

mandatory. It should be obvious that with a mandatory injunction, unlike a prohibitory one, the party in whose favor it is issued, is placed in the same situation he was before the commission of the illegal act complained of, as if said act has never been committed. In a prohibitory injunction, the specific act sought to be enjoined has not yet been performed, and is one alleged to be illegal by the pleader. It is enjoined because it would cause irreparable injury if allowed to be committed to the prejudice of the party asking for the issuance of the injunction. The situation before the issuance of the prohibitory injunction is thus preserved in status quo. The status quo to be restored in the case of a mandatory injunction is the situation in which the pleader is before the act already committed and complained of. In the present case, the status quo is plaintiff Feranil being in actual possession of her own lot is free to exercise rights of ownership and possession. (Feranil vs. Hon. Gumensindo Arcilla, G.R. No. L-44353, February 28, 1979)

TAXATION

REFUND OF TAXES

We agree with petitioner. Protest is not a requirement in order that a taxpayer who paid under a mistaken belief that it is required by law, may claim for a refund. Section 54 of C.A. 470 does not apply to petitioner which would conceivably not have been expected to protest a payment it honestly believed to be due. The same refers only to the case where the taxpayer, despite his knowledge of the erroneous or illegal assessment still pays and fails to make the proper protest for in such case, he should manifest and unwillingness to pay, and failing so, the taxpayer is deemed to have waived his right to claim a refund.

Solutio indebiti is a quasi-contract and the instant case being in the nature of solutio indebiti, the claim for refund must be commenced within 6 years from date of payment pursuant to Act. 1145 (2) of the New Civil Code. (Ramie Textile, Inc. vs. Hon. Ismael Mathay, Sr. G.R. No. L-32364, April 30, 1979)

RECENT LEGISLATION

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CIVIL LAW

Presidential Decree 1529, known as the Property Registration Decree, amends and codifies the Land Registration Act and other various laws relative to the registration of property, including the decrees promulgated relative to the registration of certificates of land transfer and emancipation patents.

Done June 11, 1978 (75 Official Gazette 185)

PD 1559 amends specified provisions of PD 705, otherwise known as the Revised Forestry Code of the Philippines. It repeals the Pasture Land Act (C.A. 452) and other related laws.

Done June 11, 1978. (75 O.G. 3237)

CRIMINAL LAW

PD 1535 extends the period within which owners, lessees, or operators of existing cockpits are to conform with zoning requirements prescribed by PD 449, otherwise known as the "Cockfighting Law of 1974".

Done June 11, 1978 (75 O.G. 431).

PD 1602 prescribes stiffer penalties on illegal gambling, and repeals Articles 195 to 199 of the Revised Penal Code, as amended, R.A. 3063 (Horse Racing Bookies), PD 449 (Cockfighting), PD 483 (Game-Fixing), PD 510 (Slot Machines), PD 1306 (Jai-Alai Bookies), other related laws, letters of instructions, executive orders, etc.

Done June 11, 1978 (75 O.G. 3270).

PD 1612, otherwise known as the Anti-Fencing Law of 1979, penalizes any person guilty of fencing. As defined by the Decree, "fencing is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any manner deal in any article, item, object or anything of value which he knows, or should be known to him to have

been derived from the proceeds of the crime of robbery or theft". The Decree also makes mere possession of any good, article, item, object or anything of value which has been the subject of robbery or theft a prima facie evidence of fencing.
Done March 2, 1979 (75 O.G. 3273).

PD 1613 amends the laws on arson, more specifically, Articles 320 to 326-B of the Revised Penal Code, as amended. It enumerates the circumstances that constitute prima facie evidence of arson, and makes conspiracy to commit arson a punishable act.
Done March 7, 1979 (75 O.G. 3275).

Batas Pambansa 6 amends PD 9, reducing the penalty for illegal possession of bladed, pointed or blunt weapons.
Approved and took effect Nov. 21, 1978 (75 O.G. 846).

BP 22 penalizes the making or drawing and issuance of a check without sufficient funds or credit.
Approved April 3, 1979 (75 O.G. 3291).

