(the "SSS"), the Government Service Insurance System (the "GSIS"), Bangko Sentral, the Government Financial Institutions ("GFIs") and the local government units.

v. National Statistics Office data was adjusted to: (a) exclude aircraft procured under operating lease arrangements amounting to $542 million for 1996, $45 million for 1997 and $136 million for 1998 and (b) included an additional $466 million worth of aircraft imported under capital lease arrangements for 1997.

vi. Comprised of the holdings by Bangko Sentral of god reserves, foreign investments, foreign exchange and SDRs, including Bangko Sentral reserve position in the IMF. Amounts in original currencies were converted to US dollars or Pesos, as applicable, using the Bangko Sentral reference exchange rates at the end of each period.

vii. Represents debt of the Government only, and does not include other public sector debt. Includes direct debt obligations of the Government, the proceeds of which are on-lent to GOCCs and other public sector entities, but excludes debt guaranteed by the Government and debt originally guaranteed by other public sector entities for which the guarantee has been assumed by the Government.

viii. *Id.*

ix. Represents debt of the Government, the 13 monitored GOCCs, the CB-BOL, Bangko Sentral and the GFIs.

x. Includes public sector debt whether or not guaranteed by the Government.

Legacies in Civil Law from Justice Arsenio P. Dizon and His Peers*

*Justice Ricardo C. Puno, Sr.***

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* The Supreme Court Centenary Lecture Series Thirteenth Lecture. Lecture delivered in the Supreme Court Session Hall on October 5, 2001 in commemoration of the Centennial of the Supreme Court of the Philippines. The principal honoree of the Lecture, Justice Arsenio P. Dizon, obtained his Bachelor of Arts degree at the Ateneo de Manila in March, 1919.

This lecture is also published in Vol. III, No. 10 of the PHILJA Judicial Journal, and in the Court Systems Journal of the Supreme Court of the Philippines.

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His previous works published by the *Ateneo Law Journal* include: *Missions of Judicial Administration in Asia and the Pacific*, 30 ATENEO L.J. 11 (1986); *Contemporary Problems in Securing an Effective, Efficient and Fair Administration of Criminal Justice and their Solutions*, 29 ATENEO L.J. 15 (1984); and *Congestion of National Courts as a Worldwide Problem*, 22 ATENEO L.J. 1 (1977).

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I. INTRODUCTION

The "Grand Centennial Dinner," concluding the saga of the first hundred years of the Supreme Court was celebrated in fitting grandeur at the Manila Hotel last June 11, 2001. That memorable gathering also formally launched the next hundred years of the Supreme Court and the Philippine Judiciary. Earlier in the afternoon, the Centennial Lecturer of that day, His Honor, Mr. Chief Justice Hilario G. Davide, Jr. solemnly reconsecrated the challenging missions of "The Judiciary at the Threshold of the New Millenium."

In the preceding Centennial Lectures, four prominent public figures, Professor Michael O. Mastura, Congressman Leandro B. Verceles, Jr., Dr. Franklin N. Zweig, and Chief Justice Enrique M. Fernando, ably discussed the emerging scientific and expanding legal parameters of Shari'a Law, E-Commerce, Life Technology, and Constitutionalism. Three noted panelists, Dean Raul Pangalangan, Atty. Katrina Legarda and Prof. Randy David, spoke of People Power in our Legal System.

Three high court Justices from foreign lands, Justice Dorit Beinisch of Israel, Dr. Pal Solt of Hungary, and Justice Robert Nicholson of Australia, honored us by their official visits and lucidly explained the legal structures and justice systems of their respective countries.

Glowing tributes have been deservedly accorded to the illustrious men and women, living and dead, who have graced the halls of the Supreme Court and to those still sitting on its rostrum.

On the subject "The Chief Justices In Philippine History," Chief Justice Andres R. Narvasa eloquently discoursed on the lives and achievements of 21 chief magistrates, not "shadows in the mists," as he modestly refers to them and himself, but shining, living monuments in the pantheons of history.

Justice Ameurfina A. M. Herrera memorialized the "Feminine Grace" of eight (8) lady justices, past and present, and their valuable contributions to the luster of the High Court and the annals of jurisprudence. Chief Justice Davide called them "gems for that historic event."

