to justify the extension of the applicability of the prospectivity principle to judicial decisions wherein previously established doctrines are set aside.

First, the Supreme Court in the case of *People v. Jabinal* considered the reliance placed upon the old doctrine and the fact that people have acted on the faith thereof. The Supreme Court based the said rule on the need to make the punishability of an act "reasonably foreseen for the guidance of society."[168] The *Jabinal* case has been cited as jurisprudence for the proposition that judicial decisions have prospective effect only, even in civil cases.[169] Second, the Supreme Court has interrelated Articles 4 and 8 of the Civil Code and reached the conclusion that laws shall, likewise, have prospective effect only.[170] Third, the Supreme Court has found that declining to apply the

[167] *Id.* at 30.

[168] *Jabinal*, 55 SCRA at 612.

[169] *See Benzonan*, 205 SCRA 515; *Unciano Paramedical College, Inc.*, 221 SCRA 285.

[170] *See Benzonan*, 205 SCRA 515.

prospectivity principle leads to unjust consequences of either impairing the obligation of contracts or divesting persons of vested rights.[171]

Several other arguments may be given in support of the proposition that judicial decisions should only have prospective effect. It may be argued that judicial decisions in criminal cases may not be given retroactive effect when such will result in a violation of the prohibition against *ex post facto* laws. A similar argument may be made with respect to the nonimpairment clause of the Constitution as regards civil cases. It can be said that the Supreme Court is sovereign in its own realm of interpreting the law such that, whenever it determines what the law means, all persons must abide by such determination. Not even the Legislature has the authority to say that the interpretation is erroneous. Since all persons are required to rely upon the decision of the Supreme Court, all are required to act accordingly, without expectation that the Supreme Court will re-examine its position.

All these reasons may be condensed into two: that judicial decisions abandoning previously-settled doctrines should have prospective effect only because (1) people have relied upon and acted according to the old doctrine, and because (2) the character of the Supreme Court and its power to interpret the law necessitate such conclusion. An analysis of these two further reveals that the foundation of both reasons is reliance upon the old doctrine, actual or constructive.

2. THE FORCE AND EFFECT OF LAW

The concept itself of enacting laws is to provide a norm by which all men must act. Laws are necessary for an orderly society. In a perfect world, all men know all the laws and they all act accordingly. But this ideal is impossible to achieve. The best way to approximate it is to require all citizens to take it upon themselves to know all the laws and, at the same time, provide them with the easiest and cheapest form of access to such information. It is a matter of substantive law that ignorance of the law excuses no one from compliance therewith.[172] To comply with the constitutional mandate of due process, Article 2 of the Civil Code mandates that laws be published first before they are considered binding upon the public. This cushions the impact of the conclusively presumed knowledge of the law.

Article 8 of the Civil Code provides that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." Article 8 refers only to Supreme Court decisions. That Supreme Court decisions form part of the Philippine legal system means that they have the force and effect of laws. Article 8 is a general statement of the binding character of judicial decisions. Article 4 of the Civil Code, on the other hand, provides that laws shall have no retroactive effect, unless the contrary is provided. Merging these two provisions together leads to the conclusion that the

[171] *See Benzonan*, 205 SCRA 515; *RJL Martinez Fishing Corporation*, 127 SCRA 454; *National Service Corporation*, 168 SCRA 122.

[172] Civil Code of the Philippines, R. A. No. 386, art. 3 (1950).

binding character of judicial decisions can only mean that judicial decisions should likewise have prospective effect only. If decisions of the Supreme Court are binding, then all persons are required to act in the manner called for under the judicial decision. The binding effect of a judicial decision imposing a certain mode of action cannot be counteracted by a judicial decision calling for a different mode of action as far as completed acts and transactions are concerned.

The law must mean something sometime. If the highest court of the land has itself declared what the law means, as it alone can do under our system of government, no one can question such determination and insist upon acting in another way. Not even the Legislature can be heard to complain. Any dissent on its part must be translated into a new and clearer law to be binding upon the Supreme Court.

No one is entitled to act in the expectation that the Supreme Court will, sometime in the future, change its interpretation of the law, not only because no one is entitled to speculate on the manner in which the Supreme Court will exercise its powers in the future, but also because a crucial limitation upon judicial power is that it may be exercised only in the face of a justiciable controversy. Without an actual case calling for the application of the same law, the Supreme Court will never have the opportunity to abandon an old doctrine regardless of how much it wants to. Judicial power may be exercised only in the context of a justiciable controversy.

No matter how strong or logical a person's objections against the doctrine may seem to him, he must act according to what the Supreme Court says the law means. If he chooses not to, he should not be entitled to expect that the Supreme Court will reconsider its doctrine to benefit him. When the Supreme Court itself makes a statement as to what the law means, it in effect says all that is necessary to require compliance from all. Our legal system will not function if constructive knowledge of all statutory interpretations declared by the Supreme Court is not likewise mandated.

However, this is not to say that the Supreme Court is bound to adhere to its own determination forever. It maintains the power to re-evaluate and re-interpret the law, and re-establish new doctrines. The Constitution itself states that the Supreme Court is entitled and empowered to change its doctrines.[173] But no one should be permitted to hypothesize as to whether or when this power will be exercised.

When the Supreme Court abandons a previous doctrine all it says is that it was mistaken in its previous interpretation of the law. It does not re-create the law, it only re-states what the law means.

The situation is different when reliance is upon the interpretation made by the person himself, his lawyer, an administrative agency or even a Member of Congress. In any of these cases the reliance is misplaced because none of these

[173] PHILIPPINE CONSTITUTION, art. VIII, §4(3).

persons has the power to declare what the law means. This reliance may evince good faith which may mitigate accountability for violating the law, but that is all it does. It does not extinguish liability. But where the determination is by the Supreme Court itself, it cannot but have binding effect.

This is not to say that judicial decisions have the same status as statutes. However, if the purpose of laws, which is to make for an orderly and just society, is to be achieved, some characteristics of laws must likewise be attached to judicial decisions. Otherwise, the end sought to be achieved by the law will be dissipated in the chaos brought about by its conflicting interpretations. Judicial decisions cannot be but binding interpretations of the law, all judicial decisions are binding and not just the latest ones.

To say that the former doctrine never existed simply because it was later abandoned is not only impractical but also impossible. That the Supreme Court decision existed cannot be denied. When the Legislature enacts a law in compliance with all the requisites of the Constitution, the later repeal of that law does not make it disappear into oblivion.

Even a law passed to the effect that a repealed law will not be considered to ever have existed is highly questionable. Even unconstitutional statutes are recognized to have some effect.[174] The Supreme Court cannot but recognize the existence of a previous doctrine it itself established.

Every judicial decision must be considered to have been promulgated in the exercise of the powers of the Supreme Court. To say that a previous doctrine which is later abrogated should be considered never to have been established is to say that some Supreme Court decisions are not promulgated in the exercise of that Court's sovereign powers. It is to ascribe to some decisions strength and binding effect greater than that ascribed to other decisions. And in such case, it will only be at the end of history that it can finally be said which decisions are binding on persons. How can the public act in accordance with the law if it can never really predict the value that will be attached to a judicial decision in the future? The entire system of government will rest on uncertain ground if some decisions are deemed not at all deserving of reliance.

Also, even though the Supreme Court is not empowered to legislate, it does and ought to interpret the law as it sees it. The duty of the Legislature is to make laws. If it does not make laws which are clear and unequivocal, it will not be the fault of the Supreme Court if there will be difficulties encountered in the performance of its duty. Neither is this the fault of those who have relied upon the Supreme Court's initial interpretation.

[174] *De Agbayani*, 38 SCRA at 435.

3. PRACTICAL CONSIDERATIONS

As earlier stated, the principle that Supreme Court decisions abandoning doctrines previously laid down by the Supreme Court have prospective effect only arose from a consideration of the reliance placed upon the law. In theory, the powers of the Supreme Court and the imperatives of an orderly society require that citizens know what norms are to guide their actions. In reality, the principle affords a means of protecting those who have, consciously or constructively, acted in accordance with the law. People act in reliance upon the law and what the Supreme Court determines to be its meaning. Contracts are entered into and rights are vested in accordance with what the Supreme Court states is the meaning of the law. This expectation must be upheld in the same way all other contractual stipulations must be complied with.

The law which will be read into the contract will be the law as interpreted by the Supreme Court at the time the contract was entered into since, for all intents and purposes, this was the law which the parties expected to be considered part of their contract.

B. In Support Of Retroactive and Prospective Effects

1. JUSTIFYING THE RETROACTIVITY OF DECISIONS

It is not surprising that jurisprudence does not provide us with reasons why judicial decisions abandoning previously settled doctrines should likewise apply retroactively. For, more often than not, retroactive application of a new doctrine is disguised in the general concept of adherence to precedents. Assume, for example, that the Supreme Court promulgates a decision interpreting a statute in a certain way. If the Supreme Court later abandons its first ruling and construes the law in a contrary manner, the second decision becomes precedent. If the second decision is adhered to in a later case, the simple reason for such would be *stare decisis*. All the Supreme Court has to do is cite the second decision as jurisprudence to support the adjudication of the third case. It will not likely find any need to justify the adherence to the latest precedent even if, in effect, the Court would be applying the new ruling retroactively, say, to parties who have acted in reliance upon the old doctrine.