BP 31 amends Sec. 2 of PD 885, otherwise known as the Revised Anti-Subversion Law. Sec. 2 of the law now reads:

Sec. 2. Subversive Associations and Organizations. — Any association, organization, political party, or group of persons organized for the purpose of overthrowing the Government of the Republic of the Philippines or for the purpose of removing from the allegiance to said government or its laws, the territory of the Philippines or any part thereof, with the open or covert assistance or support of a foreign power, by force, violence, deceit or other illegal means shall be considered and is hereby declared a subversive organization.

Approved and took effect June 6, 1979 (75 O.G. 4767).

BP 33 defines and penalizes certain prohibited acts as inimical to the public interest and national security involving petroleum and/or petroleum products and prescribes penalties therefor. The prohibited acts are illegal trading, hoarding, or overpricing in the sale of petroleum and/or petroleum products, misuse of petroleum allocations, speed contests and rallies, sky-diving and water-skiing.
Approved June 6, 1979 (75 O.G. 4769).

LABOR LAW

BP 32 amends Articles 9 and 10, Chapter 2, Preliminary Title of PD 422 as amended, otherwise known as the Labor Code.
Approved and took effect June 6, 1979 (75 O.G. 4767).

POLITICAL LAW

PD 1576 provides for the rule and guidelines for the appointment, removal or suspension from office of local elective officials during the transition period by the incumbent President.
Done June 11, 1978 (75 O.G. 3252).

PD 1577 prescribes the manner of calling a plebiscite or a referendum and the manner of recall of local elective officials.
Done June 11, 1978 (75 O.G. 3254).

PD 1596 declares the area within the Kalayaan Island Group as part of the Philippine territory and provides for their government and administration. The area is constituted as a municipality of the Province of Palawan.
Done June 11, 1978 (75 O.G. 1556).

PD 1599 establishes an exclusive economic zone of the Philippines, extending to a distance of 200 nautical miles from the baselines from which the territorial sea is measured, as vital to the economic survival and development of the Republic of the Philippines. Over said zone, the Republic shall have and exercise certain sovereign rights, exclusive rights and jurisdiction, and such other rights as are recognized by international law.
Done June 11, 1978 (75 O.G. 3816).

PD 1600 increases the annual salaries of the Chief Justice and of the Associate Justices of the Supreme Court to ₱90,000.00 and ₱75,000.00 respectively. (The 1973 Constitution provides that xxxx "Until the National Assembly shall provide otherwise, the Chief Justice shall receive an annual salary of ₱75,000.00 and each Associate Justice, ₱60,000.00." (Sec. 10, Art. X)/
Done June 11, 1978 (75 O.G. 1560).

POLITICAL LAW/REMEDIAL LAW

PD 1606 revises PD 1486, creating a special court to be known as "Sandiganbayan". The Decree provides for the composition and jurisdiction of said special court and also provides for the qualifications, tenure and grounds for removal of the justices thereof. The 1973 Constitution provides that "The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law". (Sec. 5, Art. XIV)/
Done December 10, 1978 (75 O.G. 2737).

PD 1607, otherwise known as the Tanodbayan Decree, revises PD 1487 which created the office of the Ombudsman. The 1973 Constitution provides that "The National Assembly shall create an office of the Ombudsman, to be known as Tanodbayan, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body". (Sec. 6, Art. XIV)/
Done Dec. 10, 1978 (75 O.G. 2742).

SOCIAL LEGISLATION

PD 1563, known as the Mendicancy Law of 1978, establishes an integrated network of services aimed at the control and eradication of mendicancy. It provides for the apprehension and delivery to the custody and care of the Dept. of Social Services of infants and minors who are found begging or are being utilized by mendicants. It also imposes criminal liability upon mendicants, parents of exploited infants or minors, and persons who abet mendicancy by giving alms directly to mendicants, exploited infants or minors on public roads, sidewalks, parks and bridges.
Done June 11, 1978 (75 O.G. 818).

PD 1583 creates a Presidential Committee charged with the function, among others, to determine the classes or nature of tenurial arrangements between landowner, landholder, or legal possessor and tenant in private agricultural lands devoted to crops other than rice and corn. In cases where the Committee determines that tenancy exists, the tenant shall be entitled to the protection and rights of tenants under PD 1038.
Done June 11, 1978. (75 O.G. 1531)

BP 25 authorizes the increase in monthly rentals of residential units not exceeding P300.00 by not more than 10% of the existing monthly rentals for any one year period. The Batas also provides for the grounds for the judicial ejection of the lessee. It modified PD 20, other laws, decrees and orders.
Approved and took effect April 10, 1979, to remain in force for five years thereafter. (75 O.G. 3516)

TAXATION

PD 1568 further amends PD 1183, as amended. It exempts foreign students and their dependents, U.S. military personnel, and other U.S. nationals and their dependents from the payment of travel tax.
Done June 11, 1978 (75 O.G. 831).