Justice Artemio V. Panganiban lectured on the successes achieved in the last decade of the past millennium by the incumbent members of the Supreme Court as architects of New Paradigms built on the foundations of Old

Doctrines. We are thus confident in the thought that for the next decade, Philippine Jurisprudence is in the safe, worthy, and capable hands of Justices now valiantly manning the ramparts of the Davide Watch.

Justice Herrera mentioned in her lecture that 147 Justices have made it to the Supreme Court in the last hundred years. After the fitting tributes accorded to twenty-one Chief Justices, eight women Justices, and fourteen Associate Justices (three of them giving "Feminine Grace") in the Davide court, there still remain 107 deserving male Justices yet unnamed and unsung. Today, we pay homage to twenty-seven more Justices who have held the reins of judicial power during the uneasy peace of the decade that preceded Martial Law.

A. Honorees of the 13th Centennial Lecture

Today, we are gathered for the Thirteenth Centennial Lecture. This day also marks the Centennial Birth Anniversary of the 70TH appointee to the Supreme Court, Justice Arsenio P. Dizon, whose 100TH birthday coincides with the Centenary of the Court he served so faithfully and loved so well. The Supreme Court, as the highest court of this nation, has been historically conceived, traditionally perceived, and deservingly believed as being graced by the wisest men and women of the land.

Among the wisest and humblest of 147 jurists elevated to this Court during the last hundred years, were the Honorable Justice Arsenio P. Dizon and his twenty-six peers.

His colleagues from 1960 to 1971 were Chief Justices Ricardo Paras (1960), Cesar Bengzon (1961), and Roberto Concepcion (1966), and Associate Justices Sabino Padilla, Marceliano Montemayor, Felix Bautista Angelo, Alejo Labrador, Jose B. L. Reyes, Jesus Barrera, Jose Gutierrez David, Jose Ma. Paredes, Dionisio de Leon, Felipe Natividad, Roberto Regala, Querube Makalintal, Jose Bengzon, Calixto Zaldivar, Conrado Sanchez, Fred Ruiz Castro, Eugenio Angeles, Enrique Fernando, Francisco Capistrano, Claudio Teehankee, Antonio P. Barredo, Julio Villamor, and Felix Makasiar. After the retirement of Justice Dizon in 1971, Makalintal, Ruiz Castro, Fernando, Makasiar, and Teehankee became Chief Justices in close succession.

Because of the vast background of Justice Dizon's preceding twenty-three career years from July 1937 to August 1960 as Judge of the Court of First Instance, as Judge of the People's Court, and as Associate Justice of the Court of Appeals, coupled with his many years of lecturing to law students on Remedial Law in the country's leading law schools, particularly in the Manuel L. Quezon University which he later headed as President for ten years, Justice Dizon was already a recognized institution in Procedural Law when he joined the Supreme Court in August of 1960.

During the next eleven eventful years in the Supreme Court, from 1960 to 1971, Justice Dizon penned a total number of 447 decisions, many of which were, of course, in the field of Procedural Law, where he prominently loomed large as an acknowledged authority.

However, his learned pronouncements in Civil Law also stood bright and shone clear in the cases that he decided on this branch of law.

B. *Ponencia Styles*

Echoing the well-known adage that *"brevity is the soul of wit,"* Justice Dizon plainly believed that *"brevity is the soul of wisdom."* Justice Dizon's decisions were usually compressed in only one, two or three pages. Of his 447 published *ponencias,* no less than 211 decisions, or almost one-half, were written in three or less pages. Justice Dizon's longest *ponencia* was contained in twenty pages,[1] and none of his decisions ever exceeded 20 pages.

This is by no means a disparagement of long decisions. Indeed, numerous landmarks of jurisprudence are enshrined in many lengthily worded decisions. However, jurists who, like Justice Dizon, preferred to be laconic, have always known the contributing obstacles to the *ponente's* graceful descent from the skies to earthly ground. As most airplane pilots say, *"taking off is much easier than landing."*

One of these causes of overreach is the *obiter dictum*. The other cause for overflow is the *magistri dictum*. In an *obiter dictum*, the *ponente*, after having made his finding of facts, having expounded his pronouncements of law, and having decreed the disposition of the case, embarks upon an excursion into allied or contrary principles, derivative conclusions, contrasting situations and other discussions not strictly necessary to the resolution of issues and not vitally germane to the root of the controversy. It has been analogously described as "the passage from reality to reverie."