2. WHY JUDICIAL DECISIONS SHOULD ALSO HAVE RETROACTIVE EFFECT

a. Separation of Powers

American jurisprudence and certain principles established by the Supreme Court itself provide for the reasons why judicial decisions abandoning previous doctrines should have both retroactive and prospective effects. There are many reasons that may be advanced but all these arguments are based on the principle of separation of powers and the clear-cut function of the Supreme Court in our structure of government.

It is well-settled that in our form of government, the Legislative Department enacts laws, the Judicial Department interprets them, and the Executive Department enforces them.[175] These powers are mutually exclusive and no one branch may arrogate upon itself the power granted to another branch.

In interpreting the law, the Supreme Court does not create the law. It merely establishes the contemporaneous legislative intent. The interpretation placed by the Supreme Court upon the law constitutes part of the law as of the date it was originally passed.[176] The Supreme Court has no duty, and it has no power to make laws.

To say that a former doctrine established by the Supreme Court has effect even in the face of a new doctrine would be to say that the Supreme Court has the power to control the effectivity of laws. If the Supreme Court itself determines that its previous interpretation of the law was erroneous, how can it, at the same time, give effect to such erroneous interpretation when what it is supposed to uphold is the true meaning of the law? The Supreme Court would then be considered to have the power to intentionally suspend the effects of a law on account of its own previous erroneous interpretation. This is probably the only time that power is granted on the basis of the commission of an error. The Supreme Court, in its second decision, would be making a declaration that the interpretation contained therein is the correct one, but during the time that its first interpretation was the standing doctrine, the law then was according to what the Supreme Court erroneously said before.

Dura lex sed lex. The law may be harsh but it is the law. When the Supreme Court makes a determination of what the law means, such determination controls. If the reversal of doctrines leads to harsh consequences, so be it. More important than anything, the Supreme Court should be correct. Why should the Supreme Court perpetuate a mistaken interpretation of the law when its power is meant to be exercised only in the correct interpretation of the law?

The Supreme Court cannot justify such a course of action by relying on *stare decisis*. The principle of stare decisis does not command blind adherence to precedents. A doctrine laid down, even if it has been followed for years, if found to be contrary to law, must be abandoned. The principle of *stare decisis* does not apply when the precedent conflicts with the law.[177]

b. On the Matter of Reliance

Reliance upon a wrong interpretation of the law is misplaced even if the source of the interpretation is the Supreme Court itself. In the end, reliance must

[175] United States v. Ang Tan Ho, 43 Phil. 1, 6 (1922).

[176] Senarillos v. Hermosisima *et al*, 100 Phil. 501, 504 (1956).

[177] Tan Chong v. Secretary of Labor, 79 Phil. 249, 257 (1947).

be placed in the words of the law itself and nowhere else. Persons are required to act according to the law and not according to what the Supreme Court perceives the law to be.

If a certain expectation is extremely important to the parties, it should be made a specific stipulation in the contract. If the contract contains no stipulation on a certain matter, then it is the law which is being read into the contract, not the parties' expectation. Changes in the law and their interpretation may affect the agreement between contracting parties without infringing on any constitutional or statutory provision.

If we ascribe to the parties of a transaction knowledge of the law and of judicial decisions, then we can also impute to them knowledge of the fact that the Supreme Court is constitutionally entitled to review any previous interpretation of the law. This sovereign power may not be contracted away by the parties.

As regards the *ex post facto* clause in the Bill of Rights, such is directed against legislative action only and does not apply to judicial decisions.[178]

There is no vested right in the decisions of a court.[179]

c. Unequal Treatment

To espouse prospectivity also leads to the unequal treatment of persons. Those who are substantially in the same position are made subject to different "laws" only because of the fortuity that one case reached the Supreme Court before the other. In this case, this accident of time is not a substantial distinction germane to the situation. It does not provide a basis for different treatment. With the exception of the situation when the principle of *res judicata* applies, all persons should be made subject to the same, and to the correct, interpretation of the law.

The duty of the Supreme Court is to interpret the law. When it does, that interpretation should be final as far as the law's meaning is concerned. That is the law. To say more would be to engage in prohibited judicial legislation.

VI. THE RULE AND THE EXCEPTIONS

A. Sources of Guidance

1. STATUTES AND DECISIONS OF THE SUPREME COURT

[178] Frank v. Mangum, 59 L. ed. 969, 987 (1915); United States v. General Electric Co., 80 F. Supp. 989, 1004 (1948); United States v. Rundle, 383 F. 2d 421, 425 (1967); Devine v. New Mexico Dept. of Corrections, 866 F. 2d 339, 342 (10th Cir. 1989).

[179] State v. O'Neil, 126 N. W. 454, 455 (1910).

There is no constitutional provision, no law, not even a rule issued by the Supreme Court which governs the matter of the effect of judicial decisions. Only one thing is clear: the Supreme Court has the last word on what the law is.[180] It is the duty of the Supreme Court to interpret the Constitution and all statutes, and in the exercise of this duty it is supreme.

What the Constitution and some of our statutes do contain are guidelines regarding statutes. The Bill of Rights is replete with matters which laws may or may not contain, while the Civil Code, the Administrative Code of 1987, and the Revised Penal Code contain provisions on the effectivity, effect, and repeal of statutes. It would be easy to apply all these rules even to judicial decisions on the basis of Articles 4 and 8 of the Civil Code. This may be expedient but not entirely sound, for Supreme Court decisions are not laws and laws are not judicial decisions. The manner in which the Legislature enacts laws is very different from the deliberative process the Supreme Court goes through each time it decides a case before it. The effect of statutes may be attributed to judicial decisions only if a careful analysis shows that such analogy is justified.

In enacting laws, the Legislature is not limited by anything it has previously done. Neither is it limited by anything the Supreme Court has previously done. The only limitations on the power of the Legislature to make laws are those provided by the Constitution itself. In construing the law, the Supreme Court is guided both by the Constitution and the words of the statute. The very mandate of the system of separation of powers prohibits the Supreme Court from engaging in judicial legislation.

The manner in which laws and judicial decisions are publicized likewise demonstrates their differences. The Civil Code itself provides for the effectivity date of a statute while the rules on repeals of statutes are contained in the Administrative Code of 1987. On the other hand, Supreme Court decisions become part of jurisprudence immediately upon promulgation of the decision.

Publication in the *Official Gazette* or in a newspaper of general circulation is mandatory before any statute can take effect but there is no required mode of dissemination to ensure that the public is informed of the rulings of the Supreme Court. Not even its publication in the *Official Gazette* is required by law.[181] Although the Constitution contains a provision on the manner in which a Supreme Court doctrine may be abrogated, there is neither a statute nor a rule which settles the effect of such abrogation.

Recklessly equating laws with judicial decisions, therefore, is not the solution to the problem. Soon it will be realized that doing so will lead to absurd situations based mainly on the fact that, while laws can involve a whole range of matters

[180] Albert v. Court of First Instance of Manila (Br. VI), 23 SCRA 948, 961 (1968).

[181] De Roy v. Court of Appeals, 157 SCRA 757, 761 (1988).

and can command all sorts of acts as long as the Constitution is not violated, judicial decisions do not entail as much freedom. The decisions of the Supreme Court must not only be consistent with the Constitution but likewise consistent with the law as the Legislature enacted it. To resolve the issue, it must be carefully determined which of the guidelines affecting laws may and should be carried on to the realm of judicial decisions.

2. SUPREME COURT-MADE PRINCIPLES

An attempt to find the solution solely from principles the Supreme Court itself laid down is circuitous. It would be like saying that anything the Supreme Court does may be justified as long as it has laid down a precedent for doing so. American jurisprudence contains authority to the effect that it is entirely up to the court to decide whether a doctrine it lays down will have prospective effect only or whether it will also have retroactive effect.[182] This does not seem correct. There must be established guidelines, otherwise, not only will there be confusion as to what the law means, there will also be confusion as to the significance of judicial decisions. What kind of legal system would we then be left with?

The Supreme Court does not have a free hand in determining the effectivity of its judicial decisions. To allow this would be to permit the Supreme Court to indirectly control what the law is.

There is, however, a perfect compromise between the policies protected by law and the principles of law established by the Supreme Court. This resolution, most important of all, is compatible with the Constitution.

B. The General Rule

When the Supreme Court interprets the law, it merely expresses the intent of the Legislature when the latter enacted the law.[183] The general rule ought to be that judicial decisions interpreting the law retroact to the date of the law's effectivity. This is most consistent with the prohibition against judicial legislation. The Supreme Court cannot transgress the prerogative of the Legislature to amend the law. The Supreme Court cannot itself make or re-create the law, neither can the Supreme Court suspend its effectivity. The separate spheres within which the Legislature and the Judiciary act must be kept distinct.