PD 1621 amends certain provisions of, and adds new provisions to PD 464, as amended, otherwise known as the Real Property Tax Code. Its two salient points are: (a) the general revision of real property assessments shall now be made once every three years instead of once every five years; (b) the assessment level of real property, directly and exclusively used for educational, cultural, scientific, or recreational purposes has been reduced from 30% to 15% of its market value.
Done April 19, 1979 (75 O.G. 3992; 75 O.G. 4623).

BP 2 amends the National Internal Revenue Code of 1977, as amended, by inserting Sec. 205-A which imposes a percentage tax of 10% on gross receipts derived from room occupancy of hotels, motels, and other like establishments in lieu of the contractor's tax and the documentary and science stamp tax.
Approved Aug. 18, 1978; took effect Apr. 1, 1979. (75 O.G. 444)

BP 3 amends Sec. 149 of the National Revenue Code of 1977, as amended. It increases the rates of specific taxes on cigarettes.
Approved and took effect August 26, 1978. (75 O.G. 445)

BP 4 amends Sections 145 and 147 of the National Internal Revenue Code of 1977, as amended. It provides for the upward revision of specific taxes on alcoholic beverages.
Approved and took effect Aug. 26, 1978 (75 O.G. 446).

BP 5 amends Sec. 146 of the National Internal Revenue Code of 1977, as amended. It restores the specific tax on wines and compounded liquors.
Approved and took effect August 26, 1978 (75 O.G. 447).

SELECTED OPINIONS OF THE MINISTER OF JUSTICE

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CIVIL LAW

On Agency

Where one of the officers of an entity classified as a single proprietorship is also the agent of the owner by virtue of a general power of attorney issued by the latter, the death of such owner does not revoke the power of attorney. As a rule, the death of the principal extinguishes the agency but where the agency has been constituted in the common interest of the principal and his agent, or in the interest of a third person who has accepted the stipulations in his favor, the agency remains in full force and effect even after the death of the principal. (Opinion No. 139, s. 1978, September 8, 1978).

On Conflict of Laws

Chong Ben Lc and So Bi Ty, two Chinese citizens and residents of the Philippines contracted marriage in the City of Manila. Instead of securing a certificate of legal capacity to marry as required by Art. 66 of the Civil Code of the Philippines, they executed their respective affidavits stating in each that "it has become legally impossible for me to comply with Article 66 of the Civil Code of the Philippines and that I hereby affirm that I have the legal capacity to contract marriage xxx". As the contracting parties are Chinese citizens and since at the time they applied for a marriage license, the People's Republic of China had already established its Embassy in the Philippines, it is clear that the affidavits which they executed do not suffice for purposes of complying with the requirements of Article 66 of the Civil Code. (Opinion No. 179, s. 1978, November 17, 1978).

On Credit Transactions

Article 2244 (14)(a) of the Civil Code of the Philippines provides for the classification, concurrence and preference of credits. The cited Article confers a preference on credits constituted in the form of a duly notarized instrument over credits not so constituted, such preference

being determined in the order of priority of the respective dates of notarization. The scheme of classification and priority among credits embodied in said Article is basically designed to meet the situation where the value of a debtor's assets is not sufficient to enable him to meet all his maturing obligations, thereby minimizing the potential clash of rights among his creditors. The law, however, could not have intended to include the State itself among the debtors referred to therein, considering that, in this jurisdiction, it is recognized doctrine that the State is always solvent. Thus the provisions of Article 2244 of the Civil Code were not intended to apply and do not apply to the obligations of the Republic. (Opinion No. 138, s. 1978, September 8, 1978).