On the other hand, in *magistri dictum*, the *ponente*, much like a teacher (*magister*), attempts to enrich the text of his *ponencia* with extended and learned commentaries impressed with the exacting guidelines of the mentor, the scientific syllogisms of the instructor, and the legal philosophies of the professor.

Obiter dictum explores. *Magistri dictum* teaches. The opposite of both is *jure dictum*, whereby the judge adjudicates upon the case with precision in exclusive and conclusive accord with the facts and the law.

Justice Arsenio P. Dizon, the just jurist, was the epitome of *jure dictum*.

1. Rural Bank of Lucena v. Central Bank, 30 SCRA 628 (1969).

C. *Memories of Justice Dizon*

I reminisce at this juncture and gaze more closely upon one of the men we honor today. I was one of his many students who deeply admired him, one of many thousands whose lives he touched. As I knew him, Justice Arsenio P. Dizon was in life a man of many facets — of myriad personalities, of contrasting characters, of complex moods. He was a kind person with a tinge of temper, a courteous gentleman who could not put up with insolence, a patient man until unjustly provoked, a loyal friend but a formidable adversary. No such contrasts were, however, portrayed in his family life. He was always a devoted husband and a loving father.

The facets of character were displayed at the right time, in the appropriate places and to the proper people. He played golf with a passion; he used to vent his temper on his golf clubs that did not obey his bidding and his golf balls that failed to follow directions, but not on his caddies and never on his golf mates. He was dearly loved by his students because he treated them with kindness, courtesy, and patience. He never raised his voice in anger, never disparaged and never humiliated anyone by word, deed, or gesture. As a law practitioner even after his retirement, he was always friendly to his adverse counsel, but retribution followed those who dared to unfairly offend him.

These traits of kindness, courtesy and patience were manifestly evident in the rulings Justice Dizon penned all through his thirty-four years in the Judiciary.

II. Discussion of the Legacies Left Behind in Various Areas of Civil Law

A. *Family Law*

As we retrieve the heirlooms of law from the vaults, let us first focus our initial attention on Family Law and Justice Dizon's *ponencia* in the case of *Puzon v. Gaerlan*.[2]

> (Plaintiff) Francisca Puzon and (Defendant) Marcelino Gaerlan were married on May 15, 1944. Due to estranged relations, they separated sometime in 1958. Among the real and personal properties acquired by them during coverture was a two-story building situated at 39 General Luna Road, Baguio City.
>
> Before their separation on March 1, 1950, Gaerlan executed a contract of lease with Emma Villanueva and Rosalina Gundran over the basement of the residential building, providing, *inter alia*, that the lessees shall pay the monthly rental of the premises to Gaerlan. Because of such stipulation, appellant commenced Civil Case No. 950 in the Court of First Instance of Baguio against the lessees and her husband, to determine and declare the rights and duties of the parties (the spouses) under the contract.

2. 15 SCRA 678 (1965).

> When the case was called for trial on July 12, 1960, a pre-trial was held...In the course thereof, the spouses entered into a compromise agreement.[3]

After trial, the then Court of First Instance ruled:

> [r]econciliation thus far is not possible and in order to avoid conflicting interests, plaintiff and defendant Gaerlan have agreed that upon payment by the plaintiff to defendant of the sum of P35,000.00. Defendant waives all right to the conjugal properties, real and personal, consisting of the Baguio house and land, the house and land at San Lorenzo Village, Makati, Rizal, and the department store known as "Paquitas" located at Session Road, Baguio, as well as any accounting for rentals or profits received by plaintiff, in favor of said plaintiff.[4]

Appeal was then taken to the Supreme Court by Francisca Puzon from the final order dated September 15, 1960 of the Court of First Instance of Baguio:

> (Puzon) does not deny that she and her husband had entered into the compromise agreement whose terms appear substantially embodied in the said (appealed) order. She claims, however, that the lower court had no authority to dissolve the conjugal partnership, as provided for, according to her, in the appealed order.[5]