When the Supreme Court engages in statutory construction, it does so in the form of a judicial decision. No other occasion arises during which the Supreme Court may exercise judicial power other than an actual justiciable controversy. Even as it is the Supreme Court alone which can definitively say what the law means, the law has an existence separate from the Supreme Court. The fact that

[182] Great Northern Railway Co. v. Sunburst Oil & Refining Company, 85 ALR 254, 260 (1932).

[183] Senarillos, 100 Phil. at 504.

no controversy has ever arisen about a particular provision of law does not mean that the law is not in effect. The meaning which the Supreme Court attributes to the words of a statute attaches to them from the moment of their coming into existence, simply because it is not the Supreme Court which makes those words law.

C. *The Exceptions*

The strongest argument against the retroactive effect of judicial decisions is the reliance placed upon the erroneous interpretation of the law, the existence of which cannot be denied. But such reliance must be consequential enough to justify a departure from the general rule. The reliance must have been translated into a concrete act or a positive right.

The general rule was arrived at by harmonizing the powers and functions of the Legislative and the Judicial Departments of Government in our legal system as it is found in the Constitution. In putting together all the various propositions and premises, what stands out is the need to protect and give effect to constitutionally established roles. The said general rule complies with this. However, we cannot close our eyes to the existence of another section in the Constitution which we call the Bill of Rights.[184]

The powers of both the Legislature and the Judiciary are tempered by the mandate of Article III of the Constitution. The citizenry has rights which not even the Government may violate. Three of the provisions in the Bill of Rights are especially pertinent here: (1) the prohibition against *ex post facto* laws, (2) the prohibition against laws which impair the obligations of contracts, and (3) the prohibition against deprivation of life, liberty, and property without due process of law. Although the Constitution contains the word "laws" and, as has been stressed earlier, judicial decisions are not laws, still the principles enshrined in the Constitution must be protected even in the realm of judicial decisions. What cannot be done directly, through laws, should not be permitted to be done indirectly, through judicial decisions.

There are, therefore, three exceptions to the general rule of retroactivity. Judicial decisions adopting new doctrines and abandoning old ones have prospective effect only when (1) the *ex post facto* principle or (2) the nonimpairment principle will be violated, or where (3) vested rights are impaired in violation of the due process clause.[185] In these exceptions, there is constructive knowledge of the existence of the first doctrine and reliance thereon is presumed. In applying an already abandoned doctrine, the Supreme Court does not prescribe a new law for the future, but only applies to a completed transaction laws which were in force at the time

[184] PHILIPPINE CONSTITUTION, art. III.

[185] Jackson v. Harris, 43 F. 2d 513, 516 (10th Circ. 1930); Mickel v. New England Coal & Coke Co., 171 ALR 1001, 1005 (1946); O'Malley v. Sims, 115 ALR 634, 638 (1938).

of its completion. This is plainly a judicial act and not an exercise of legislative authority.[186]

1. THE *EX POST FACTO* PRINCIPLE

Reaching a determination as to whether the principle of prospectivity should apply to judicial decisions is very much simpler when the judicial decisions involved relate to criminal cases.

Section 14, Article III of the Constitution provides that: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved,..." The same presumption is repeated in the Rules of Court as part of the Rules on Evidence.[187] It has also been translated into a rule of statutory construction to the effect that penal laws shall be construed in favor of the accused. Of course, where the law is clear, there is no room for interpretation. The law must be applied, no matter how harsh the consequences are.[188] But where the law is ambiguous, every doubt must be resolved in favor of an acquittal.

The extreme position would be to hold that once the Supreme Court establishes that an act is not punishable under the law, it should no longer be permitted to abandon this earlier ruling. The act may be deemed prohibited only upon the enactment of a new law specifically punishing the act and removing whatever ambiguity existed in the past. It may be said that any law which may be the subject of two conflicting interpretations is an ambiguous law which, if made the basis of a conviction, results in a deprivation of life, liberty, or property without due process of law .

This position is, however, extremely impractical, to say the least. The words of a statute are not always simply either clear or ambiguous. There is a wide gray area in between these two characterizations. There are degrees of ambiguity and degrees of clarity. Hundreds have served as Justices of the Supreme Court. Although they may all have been men of probity and independence, each Justice possessed a personality and manner of thinking different from the next. What may have appeared ambiguous to some may have been unequivocal to others. But no matter how many Justices have served and continue to serve in the Supreme Court, there is and will always be just one Supreme Court. And this Supreme Court is constitutionally vested with judicial power and constitutionally permitted to re-evaluate the doctrines it establishes.[189]

At the other extreme is the position that the latest interpretation by the Supreme Court should be held to apply for as long as the Supreme Court itself

[186] Ross v. Oregon, 227 U. S. 150, 163 (1913).

[187] Rules of Court, rule 131, §3(a).

[188] United States v. Go Chico, 14 Phil. 128, 138 (1909).

[189] PHILIPPINE CONSTITUTION, art. VIII, §4(3).

has not abandoned it. Under this view, dates of commission and dates of promulgation are completely irrelevant. Any case that is brought to the Supreme Court for review must be resolved in view of its latest ruling. It is difficult to see how this position can survive in the light of the constitutional mandate that the accused be presumed innocent. The public will be left guessing as to what governs their actions. It is never certain whether an act is punishable or not.

This position is even harsher when it is realized that most ambiguity arises from special penal laws and relates to acts *mala prohibita* instead of acts which are wrong *per se*. Imagine a man who is in possession of a firearm without a license. He has no intention of using this firearm unless in self-defense. The gun is safely kept in a locked drawer beside his bed. This picture does not evoke strong feelings of anger or hatred. There is nothing intrinsically evil in what this man has done. In fact, the right to bear arms is a constitutional right under the United States Constitution.[190] The only reason the above act is punishable is because a law which makes it so punishable exists. The situation is the same where a person issues a check to guarantee payment of an obligation and the check bounces. In these cases, the mere commission of the act punishable by law does not demonstrate any evil inclination or an actual desire to violate the law.

It is not the same in the case of murder or rape, for example, where the public interest involved is so great that a stretching of the rule of statutory construction would result in putting society itself at risk.

The best position is somewhere in the middle.

If the Supreme Court itself has, in the past, ruled that an act is not prohibited within the contemplation of a certain penal statute, the Supreme Court itself provides proof that such interpretation is reasonable in view of the words of the law. If the Supreme Court later decides to exercise its prerogative to re-evaluate the law and, after a careful re-examination, determines that the same act is in fact prohibited by statute, the new doctrine should not be applied to those who have acted in accordance with the previous determination of the Supreme Court. Due process bars the retroactive judgment of a person's conduct using the expanded definition of a crime.[191]

This is in consonance with all principles of fairness and justice. The application of the prospectivity principle to judicial decisions is the best way to avoid an unfair situation wherein citizens not well-educated in the law would be expected to know exactly what the law means even as the Supreme Court has held otherwise.

It has been said that,

> [a]n unforseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, such as... the Constitution forbids.... If a state legislature is barred by the *Ex Post Facto* Clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction.[192]

A mistake in comprehending what the law means takes on a new meaning when the same mistake is committed by the Supreme Court itself. The day the Supreme Court requires more of the parties that come before it than it requires of itself is the day that it would cease to be a court of justice and equity.

2. THE NON-IMPAIRMENT OF CONTRACTS CLAUSE

The Constitution provides that "No law impairing the obligation of contracts shall be passed.[193] A law is said to impair the obligations of contracts when

> the law changes the terms of a legal contract between parties, either in time or mode of performance, or imposes new conditions, or dispenses with those expressed, or authorizes for its satisfaction something different from that provided in its terms.[194]

This presents the most viable argument in favor of the applicability of the prospectivity principle to judicial decisions in noncriminal cases. The obligation of contracts must be protected to the same extent that the prohibition against *ex post facto* laws must be upheld in the area of criminal law. Both are principles embodied in the Constitution, principles which may not be violated without violating the Constitution itself.

> The true rule is to give a change of judicial construction, in respect to a statute, the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say, make it prospective, but not retroactive. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself...[195]

Since the principle being applied to judicial decisions is based on the constitutional provision, the recognized exceptions under the Constitution must also be preserved as exceptions with regard to judicial decisions. This means that the reservation of the essential attributes of sovereign power remain read into contracts as a basic postulate of the legal order.[196] The nonimpairment clause will, therefore, not afford any comfort to the contracting parties even in the realm of judicial

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[190] The Second Amendment.

[191] United States v. Wasserman, 504 F.2d 1012, 1014-1015 (1974).

[192] Marks v. United States, 430 U.S. 188, 192 (1977); Bouie v. Columbia, 378 U.S. 347, 353 (1964).

[193] PHILIPPINE CONSTITUTION, art. III, §10.