COMMERCIAL LAW

On Corporation Law

Has the Central Bank of the Philippines legal authority to finance the construction and operation of a Brain and Trauma Center under the Central Bank Act? Under the doctrine of "limited or special capacities" applicable to corporations, a corporation is a creature of law and consequently possesses only such powers as are expressly provided in its charter or the general statute under which it was created, or such powers as are necessary for the purpose of carrying out its express powers and the objects of the corporation. A close examination of the charter of the Central Bank fails to yield any provision which might be invoked as authority for said Bank to undertake the above-described project. True, a corporation also possesses "implied powers," but such powers should relate to the accomplishments of the purpose for which the corporation was formed or to the proper transaction of its authorized business. (Opinion No. 72, s. 1979, August 1, 1979).

CRIMINAL LAW

A memorandum-order directed to the Director of Prisons to release immediately all prisoners serving sentence for violation of PD No. 9 which punishes illegal possession of bladed, pointed, or blunt weapons who had, as of the date of said Order, already served one year or more of their respective prison terms, except habitual delinquents as defined under the Revised Penal Code, shall not be limited in its application to prisoners detained at the National Penitentiary but shall also apply to prisoners detained in the city and municipal jails to prevent a miscarriage of justice. (Opinion No. 82, s. 1979, August 13, 1979).

While the Probation Law suspends the principal penalty, it does not suspend the accessory penalty that goes with it. Thus, in a case where a woman government employee was convicted of malversation of public funds and the principal penalty of prison correccional with the accessory penalty of suspension from public office was imposed on her, the

penalty of suspension subsists. Hence, she cannot be reinstated to her position upon the termination of the probation period. The final discharge of the probationer shall not operate to restore to him all civil rights lost or suspended as a result of his conviction. (Opinion No. 1, s. 1979, January 3, 1979).

POLITICAL LAW

On the Revised Administrative Code

While the President of the Philippines is the official authorized to conclude foreign loans, credits and indebtedness in behalf of the Republic of the Philippines, he may designate a representative and clothe him with authority to do the formal act of signing the agreement. Thus, where in a credit agreement executed between the Republic of the Philippines and a foreign bank, only the signature of the Minister of Finance appears in the document, his signature is in pursuance of the authority duly conferred upon him by the President of the Philippines and the said credit agreement is deemed to have been duly authorized, executed and delivered by the Republic of the Philippines and constitutes a legal, valid and binding obligation of the government, enforceable in accordance with its terms. (Opinion No. 85, s. 1979, August 17, 1979).

To determine whether a government employee is national or local, apply the service test. The source of funds from which his salary is paid or the office or the officer who fixes his salary are not the proper criteria. If he renders service as an official of the national government or a branch thereof, he is an employee of the national government. (Opinion No. 61, s. 1979, June 18, 1979).

The amount of allowances (medical, transportation, subsistence, hospital fees) that may be granted to a government employee who suffers injury while in the course of duty is that which is "necessary". In determining what is necessary, resort may be had to the prevailing rule in compensation cases that where the law does not contain any limitation as to the period during which the employer may pay for medical or hospital services, the liability on the part of the employer exists for as long as such services are required to cure or relieve the injured employee from the effects of his injury. Therefore, the employer concerned may only authorize the payment of necessary hospital fees incurred in connection with the employee's illness or injury. Such payment is subject to the availability of funds and the usual accounting and auditing procedure. (Opinion No. 111, s. 1978, July 20, 1978).

May the President of the Philippines reorganize a government office or offices through an executive order? The U.S. Congress has at various times authorized their President to reorganize executive agencies and redistribute functions; acts of reorganization made by the latter pursuant to such statutes, by means of executive orders, have been held to be within the authority of the President thus granted. In the Philippines, several reorganization laws have similarly empowered the President to restructure the government machinery and to effect the same by executive order from time to time. In cases where the law authorizing reorganization by the President is silent as to the manner by which such reorganization shall be effected, Sec. 63 of the Revised Administrative Code furnishes the legal authority to effect the reorganization through the vehicle of an executive order. (Opinion No. 175, s. 1978, November 8, 1978).

Where a practising lawyer has been appointed as a government lawyer and has qualified therein as such, his right to engage in private law practice ceases by operation of law and he thereby becomes disqualified to continue representing his former clients. This would be subject, however, to the provisions of PD No. 543 which authorizes the District Judge and the Circuit Criminal Court Judge to designate municipal judges and lawyers in any branch of the government service to act as counsel-de-officio for the indigent accused in places where there are no available practicing lawyers. (Opinion No. 71, s. 1979, July 17, 1979).