Speaking for the Court, Justice Dizon held:

> A perusal of the record sufficiently discloses that the final order appealed from embodies what apparently was agreed upon by the parties...during a pre-trial conference. Consequently, said final order is not subject to appeal.[6]

Justice Dizon further ruled that:

> Moreover, a perusal of the same order fails to disclose any pronouncement or declaration of the lower court dissolving the conjugal partnership between appellant and appellee. It simply provides that, upon payment by the plaintiff to defendant of the sum of P35,000.00, defendant waives all right to the conjugal properties, real and personal, consisting of the Baguio house and land, the house and land at San Lorenzo Village, Makati, Rizal, and the department store known as "Paquitas" located at Session Road, Baguio, as well as any accounting for rentals or profits received by plaintiff, in favor of said plaintiff. It is clear, therefore, that properties other than those enumerated in the order are not included in the agreement, much less other properties yet to be acquired by either spouse. Consequently, we find the appeal to be without merit, and is hereby dismissed.[7]

Although decided under the superseded Articles 175, and 190 to 194 of the New Civil Code, the *jure dictum* of Justice Dizon in the *Puzon* case still provides the basic principles underlying Articles 134 to 140 of the Family Code, namely:

3. *Id.* at 679-80.
4. *Id.* at 679.
5. *Id.* at 680.
6. *Id.*
7. *Id.* at 680-81.

1. Dissolution of the conjugal partnership is a remedy that calls for a distinct and proper petition for such dissolution, and may not be obtained through an incidental prayer in another action for different relief.
2. Dissolution of the conjugal partnership must be precisely decreed by court order and may not be concluded therefrom by mere implication.
3. An agreement between the spouses dealing with only a portion of the conjugal properties does not dissolve the conjugal partnership itself. Such regime continues to govern the remainder, as well as future properties, despite the spouses' separation *de facto*.
4. A judgment embodying a compromise agreement is not subject to appeal.

B. Property

1. Fraud

In Civil Law, the term "fraud" is one of the most evanescent concepts, and yet it apparently pervades the whole legal structure and poses problems calling for clear distinctions.

In essence, fraud partakes of "deceit, trickery, misrepresentation, false representation."[8] Classifications abound, which distinguish:

1. Fraud in fact or in law;
2. Legal or equitable fraud;
3. Actual or constructive fraud;
4. Fraud in the inducement or in the execution of contracts; and
5. Intrinsic or extrinsic fraud.[9]

Justice Dizon showed his priceless gift of concise simplification and lucid clarification in *Frias v. Esquivel*.[10] Distinguishing between intrinsic and extrinsic fraud, Justice Dizon said that:

> To justify the setting aside or review of a decree of registration under Section 38 of Act No. 486, the party seeking relief must allege and prove, *inter alia*, that the registration was procured through fraud — actual and extrinsic. If the fraud alleged in the petition to set aside the decree is involved in the same proceedings in which the party seeking relief had ample opportunity to assert his right, to attack the document presented by the applicant for registration, and to cross-examine the witnesses who

8. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 104 (1986).
9. BLACK'S LAW DICTIONARY 660 (6d ed. 1991).
10. 5 SCRA 770 (1962).

> testified relative thereto, then the fraud relied upon is *intrinsic*. The fraud is *extrinsic* if it was employed to deprive a party of his day in court, thus preventing him from asserting his right to the property registered in the name of the applicant.[11] (citation omitted).

By the *Frias* case, Justice Dizon foreshadowed the decisions in the later cases of *Republic v. Sison*,[12] *Libudan v. Gil*,[13] *Ruiz v. Court of Appeals*,[14] and *Francisco v. Court of Appeals*.[15]

2. Easements

Justice Dizon's colleague, Justice Fred Ruiz Castro, enriched jurisprudence by adding a new classification of easements in addition to those provided by the New Civil Code. Article 613 thereof defines an easement as "an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner." An example of an easement is a passage way through the property of another.