[194] Clemens v. Nolting, 42 Phil. 702, 717 (1922).

[195] Douglass v. Pike County, Missouri, 101 U.S. 677, 687 (1880).

[196] Tolentino v. Secretary of Finance, 235 SCRA 630, 685 (1994).

decisions if the new doctrine sought to be retroactively applied to them involves matters which fall within the ambit of the State's police power. In such a case, the retroactive application will be upheld, in the same way the impairment would have been upheld as not being constitutionally infirm if what was involved was a law.

3. THE PROTECTION OF VESTED RIGHTS

The prohibition against the impairment of contracts, for very obvious reasons, applies only when the source of the relation between the parties is a contract. Where there is no contract, Section 10 of Article III of the Constitution does not apply. Furthermore, even when a contract exists between two parties, where the law effects a change on the rights of the parties with reference to nonparties and not with reference to each other, there is no impairment.[197] The preceding exception may be a very strong argument against the retroactive effect of judicial decisions, but a very limited number of cases will fall within its scope.

Where a person finds himself outside the coverage of the preceding exception, relief may still be had under a third exception: the protection of vested rights.

Divesting a person of rights that have become vested amounts to a deprivation of property without due process of law.[198] The principle itself is not complicated. However, its application to actual cases involves the practical problem of determining which rights are vested and which ones are not. At present, there is no clear rule as to the determination of vested rights arising mainly from the fact that no clear definition of "vested right" has been presented. A vested right has been defined as a right or interest in property that has become fixed, established, and no longer open to controversy.[199] It has also been defined as a right which has been perfected such that nothing remains to be done by the party asserting it.[200] It has been said that what constitutes a vested right will be determined by the court as each particular issue is submitted to it.[201]

"A vested right is one whose existence, effectivity and extent does not depend upon events foreign to the will of the holder."[202] The term expresses a concept of present fixed interest, the annihilation of which is prohibited by the due process clause.[203] This concept of a fixed and established interest must be protected so

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[197] 1 JOAQUIN G. BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 322 (1987).

[198] Isaac v. Tan Chuan Leong, 89 Phil. 24, 27 (1951).

[199] Balbao v. Farrales, 51 Phil. 498, 502 (1928).

[200] Dones v. Director of Lands, L-9302 (14 May 1956).

[201] PARAS, *supra* note 17, at 28.

[202] Republic v. Court of Appeals, 205 SCRA 356, 361 (1992).

[203] Ayog v. Cusi, Jr., 118 SCRA 492, 499 (1982).

that a clear distinction between an inchoate and a vested right can be maintained. Rights to rely upon certain expectations and rights to expect are excluded from the true concept of "vested rights." Only rights which have vested are entitled to protection.

It would not be amiss to establish certain guidelines to make the determination of whether one falls under the third exception easier. What must first be ascertained is whether a person has a right or an obligation. If what he has is an obligation, the general rule on retroactivity applies to him. If what he has is a right, it must be determined whether the right is vested or merely inchoate. If the right is beyond controversy and is not subject to any contingency, it is already vested. If the right is still uncertain and is still subject to the happening of a condition, the right is merely inchoate. The general rule on retroactivity likewise applies to inchoate rights.

If the person is shown to have a vested right, it must be determined whether the new doctrine laid down by the Supreme Court is beneficial or prejudicial to him. If he will be divested of vested rights by the retroactive application of the new doctrine, the situation falls under the third exception. The principle of prospectivity applies. However, where the new doctrine favors him, the retroactive application of the new doctrine will be recognized.

D. In the Interest of Justice

The general rule and the exceptions stated above should not be so strictly construed as to preclude any deviation therefrom. It is impossible to establish a set of rules which will ensure the most fair and equitable disposition of all cases in the future. It is inevitable that there will be instances when faithful adherence to these rules, no matter how reasonable and sound they may be, will result in an injustice. In those cases, the Supreme Court has the power and the obligation to decide the case in the manner which best allows justice to prevail.

VII. SUPREME COURT DECISIONS IN THE LIGHT OF THE GENERAL RULE AND THE EXCEPTIONS

A. In Cases Involving Penal Legislation

1. POSSESSION OF FIREARMS BY SECRET AGENTS

The Supreme Court correctly acquitted Jose Jabinal, Rafael Licera, and Jesus Santayana of the charge of illegal possession of firearm. They all had been appointed secret agents by the local chief executive before they were caught in possession of an unlicensed firearm. At the time they were apprehended, not only was there a case to the effect that secret agents were entitled to possess firearms without a license but there were two such cases which formed part of jurisprudence (*i.e. People v. Lucero* and *People v. Moro Macarandang*). *People v. Mapa* was yet to be decided.

To convict them would have been an indirect violation of the prohibition against *ex post facto* laws.

2. BOUNCING GUARANTEE CHECKS

The manner in which the Supreme Court adopted the principle of prospectivity to apply to judicial decisions in the *Co v. Court of Appeals* case was quite problematic. Unfortunately, it was in this case that the Supreme Court chose to make the lengthiest discussion of the applicability of the prospectivity principle to judicial decisions.

Even as the Supreme Court earlier upheld in *Que v. People* (1987) the view that B.P. 22 encompassed the issuance of checks of whatever kind and for whatever purpose, it still opted to acquit Albino Co on the ground that, at the time he issued the check, there was a standing Ministry of Justice Circular excluding guarantee checks from the coverage of B.P. 22.

It is true that the determination made by the Secretary of Justice embodied in Circular No. 4 is not just

> the opinion of a private lawyer but... an official pronouncement of no less than the attorney of the Government,... whose opinions, though not law, are entitled to great weight and on which reliance may be placed by private individuals as reflective of the correct interpretation of a constitutional or statutory provision.[204]

Still, the opinion does not deserve the same weight and the same degree of reliance judicial decisions deserve.

Circular No. 4 is definitely not of the same rank as the Supreme Court's determination in the *Lucero* and *Moro Macarandang* cases that secret agents may possess firearms without a license. In fact, Circular No. 4 was superseded by Circular No. 12 even before the Supreme Court decided the *Que v. People* case.

The rule-making powers of an administrative agency may be categorized into three: (1) supplementary legislation, (2) interpretative legislation, and (3) contingent legislation.[205] The above Circulars were not issued by virtue of the power of supplementary legislation. B.P. 22 did not contain a specific delegation of authority to "fill in the details" of the statute. Unlike rules and regulations issued under the power of supplementary legislation, rules and regulations which are merely interpretative do not have the force and effect of law. At best, they are persuasive.

The Supreme Court is best advised to seriously consider the contents of interpretative regulations, but in no way are these binding upon the Supreme

[204] Co, 227 SCRA at 456.

[205] HECTOR M. DE LEON, JR., ADMINISTRATIVE LAW: TEXT AND CASES 79 (1993).

Court. In the end, it is the Supreme Court which definitively says what the law means. That, every now and then, the Supreme Court renders contradictory statutory constructions does not detract from this principle, and is certainly irrelevant when its interpretation is compared to an administrative interpretation.

The suggestion in *Co* that an administrative interpretation deserves equal, if not greater weight than the Supreme Court's interpretation is dangerous, to say the least. The Supreme Court could at least have attempted to rationalize why the interpretation contained in Circular No. 4 was reasonable in the first place. At least then, it could really have been said that Co was acquitted because, in a criminal action, all doubts must be resolved in favor of the accused. The Supreme Court did not.

As it stands, the acquittal of Co seems to have been based on the Secretary of Justice's interpretation of B.P. 22, not the Supreme Court's. Remember that when Que issued the two checks for which he was convicted, Circular No. 4 had not yet been issued by the Secretary of Justice; and when Reyes issued the two checks for which he was convicted, Circular No. 12 had already reversed Circular No. 4. Although in these two cases the Supreme Court did not make any declaration that the checks involved were mere guarantee checks, these conditions support the observation that Co's acquittal was based on statutory construction performed by an administrative agency and not the Supreme Court.

In *Co v. Court of Appeals*, the Supreme Court erred in applying the prospectivity principle to its decision in *Que v. People*. By doing so, it was first to relax the maxim that it is the Supreme Court alone which can finally and definitively say what the law means. If, in interpreting B.P. 22, the Supreme Court did not even entertain any single doubt that the legislators had no intention to make an exception as to guarantee checks, it had no power to itself make the exception, even if only for a very limited span of time. Certainly, this is not the proper application of the prospectivity principle.

3. THE UNCOUNSELED WAIVER OF THE RIGHT TO COUNSEL[206]

When the Supreme Court declared in *Morales, Jr. v. Enrile* that the 1973 Constitution not only enshrined the right of a person under custodial investigation to be assisted by counsel but concurrently required that any waiver of the said right is valid only if made with the assistance of counsel, it was not merely applying the Constitution but interpreting it. Section 20, Article IV expressly dealt with the matter of rights only, not with the matter of waivers. But for all intents and purposes, the guideline set out in *Morales* was a mere *obiter dictum*. The issue before the Supreme Court was the legality of the continued detention of the

[206] On the belief that any subsequent determination that a person under custodial investigation may waive the right to counsel even without the assistance of counsel would amount to a violation of the prohibition against *ex post facto* laws, this subject was included under the heading *"In Criminal Cases."*

petitioners on the charge of rebellion. Their petitions for *habeas corpus* were dismissed. The merits of the charge of rebellion and the petitioners' allegations that their constitutional rights had been violated were not addressed by the Court.