The term "executive branch of the national government" is still a proper term under the existing parliamentary system of government. While a parliamentary system of the government is characterized by a fusion of executive and legislative functions in one body which is the "Parliament", whereas the term "executive branch" refers to a presidential form of government, the fact remains that there is still in the present set-up an executive hierarchy — of which the Prime Minister is the head — which is charged with the enforcement and administration of the laws enacted by the legislative body. For organizational purposes, therefore, there is an "executive branch" of the government which is charged with executive functions as distinguished from the "legislative branch" which is charged with the lawmaking body. (Opinion No. 26., s. 1979, March 15, 1979).

On Constitutional Law

A non-stock, non-profit religious corporation organized under the laws of the State of Delaware, U.S.A., may be allowed to establish a branch in the Philippines for the purpose of translating the Holy Bible into different dialects as well as printing and distributing the same without violating the constitutional requirement that all forms of mass media should be owned by Filipino citizens or by associations or corporations owned by Filipino citizens (Art. XV, Sec. 7(1)). The reason behind this are that: First, the proposed activity of said corporation is

too limited in scope, being confined to the mere translation of only one book, the Holy Bible, and cannot be placed within the same class as publications or other instruments of mass media like newspapers and periodicals that deal with matters of general interest and, accordingly could be effective means of shaping public opinion. Second, the constitutional provisions speaks of "ownership and management of mass media" and therefore implies that it is directed at the business of operating the various means of disseminating information to the public. The applicant corporation, however, is banned from importing a new printing press or equipment and instead, is obliged to utilize printing facilities already existing in the Philippines. Finally, a restrictive interpretation of the phrase "mass media" is urged by the accepted principle in statutory construction suggesting strict interpretation of laws that are restrictive and in derogation of common right especially those involving the free exercise of religious profession and worship which carries with it the right to disseminate religious information. (Opinion No. 159, 2. 1978, October 6, 1978).

A member of the National Assembly is prohibited from holding any other office or employment in the Government or any of its subdivision thereof even if the concurrent position being held is that of member of the Provisional Government of Mindanao, and therefore, transitional in character. There can be no question that the Provisional Government of Mindanao is an agency of the Philippine Government for the purpose of administering the 13 autonomous provinces and cities of the region, albeit temporarily. Hence, membership in the said provisional government constitutes the holding of a public office which is prohibited by law. (Opinion No. 178, s. 1978, November 13, 1978).

REMEDIAL LAW

On Criminal Procedure

Unless prosecuting officers, other than those belonging to the Commission on Election, are deputized to conduct the preliminary investigation and to file the information for violation of the Election Code, such acts (i.e., conduct preliminary investigations, file informations and prosecute offenses involving violations of the 1978 Election Code) may be made only by the Commission on Election considering that not only is the COMELEC an independent constitutional body, but is also the agency charged with the implementation of the Election Code. (Opinion No. 163, s. 1978, October 6, 1978).

TAXATION

Questions as to the legality of a tax ordinance shall be referred for opinion to the Provincial Fiscal or to the City Fiscal, as the case may be. The opinion of the Provincial City or City Fiscal shall be appealable to the Secretary of Justice who shall render an opinion on the matter within sixty days after receipt of the appeal. The authority of the Minister of Justice under this provision of the Local Tax Code is appellate in nature and arises only when the provincial or city fiscal has rendered an opinion which is elevated to the office of the Minister of Justice on appeal. Where, as in the instant case, the provincial fiscal of the province concerned has not rendered an opinion on the legality of the tax ordinance in question, the Minister of Justice cannot render his opinion on the matter. (Opinion No. 87, s. 1979, August 17, 1979).

Tax exemption provisions cannot be applied retroactively. A retroactive application of the tax exemption would result in an absurd situation whereby taxes already paid or spent by the government would have to be refunded by them to the persons or entities which paid the same. This would have the effect of impairing rights already vested and/or violating contractual obligations already entered into by said local governments prior to the effectivity of the tax law granting the exemption. Tax exemption provisions should, as such, be held strictly against the taxpayer and, if the exemption is not expressly mentioned in the law, it must at least be within its purview by clear legislative intent. (Opinion No. 63, s. 1979, June 20, 1979).