The New Civil Code classifies easements into: Public or Private;[16] Continuous or Discontinuous;[17] Apparent or Non-apparent;[18] Positive or Negative;[19] and Legal or Voluntary.[20]

In the case of *Benedicto v. Court of Appeals*,[21] Justice Castro, citing American authorities, added two more classifications: Perpetual or Temporal Easements; and Easement by Grant or Easement of Necessity.[22]

Justice Castro opined that:

> The easement in the case at bar is perpetual in character and was annotated on all the transfer certificates of title issued in the series of transfers from Hedrick through to the respondent Heras, and in the transfer certificates of title issued in the series of transfers from Recto through to the petitioner Benedicto. Since there is no evidence that would point to a mutual agreement between any of the predecessors-in-interest of the respondent nor between the petitioner and the respondent themselves, with respect to

11. *Id.* at 773-74. [emphasis supplied].
12. 9 SCRA 533 (1963).
13. 45 SCRA 17 (1972).
14. 79 SCRA 525 (1977).
15. 97 SCRA 22 (1980).
16. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE] art. 614.
17. CIVIL CODE, art. 615.
18. *Id.*
19. *Id.* art. 616.
20. *Id.* art. 619.
21. 25 SCRA 145 (1968).
22. *Id.*

> the...obliteration of the easement annotated on the titles, the continued evidence of the easement must be upheld and respected.
>
> The fact that an easement by grant may have also qualified as an easement of necessity does not detract from its permanency as a property right, which survives the termination of the necessity.[23]

C. *Succession*

1. Probate

Probate of wills is a common concern of Civil Law and Remedial Law. The New Civil Code addresses this matter of "Allowance and Disallowance of Wills" in Articles 809, 811, 815 to 819, 838, and 839. The counterpart provisions of the Rules of Court on the same subject are contained in Rules 75, 76, and 77.

Justice Dizon discussed with precision the interplay of testate and intestate proceedings in *Uriarte v. Court of First Instance of Negros Occidental*.[24] Invoking settled jurisprudence in this jurisdiction, Justice Dizon explained that:

> [t]estate proceedings for the settlement of the estate of a deceased person take precedence over intestate proceedings for the same purpose...if in the course of intestate proceedings pending before a Court of First Instance it is found that the decedent had left a last will, proceedings for the probate of the latter should replace the intestate proceedings even if at that stage an administrator had already been appointed, the latter being required to render final account and turn over the estate in his possession to the executor subsequently appointed. This, however, is understood to be without prejudice, in that should the alleged last will be rejected or is disapproved, the proceeding shall continue as an intestacy.
>
> Where intestate proceedings before a Court of First Instance had already been commenced, the probate of the will should be filed in the same court, either in a separate special proceeding or in an appropriate motion for that purpose filed in the pending intestate proceeding. This is especially true where the party seeking the probate of the will had been informed or had knowledge of the pendency of the intestate proceedings. It is not in accord with public policy and the orderly and inexpensive administration of justice to unnecessarily multiply litigation, especially if several courts would be involved, which would be the result if the probate of the will were filed in another court.[25]

23. *Id.* at 152-53 (citation omitted).
24. 33 SCRA 252 (1970).
25. *Id.* at 259-60.

2. Wills And Testaments

Justice Conrado Sanchez, noted colleague of Justice Dizon, further enriched the annals of Succession in *Nuguid v. Nuguid*.[26] Distinguishing "Preterition" from "Disinheritance," Justice Sanchez declared that:

> Preterition "consists in the omission in the testator's will of the forced heirs or anyone of them, either because they are not mentioned therein, or, though mentioned, they are neither instituted as heirs nor are expressly disinherited." Disinheritance, in turn, "is a testamentary disposition depriving any compulsory heir of his share in the legitime for a cause authorized by law." Disinheritance is always voluntary; preterition, upon the other hand, is presumed to be involuntary.
>
> The effects flowing from preterition are totally different from those of disinheritance. Preterition under article 854 of the New Civil Code "shall annul the institution of heir." This annulment is *in toto*, unless in the will there are, in addition, testamentary dispositions in the form of devises or legacies. In ineffective disinheritance under Article 918 of the same Code, such disinheritance shall also "annul the institution of heirs," but only "insofar as it may prejudice the person disinherited," which last phrase *was omitted* in the case of preterition. Better stated yet, in disinheritance the nullity is limited to that portion of the estate of which the disinherited heirs have been illegally deprived.[27]

D. Obligations

1. Sources

In the law on Obligations, Justice Dizon has given us more valuable bequests.