The reference to the *Morales* guideline in the *People v. Galit* case was likewise only an *obiter dictum* with respect to the requirement of counsel assistance in waiving the right to counsel. The Supreme Court found that the extrajudicial statement of Galit did not contain any waiver. It was the fact, therefore, that Galit was not assisted by counsel even as he did not waive his right to counsel that led to the inadmissibility of his statement. The constitutional violation was manifest. Still, the requirement that a waiver be made only with the assistance of counsel became known as the *Morales-Galit* doctrine.

It was in the case of *People v. Sison* that the Supreme Court had the opportunity to reiterate paragraph 7 of the *Morales* case and give it doctrinal value. It was only in this case that the Supreme Court was faced with an extrajudicial confession that contained a waiver of the right to counsel which was not itself made with the assistance of counsel.

There was no mention of the prospectivity principle in the *Sison* decision, and there was no need for a discussion of the principle since the extrajudicial confession involved was dated 19 May 1983. It was, thus, executed after the Supreme Court promulgated its decision in *Morales, Jr. v. Enrile.*

The Supreme Court then decided the *People v. Nabaluna* case and it was at this juncture that the Supreme Court applied the prospectivity principle to judicial decisions.

The ruling therein was that the extrajudicial confessions executed by the accused after they waived their right to counsel, without the assistance of counsel, were admissible in evidence since the *Morales-Galit* doctrine was set out after the trial court rendered judgment in the case. This manner of reasoning adopted in *Nabaluna* was later repeated by the Supreme Court in the *People v. Ponce* case.

It seems that the *Morales-Galit* doctrine, which actually became a doctrine in 1983 when *Sison* was decided, should have been given retroactive effect by the Supreme Court. In effect, the Supreme Court granted a right for the first time in *People v. Sison*: the right of a person under custodial investigation to be assisted by counsel even in the act of waiving the right to counsel. One of the exceptions to the nonretroactivity of statutes is when a statute grants a right for the first time. The same principle should have been applied to the ruling of the Supreme Court in *People v. Sison*. However, even if the Supreme Court applied the *Morales-Galit* doctrine to the benefit of Nabaluna and Ponce, the judgment in those cases would still have been the same since, in both cases, there was sufficient evidence to support their convictions, apart from their extrajudicial confessions.

After the 1987 Constitution took effect, the Supreme Court decided the case of *Dacoycoy* and, later, the case of *Luvendino*. The conflict between the outcome of the *Dacoycoy* case and the outcome of the *Luvendino* case deserves some consideration. When the 1987 Constitution took effect on 2 February 1987, the requirement that the waiver of the right to be assisted by counsel must itself be made with the assistance of counsel explicitly became part of the Bill of Rights. Although the question of whether provisions in the Bill of Rights may be granted retroactive effect has been the subject of differing opinions, the position in *Dacoycoy* favoring retroactivity seems more correct. As earlier stated, one of the exceptions to the rule that laws shall have prospective effect only is when a statute grants rights for the first time. There is no reason not to apply this rule to a right expressly granted by the Constitution for the first time. Upon the effectivity of the 1987 Constitution, any question regarding the soundness or applicability of the *Morales* guideline should have become moot.[207]

B. In Cases Not Involving Penal Legislation

1. REPURCHASE OF LANDS ACQUIRED BY HOMESTEAD

The cases involving the interpretation of Section 119 of Commonwealth Act No. 141 present a more complicated matter. The significance of the prospectivity principle as applied to judicial decisions was recognized in the case of *Benzonan v. Court of Appeals*. This case, however, was already the seventh in a series of cases spanning four decades relating to that particular provision of law.

The difficulty in analyzing these cases stem from the fact that, in the first two cases decided three years apart, the Supreme Court arrived at conflicting interpretations of the law. The decision in *Monge et al v. Angeles et al*, the second case, was not the result of a reconsideration of the doctrine enunciated in *Paras v. Court of Appeals*, the first case. *Monge* was decided without any reference to the *Paras* case, even as two of the Justices[208] who took part in the deliberations of the *Paras* case were still incumbent at that time.

Further confusion results from a couple of inaccurate citations made in the subsequent cases. In the *Tupas v. Damasco* case, the Supreme Court held that the five-year period provided under Section 119 should be counted from the date of the execution sale. This decision was based on the *Oliva v. Lamadrid* case. But a review of the *Oliva* case reveals that the issue therein was different. That case is jurisprudence to the effect that Section 119 of C. A. No. 141 applies to both voluntary and involuntary conveyances. That was the issue decided therein. In turn, the *Belisario v. IAC* case was decided on the basis of the *Manuel v. PNB* case. The ruling in *Belisario* was that the five-year period begins to run only after the expiration of the one-year redemption period applicable to extrajudicial foreclosure sales. Note that in the *Manuel* case, the Supreme Court acknowledged its conflicting rulings in *Paras* and *Monge*. It then held, without upholding the validity of either

[207] Note also that the conviction of Dacoycoy was based solely on the extrajudicial statement. In People v. Luvendino, Luvendino repeated his statement later on with the benefit of counsel.

[208] Justices Bengzon and Labrador.

interpretation, that the period to redeem had lapsed whichever way it was counted. It was from where *Belisario* left off that *Benzonan* proceeded.

In addition, beginning with the *Tupas* case and until the case of *Sta. Ignacia Rural Bank, Inc. v. Court of Appeals*, the Supreme Court had been deliberating in divisions instead of *en banc*. The last decision by the Supreme Court *en banc* was the *Oliva* case. As earlier stated, that case did not exactly involve the same issue as the other cases. Previous to that was the *Manuel* case, in which the Supreme Court did not make a categorical pronouncement as to the correct interpretation of Section 119. The last ruling of the Supreme Court *en banc* on the matter was the *Monge* case. In effect, the First Division of the Supreme Court, in the case of *Belisario*, abandoned the *Monge* decision, which was promulgated by the Supreme Court *en banc*, and the Third Division of the Supreme Court has, since then, recognized the doctrinal value of the *Belisario* case in at least three subsequent decisions.[209]

Be that as it may, the concern of this study is the propriety of the application of the prospectivity principle in the *Benzonan* case. In this case, the Supreme Court implicitly held that the general rule is that judicial decisions have prospective effect only, save in those exceptional instances when retroactivity is necessitated by considerations of equity and social justice.[210] The author has rejected this proposition for reasons already elucidated. However, it appears that the Supreme Court properly applied the prospectivity principle in the *Benzonan* case.

The prospectivity of the *Belisario* ruling, that is, the limitation of its applicability to situations arising after 30 August 1988, was recognized in the *Benzonan* case for the benefit of the Benzonan Spouses. The Benzonan Spouses were the purchasers of the land subject of the controversy from DBP, which purchased the land at the foreclosure sale. In ruling in favor of the Benzonan Spouses, the Supreme Court found that they had a right over the parcel of land which was already vested at the time the *Belisario* case was decided. Exactly what this vested right was is unclear but it seems that the Supreme Court was referring to the right of the Benzonan Spouses, as buyers in good faith, to rely on the *Monge* and *Tupas* rulings when they purchased the property in 1979.[211]

It is true that a seller has a vested right to repurchase the property he sold within the period granted by the law, or the Supreme Court decision, in effect at the time of the sale. This is an actual right which he may not be divested of without violating due process of law. However, this is not to say that the purchaser does not likewise have a vested right. As far as the purchaser and his successors-in-interest are concerned, they have the right to expect that their ownership will become absolute after the said period to repurchase lapses. In fact, as far as subsequent purchasers like the Benzonan Spouses are concerned, the length of the period of repurchase must have been a crucial consideration in determining the appropriate purchase price for the land.

[209] In the cases of *Benzonan*, *Rural Bank of Davao City*, and *Sta. Ignacia Rural Bank*.

[210] Benzonan, 205 SCRA at 527-528.

[211] *Id.* at 528. Note that the *Tupas* case was actually decided in 1984, after the Benzonan Spouses purchased the land from DBP in 1979.

The period for repurchase as determined by the Supreme Court decision in effect at the time of the original sale cannot be affected by a later decision which shortens the period since this divests the original owner of his vested right. However, neither may this period be affected by a later Supreme Court decision which lengthens it since, in such a case, it would be the vested right of the buyer and his successors-in-interest which will be adversely affected.

The Supreme Court, thus, correctly held that the effect of the ruling in *Belisario* should not be made to reach conveyances made prior to its promulgation. The property of Pe was foreclosed by the DBP in 1977. The *Belisario* ruling was promulgated only in 1988. Remember also that the Supreme Court found that Benito Pe did not fall under the classification of the poor farmer for whose benefit Section 119 was passed.[212]

2. JURISDICTION

Jurisdiction over the subject matter was the common issue in the cases involving government-owned or controlled corporations (GOCC's) without original charter, the Warsaw Convention, and the 10-day appeal period under the Labor Code.[213]

Jurisdiction of courts over the subject matter of an action is a matter of law. The parties themselves may neither grant a court jurisdiction it does not legally possess nor deprive it by stipulation of jurisdiction it has under the law.[214]

Jurisdiction over the subject matter is determined according to the law in force at the time the action is filed.[215] Once the jurisdiction of a court attaches, the court cannot be later ousted of such jurisdiction by subsequent events, even of a character which would have prevented jurisdiction from attaching in the first place.[216]

[212] *Id.* at 523.

[213] *See* Paramount Vinyl v. NLRC, 190 SCRA 525, 533 (1990); Lucero v. NLRC, 203 SCRA 218, 224 (1991); Ramones v. NLRC, 219 SCRA 62, 68 (1993); San Miguel Corp. v. NLRC, 221 SCRA 48, 50-51 (1993). In these cases, the Supreme Court held that the appeal period is a matter of jurisdiction.

[214] Nepomuceno v. Carlos, 9 Phil. 194, 199 (1907); Municipality of Sogod v. Rosal, 201 SCRA 632, 637 (1991).

[215] Republic v. Court of Appeals, 205 SCRA 356, 363 (1992); People v. Lagon, 185 SCRA 442, 446 (1990).

[216] Ramos, *et al.* v. Central Bank of the Philippines, 41 SCRA 565, 583 (1971).

The Supreme Court has held that, upon the filing of a suit, the right to file such suit and to have the same proceed to final adjudication vests. Vested rights include not only legal title to the enforcement of a demand but also exemption from new obligations created after a right has vested. The vested right of action can no longer be prejudiced by the enactment of a new law.[217]

Based on these principles, it is apparent that all the parties to a suit have the right to a determination of jurisdiction in accordance with the law in force at the time the action is filed. At the actual point in time when the action is commenced, both the plaintiff and the defendant have a vested right to have the court determine its jurisdiction according to the law in effect.

Consequently, since vested rights are involved, the matter of jurisdiction over the subject matter in an action is covered by one of the exceptions earlier stated. If, based on the standing doctrine of the Supreme Court at the time the complaint is filed, a court has jurisdiction over the subject matter of an action, the court continues to possess such jurisdiction until the case is resolved regardless of any subsequent ruling of the Supreme Court to the contrary. In the same way, if, at the time of filing, existing jurisprudence states that the court has no jurisdiction, a defendant is entitled to a dismissal and the court is obliged to dismiss the complaint.

An examination of the three sets of cases involving jurisdiction will, however, show that there are special circumstances in each of these cases which make the above pronouncement not exactly and directly applicable.

a. Claims for Damages Based on Airline Negligence

When the Supreme Court interprets the words of a treaty, it is, in effect, interpreting a statute, for a treaty is of the same rank as a statute in the hierarchy of laws in the domain of municipal law.

The first of the series of cases dealing with claims for damages arising from a tort committed by an airline company was the *Pan American World Airways, Inc. v. IAC* case. This case, however, was decided without making any reference to the provisions of the Warsaw Convention. It was the Philippine law on torts and damages that was applied. None of the parties raised the issue of the applicability of Article 28(1) of the Warsaw Convention so the Supreme Court had no reason to discuss it. It, therefore, cannot be said that the *PanAm* case was an exercise of statutory construction with regard to the Warsaw Convention.

The *PanAm* case was followed by the case of *Santos III v. Northwest Orient Airlines*. Unlike *PanAm* which was a decision rendered by a division, the *Santos III* case was decided by the Supreme Court *en banc* and the question of jurisdiction was specifically put in issue through a motion to dismiss. Article 28(1) of the Warsaw Convention was interpreted by the Supreme Court as a matter of

[217] Republic v. Court of Appeals, 205 SCRA 356, 361 (1992).

jurisdiction and not just of venue. Since the Philippines was not one of the four places enumerated under the treaty, the Supreme Court ruled that the Regional Trial Court did not have jurisdiction.

In the succeeding case of *Lopez v. Northwest Airlines, Inc.*, decided after the *Santos III* case, the Third Division of the Supreme Court ruled that the *Santos III* decision should only apply prospectively and should not effect a nullification of a previous determination by the Supreme Court that the Regional Trial Court, in fact, has jurisdiction. The *PanAm* case was cited in support of this position. This reliance is erroneous for the *PanAm* case did not establish any doctrine as to the applicability and meaning of Article 28(1). The Warsaw Convention was not considered in that case since *PanAm* never raised lack of jurisdiction as a defense in a motion to dismiss or in its answer. It was not even an issue raised on appeal. Not having been an issue therein, how can the *PanAm* case serve as doctrinal basis for the proposition that Philippine courts retain jurisdiction over claims for damages arising from international airline transport contracts even with the existence of the Warsaw Convention?

In the *Lopez* case, Northwest Airlines filed a motion to dismiss precisely to question the jurisdiction of the Makati court. The denial of its motion to dismiss reached the Supreme Court, ruling that Northwest Airlines failed to show any reversible error committed by the Court of Appeals in affirming the trial court's denial of the motion to dismiss.

Two points should be raised in determining the propriety of the decision in the *Lopez* case. First, there is a need to determine whether Northwest Orient was already barred by laches or estoppel from questioning the trial court's jurisdiction for having participated in the trial on the merits. Second, it must be realized that this case did not involve the prospectivity of a judicial decision which abandons a previously established doctrine. What it actually involves is the determination of whether the initial interpretation by the Supreme Court retroacts to the date of effectivity of the statute or the treaty.

The author believes that where only one doctrinal pronouncement of the Supreme Court is involved, there is no doubt that the interpretation of the statute contained therein retroacts to the date of effectivity of the statute. Before *Lopez*, there was only the *Santos III* case which was decided *en banc* and concurred in by all the Justices of the Supreme Court. The interpretation of Article 28(1) contained therein should be considered to retroact to the date of effectivity of the Warsaw Convention on 9 February 1951.[218] Clearly, the Regional Trial Court of Makati did not have jurisdiction over the action for damages. However, the issue of estoppel was left to be determined. Was Northwest Airlines guilty of any act which may be interpreted in any way as its agreement to the Philippine court's exercise of jurisdiction? If yes, then the Philippine court may adjudicate the case to its finality, any judgment rendered being binding on both parties regardless of the doctrine in the *Santos III* case.

[218] Santos III, 210 SCRA at 472.

b. Employees of GOCC's Without Original Charter

In the case of *NHC v. Juco*, the Supreme Court *en banc* construed Section 1, Article XII-B of the 1973 Constitution to mean that employees of government-owned or -controlled corporations fell within the ambit of the Civil Service regardless of their manner of incorporation. This decision was rendered in 1985.

On 2 February 1987, the new Constitution took effect. Under its provisions, employees of government-owned or controlled corporation without original charters were clearly excluded from the coverage of the Civil Service.

NASECO v. NLRC followed the *NHC v. Juco* case. The case of Eugenia Credo arose during the effectivity of the 1973 Constitution. She was terminated so she filed a complaint against her employer NASECO in 1983. The decision of the Labor Arbiter and the NLRC were both rendered in 1984. In upholding the jurisdiction of the NLRC, the Supreme Court *en banc* ruled that to give effect to the *NHC v. Juco* ruling in 1985 to situations which arose before 1985 would result in injustice to the employees concerned. Also, the 1987 Constitution in force at the time the Supreme Court resolved the matter of jurisdiction should be applicable. The opinion of the Court reveals that there was a determination that NASECO's claim of absence of jurisdiction was belatedly claimed before the Supreme Court already.

The Supreme Court cited three previous instances wherein the jurisdiction of the NLRC over government-owned or controlled corporations was upheld. In these cases, however, jurisdiction was not put in issue by the parties. In reviewing the decision of the NLRC or the Regional Director of the Department of Labor and Employment, the Supreme Court was not called upon to decide the question of jurisdiction but only to review the case based on the other point of merit. As in the *Santos III v. Northwest Orient Airlines, Inc.* case, it was the *NHC v. Juco* case which was the first construction of Section 1(1), Article II-B of the 1973 Constitution which was of doctrinal value.

Strictly speaking, therefore, the NLRC did not have jurisdiction over Credo's complaint against NASECO. Under the law in force at the time the complaint was filed, as interpreted by the Supreme Court, jurisdiction over the subject matter lay with the Civil Service Commission and not with the NLRC. The statement made by the Supreme Court to the effect that the NLRC may be deemed to have jurisdiction since, according to the 1987 Constitution, in place at the time of the Supreme Court's decision was rendered, the NLRC already had jurisdiction is clearly erroneous in the light of established jurisprudence to the effect that jurisdiction over the subject matter is determined at the time the complaint is filed. However, because of considerations of laches[219] and in order to prevent an injustice from being done, the Supreme Court exercised its discretion in considering the case before it as an exceptional situation wherein the jurisdiction of the NLRC must be recognized.

[219] *See* One Heart Sporting Club, Inc. v. Court of Appeals, 108 SCRA 416, 424 (1981). The Supreme Court held therein that "after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court."

This finding of injustice should be considered by the NLRC in determining that it has jurisdiction over cases which fall under the classification, that is, complaints having been filed prior to 17 January 1985, when the *NHC v. Juco* case was promulgated. This issue, however, has not been clearly ruled upon by the Supreme Court. Instead of adopting the Supreme Court's earlier ruling that an injustice results by applying the *NHC v. Juco* case to situations arising before its promulgation, the Second Division arrived at the same conclusion by adhering to the ruling in *NASECO v. NLRC* that the 1987 Constitution applies even to cases arising under the effectivity of the 1973 Constitution for as long as the Supreme Court decides the case during the effectivity of the 1987 Constitution, in *PNOC-EDC v. Leogardo*. It must be remembered that this statement goes against established principles on when jurisdiction over the subject matter should be determined.

c. The Appeal Period Under the Labor Code

The succession of cases involving the interpretation of Article 223 of the Labor Code presents a unique application of the prospectivity principle.

Of interest is the fact that the meaning of a reasonably simple provision of law was expanded by the Secretary of Labor in the exercise of his power of subordinate legislation granted by the Labor Code.[220] The term "10 days" appeared in the law but the rule implementing Article 223 provided that the appeal period was 10 working days instead of 10 days, which normally contemplate calendar days. Valid legislative rules have the force and effect of valid statutes, but the effect of an *ultra vires* legislative rule has not been settled.[221] What is settled is that not even the Secretary of Labor has the power to amend or alter what the law unequivocably provides.[222]

Be that as it may, the "working day" method of computing the appeal period was adopted by the Supreme Court in *Fabula v. NLRC*. Note, that none of the parties questioned the validity of the implementing rule. In fact, the Supreme Court rendered a very brief decision reinstating the appeal after the Solicitor General filed a Manifestation that the records revealed that the appeal was timely filed.

In deciding the *Vir-Jen Shipping and Marine Services v. NLRC* case, the Supreme Court ruled that "the Minister of Labor has no legal power to amend or alter in any material sense whatever the law itself unequivocally specifies."[223] The "working day" method of computation was struck down but the Supreme Court found that the circumstances presented by the case justified a consideration of the merits of the case even if the appeal was not timely filed. The Supreme Court did admonish all concerned, from that point in time, to act according to its view that the 10-day appeal period referred to calendar days.[224]

[220] Labor Code of the Philippines, Presidential Decree 442, as amended, §5.

[221] DE LEON, *supra* note 205, at 83.

[222] Erectors, Inc. v. NLRC, 158 SCRA 421, 426 (1988).

[223] *Vir-Jen*, 115 SCRA at 361.

[224] *Id.*

The *Vir-Jen* case was later made the subject of three motions for reconsideration. The first two motions for reconsideration were denied but in resolving the third motion for reconsideration, the Supreme Court *en banc* reversed the 20 July 1982 decision of the Second Division. The *en banc* ruling was, however, on the merits of the case and not on the timeliness of the appeal. Nowhere in the 18 November 1983 resolution of the third motion for reconsideration is the issue of timeliness of the appeal found. These motions for reconsideration on a distinct issue was not viewed by the Supreme Court as a hindrance to recognizing the pronouncement in *Vir-Jen* on the meaning of Article 223 as acquiring doctrinal value as of 20 July 1982.

Except for the *American Express* case, the decisions of the Supreme Court after *Vir-Jen* were consistent in their implicit application of the principle of prospectivity. Among the cases decided between 1984 and 1993, only the *RJL Martinez* case involved an appeal taken to the NLRC prior to 20 July 1982. The *RJL Martinez* case was thus properly decided based on the prevailing "working day" method since the *Vir-Jen* case was not yet in place when the appeal was filed. Since the jurisdiction referred to in Article 223 of the Labor Code is appellate jurisdiction, the crucial date is the date of the filing of the appeal and not the date the original complaint was filed. It is the law or the Supreme Court doctrine in place at the time of the filing of the appeal which determines whether the appellate tribunal has jurisdiction to dispose of the appeal or not.

The rest of the cases, from *MAI Philippines* to the *Dizon* case, were decided using the "calendar day" method. All the appeals involved therein were filed after 20 July 1982.

It was only the *American Express* case which was decided differently. In that case, the Supreme Court ruled that the "calendar day" method of computation should not be applied to American Express International, Inc. for two reasons: (1) entry of judgment in the *Vir-Jen* case was actually effected only on 9 April 1984 and (2) the clarificatory ruling in *RJL Martinez* was rendered only in 31 January 1984. Counsel for American Express could not possibly have anticipated the final outcome of the *Vir-Jen* case and the tenor of the decision in *RJL Martinez* when he filed the appeal in 1982. This ruling seems to be erroneous.

Although the 20 July 1982 decision of the *Vir-Jen* case was made the subject of three motions for reconsideration, the first resolution should in itself be considered of binding effect. Even if it was subjected to further review, the fact was that the Supreme Court already rendered a decision therein. There is only one Supreme Court, single, unitary, complete and supreme.[225] It is this Supreme Court whose decisions form part of the legal system of the Philippines as mandated by Article 8 of the Civil Code. Each resolution of the same case should be considered a separate case insofar as the application of the principle of *stare decisis* is concerned. Even as the litigation between the parties in the *Vir-Jen* had not ceased, the Supreme Court, on 20 July 1982, had already rendered a principle of law as far as Article 223 was concerned, a principle of law which must be

[225] Vir-Jen Shipping and Marine Services, Inc. v. NLRC, 125 SCRA 577, 584 (1983).

accorded respect and obedience by everyone. This is especially true in the instant case since the timeliness of the appeal was not an issue discussed in the motions for reconsideration.

Also, the suggestion in *American Express* to the effect that it is the actual entry of judgment in the Supreme Court that operates to render a doctrine laid down as binding has no basis. It is the date of promulgation that has uniformly been considered as the crucial date in determining when a decision of the Supreme Court becomes effective.

It may be appropriate to add, at this point, that in the Philippines, there is no law requiring the publication of Supreme Court decisions in the *Official Gazette* or elsewhere before they can be considered binding and effective. It is the duty of all lawyers in active practice to keep themselves informed of the latest decisions of the Supreme Court.[226]

3. THE CONTRACT OF ENROLLMENT

Had the facts in the *Unciano College* case been clearly established and had these facts proven that the Respondents-students were neither guilty of academic deficiency nor violation of school disciplinary regulations, it would be easy to perceive that the application of the prospectivity principle therein was inappropriate.

What was involved in the cases of *Alcuaz*, *Non*, and *Unciano College* was the determination of the term of a contract of enrollment. These cases related to contractual rights.

Under the third exception laid down earlier, where the nonimpairment clause of the Constitution would be indirectly violated by the retroactive application of a new doctrine of the Supreme Court, the new doctrine should be held to apply only prospectively. This exception would have been applicable to the contract of enrollment had it been an ordinary agreement between the parties. But it is not. The contract between the school and the student is imbued with public interest, considering the priority given by the Constitution to education and the grant to the State of supervisory and regulatory powers over educational institutions.[227] The Constitution provides that "the State shall protect and promote the right of all citizens to quality education at all levels..."[228]

As stated earlier, the exceptions to the application of the nonimpairment clause as regards laws also apply to its application with regard to judicial decisions. The subject matter of contracts of enrollment is properly the object of the exercise of the State's police power. As a matter of public policy, the Supreme Court *en*

[226] *De Roy*, 157 SCRA at 761.

[227] *Non*, 185 SCRA at 537.

[228] PHILIPPINE CONST., art. XIV, §1.

banc established that every student in good standing has the right to complete the course for which he has enrolled. This expression of public policy should be held to apply even in those cases where the contracts of enrollment were terminated prior to 20 May 1990. Reliance on the *Alcuaz* doctrine should not be accepted as sufficient reason for undermining the important public policy involved in the pronouncement in *Non*.

VIII. RESOLVING THE CASE AT BENCH

The main query posed by this study has been addressed and answered. However, there remains an incidental but, nevertheless, crucial matter to be resolved. In the instances where the doctrine being re-evaluated relates to matters properly within the coverage of the exceptions enumerated in Chapter VI, how should the Supreme Court dispose of the case actually before it when it finds that a reversal or modification of that doctrine is in order? Should the case be decided according to the new doctrine or the old one?

As shown by the discussion in Chapter IV, the Supreme Court has recognized the applicability of the principle of prospectivity to its decisions and has acknowledged the reliance placed upon its decisions under certain circumstances. But insofar as the parties-litigant actually before it when it abandons a previous doctrine, the Supreme Court has never taken such reliance into consideration in resolving the case. The earlier ruling is simply reversed or modified and made to apply immediately to those parties, bypassing all considerations of *ex post facto* laws, vested rights and impairment of contracts. The need to apply the principle becomes obvious only after the existence of the two conflicting doctrines becomes manifest during the deliberations of a third or later case.

With the benefit of hindsight, it appears that there is something anomalous about such a situation for all the reasons why the Supreme Court decides to apply the prospectivity principle in a later case are equally availing in the case in which it abandons its earlier doctrine. Take, for instance, the case of *People v. Mapa*.

The account of decisions rendered by the Supreme Court in the matter of illegal possession of firearms takes on a different turn when seen from the viewpoint of Mario Mapa. In the subsequent cases of *People v. Jabinal*, *People v. Licera* and *People v. Santayana*, the Supreme Court acknowledged that Jabinal, Licera and Santayana all had the right to rely on the *Moro Macarandang* doctrine. The question that comes to mind is why did the Supreme Court not accord the same right to Mapa? That *Moro Macarandang* was the jurisprudence in place when these three persons were apprehended can also be said about Mapa. How can the *Mapa* doctrine possibly have an existence prior to the time Mapa appealed to the Supreme Court? Yet the Supreme Court acquitted Jabinal, Licera and Santayana while it upheld Mapa's sentence to an indeterminate penalty of one year and one day to two years.[229] Mapa seems to have found himself in an unjust situation, if not a victim of extreme bad luck.

[229] *Mapa*, 20 SCRA at 1166.

The only distinctions between the situation the above accused found themselves in were the dates of their appointment, apprehension and the review of their convictions reached the Supreme Court. Mario Mapa was the first to be apprehended and his conviction was the first to be reviewed by the Supreme Court. But it was Rafael Licera who was appointed secret agent at the earliest time. These nuances are irrelevant in terms of the application of the prospectivity principle to their benefit. Mapa's act of unlicensed possession of a firearm was as innocent when committed as the acts of Jabinal, Licera and Santayana were.

A quick response to this predicament would be to say that Mapa should similarly have been acquitted. The indirect violation of Section 22, Article III of the Constitution ought to have been avoided even as regards Mapa, and the same conclusion should be arrived at where an indirect violation of the nonimpairment clause results or where persons are to be dispossessed of vested rights.

There is, however, an obstacle to such a position: if the Supreme Court abandons a previously established doctrine but declines to apply the new doctrine to the parties before it, then the Supreme Court does not actually establish a new doctrine but only renders an *obiter dictum*. In the absence of a new doctrine, the situation where the prospectivity principle is applicable will never arise. The Supreme Court does not have a choice but to apply what it deems to be the correct interpretation of a statute to the case before it.

The preceding suggestion admits that some inequity does result from the immediate application of a new doctrine to persons who have relied upon an earlier doctrine. But the inequity is inescapable and should be accepted as a flaw incident to an imperfect system of law. It is unfortunate that there will be persons who will be excepted from the benefit of the prospectivity principle by mere accident of time. But there is no other way for the Supreme Court to reverse or modify a previous ruling than by applying the new ruling to an actual controversy before it. A re-examination of the concepts of *obiter dictum* and *ratio decidendi*, however, reveal that this inequitable situation is neither unavoidable nor inescapable and, the stumblingblock to equal treatment is but a question of semantics.

The problem is a product of adopting definitions of *ratio decidendi* and *obiter dictum* couched in general terms. *Ratio decidendi* has been defined as the reasoning or principle upon which a case is based.[230] *Obiter dictum* has been defined as a statement made in passing or a rule on a point not necessarily involved in the case.[231] Given these two definitions, it is impossible to definitively characterize every point raised by the Supreme Court in a decision as either being *ratio decidendi* or *obiter dictum*. Certainly, a statement that a previous doctrine is being abandoned by the Supreme Court that is at the same time being held applicable to the parties-litigant under the prospectivity principle does not categorically fall under either definition.

In the United States, courts have gone as far as to distinguish between a considered *dictum*, or simply *dictum* and an *obiter dictum*. The former refers to the

[230] FEDERICO B. MORENO, PHILIPPINE LAW DICTIONARY 514 (1982).

[231] *Id.* at 422.

opinions of the judge which do not embody the resolution of the court and made without argument or full consideration of the point, and the latter refers to such opinions uttered by the way, not upon the point pending but "turning aside from the main topic of a case to collateral subjects."[232] A considered *dictum*, unlike an *obiter dictum*, is said to have the capacity "to tilt the balanced mind toward submission and agreement," even if it is less than a decision.[233]

In this jurisdiction, *obiter dictum* has been defined as an opinion

> uttered by the way, not upon the point or question pending, as if turning aside from the main topic of the case to collateral subjects,... or the opinion of the court upon any point or principle which it is not required to decide, or an opinion of the court which does not embody its determination and is made without argument or full consideration of the point, and is not the professed deliberate determinations of the judge himself.[234]

The case of *Auyong Hian v. Court of Tax Appeals*[235] clarified this definition. The Supreme Court therein explained that a pronouncement made by the Court in its decision, though found only in the opinion and not included in the dispositive part, is not *obiter dictum* where it is made upon a question which must be answered in order to arrive at the conclusion found in the dispositive portion of the decision. A pronouncement is authoritative as long as "there was an application of the judicial mind to the precise question adjudged and that the point was investigated with care and considered in its fullest extent."[236]

Adhering to the next preceding characterization of an *obiter dictum*, it is clear that any pronouncement by the Supreme Court that it is abandoning or modifying a doctrine it previously established does not become *obiter dictum* by the mere fact that the new doctrine is not made to apply immediately to the case at bench. The *ratio decidendi* of the case or the reason for the decision therein would actually have two components: (1) the determination that the previous interpretation of a statute is incorrect and should be overturned and (2) the conclusion that the new doctrine cannot be made to apply to the case at bench because of serious considerations which warrant the application of the prospectivity principle. To say that only the second component is the *ratio decidendi* would be absurd for it obviously cannot stand by itself. Alone, it means nothing. The disposition of the case at bench is arrived at by reason of the interplay of these two components.

[232] JOHN BOUVIER, BOUVIER'S LAW DICTIONARY 863 (1914).

[233] Hawks v. Hamill, 288 U. S. 52, 59 (1933).

[234] People v. Macadaeg *et al*, 91 Phil. 410, 413 (1952).

[235] 59 SCRA 110, 121 (1974). The main issue in this case was who had the better right to the tobacco subject of the controversy. The incidental issue was whether there was a deprivation of due process during the seizure proceedings, which was the basis of the Collector of Customs' claimed right of possession.

[236] *Id.* at 121.

The doctrine of *stare decisis* means that "when a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same, regardless of whether the parties and property are the same."[237]

Past precedents are to be followed not only when the facts are exactly the same but also when the facts are substantially the same. If, after a doctrine is re-evaluated, a different set of parties reach the Supreme Court and these parties also acted in reliance upon the old doctrine, then the case should be decided as it was in the case where the doctrine was overturned. If the difference in the factual milieu lies in the time when the acts involved were committed or transactions entered into, the later case involving parties who acted and entered into transactions after the case where the old doctrine was abandoned, then the facts are substantially the same but the principle of law applicable is only the first of the two components because the second component is inappropriate.

The author realizes that this has never been done before, but neither inaction nor custom justifies a wrong course of action. It is not only consistency which must be sought, but more importantly, constitutional rights must be protected. It should not be said that constitutional rights will cower in the face of definitions. What is unacceptable is a stubborn adherence to recognized definitions of *obiter dictum* and *ratio decidendi*, which are neither unequivocal nor settled, at the expense of equal protection, which is not only mandated by the Constitution but also required by the human relations provisions of the Civil Code.

There is nothing objectionable about the Supreme Court abandoning a previous doctrine and adopting a new one while, in the same case, ruling in accordance with such previous doctrine given the considerations mentioned.

It is clear that Mario Mapa should have been acquitted in the same way that Jabinal, Licera and Santayana were acquitted. The unfair situation Mapa found himself in seems to have been the result of a mere oversight. It was only when confronted with the *Jabinal* case that the Supreme Court realized the significance of having abandoned the *Lucero-Moro Macarandang* doctrine. At this time (1974), Mapa had long completed serving his sentence.

IX. CONCLUSION AND RECOMMENDATION

The wisdom of the prospective effect of statutes has long been a settled matter. The applicable laws are clear and the exceptions are established. The same cannot be said about the applicability of the prospectivity principle to judicial decisions abandoning, reversing or modifying doctrines laid down in the past.

Although the easiest solution is to directly translate the laws governing the effects of statutes into rules governing judicial decisions, this is inappropriate. It

[237] *Reinsurance Company of the Orient*, 198 SCRA at 33.