The opening articles on the General Provisions, Chapter I, Title I of Book IV of the New Civil Code read as follows:

> ART. 1156. An obligation is a juridical necessity to give, to do or not to do.
>
> ART. 1157. Obligations arise from:
>
> 1. Law;
> 2. Contracts;
> 3. Quasi-contracts;
> 4. Acts or omissions punished by law; and
> 5. Quasi-delicts.
>
> ART. 1158. Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book.

The most challenging dilemmas that face disciples of law probably come from the concept of civil obligations arising from law. Law as a source does not merely refer to civil obligations specifically mandated by statutes, such as tax laws, and administrative orders and regulations.

26. 17 SCRA 449 (1966).

27. *Id.* at 457-58 [emphasis supplied].

An instance of one such source of civil obligations arising from law is the final and executory judgment of a competent court. Although court cases do originate from claims arising from contracts, quasi-contracts, delicts or quasi-delicts, all the litigated claims are finally distilled, consolidated, and subsumed in the dispositive portion of the decision, which becomes the sole specific legal source definitive of the rights and obligations of the parties — the ultimate *jure dictum*. This legal principle was illustrated by Justice Dizon in *First National City Bank of New York v. Cheng Tan*.[28]

The facts on record show that:

> On July 2, 1947, the Court of First Instance of Manila rendered judgment in Civil Case No. 59502 — which was an action to foreclose a real estate mortgage — ordering the defendants therein...to pay, jointly and severally, the First National City Bank of New York the sum of P142,000.56 interest plus costs, and providing that in case of default of payment within the period of time therein given, the properties mortgaged by said defendants be sold at public auction to satisfy the judgment. After the sale of the mortgaged properties, a deficiency judgment was rendered on March 25, 1950 for P98,256.13. After the issuance of the corresponding writ of execution and the sale of two parcels of land located in San Miguel, Bulacan, there remained unsatisfied the sum of P38,090.06, with the 7% stipulated interest thereon from October 3, 1941, until paid.
>
> As the other defendants in the case had died or could nowhere be found, and the five-year period for the enforcement of the deficiency judgment by mere motion had elapsed without the same having been satisfied, on June 26, 1957, the First National City Bank of New York instituted an action against Silvio Cheng Tan (the surviving debtor) in the Court of First Instance of Manila to revive the judgment aforesaid.
>
> During the pendency of the cases (Silvio) Cheng Tan died and was substituted by his legal representative, Serafin Cheng, who filed a motion to dismiss the action on the ground that under Section 21, Rule 3 and Section 5, Rule 87 of the Rules of Court, the plaintiff should file its claim in the intestate estate proceedings for the settlement of the estate of said deceased pending in the Court of First Instance of Rizal since February 27, 1958, an administrator having been appointed by said court on April 7, 1958.
>
> Opposing the motion to dismiss, plaintiff contended that the judgment rendered in Civil Case No. 59502 having ceased to be executory, demandable and operative, the same had been reduced to a mere right of action; that the present action to revive said judgment, is not one for the recovery of money; that it was for this reason that a contingent claim had been filed by it against defendant's estate.
>
> In its order of July 1, 1958 the lower court granted defendant's motion to dismiss. Hence, this appeal.[29]

Citing precedents, Justice Dizon held that:

28. 4 SCRA 501 (1962).

29. *Id.* at 502-03.

> [a] deficiency judgment is a contingent claim and must be filed with the probate court where the settlement of the estate of the deceased mortgagor is pending, within the period of time fixed for the filing of claims. On the other hand, Section 5, Rule 87 of the Rules of Court, provides that, among others, judgments for money against the decedent whose estate is in the process of judicial settlement must be filed with the probate court within the time limited in the notice given for that purpose, otherwise, they will be deemed barred forever, except that they may be set forth as a counterclaim in any action that the executor or administrator may bring against the judgment creditor.[30]

Justice Dizon opined:

> It is true that a judgment rendered in a civil action remaining unsatisfied after 5 years from its date of entry, may be reduced to the condition of a mere right of action...but this, in our opinion, does not argue against the proposition that it should be filed with the probate court for corresponding action. To the contrary, reduced, as it has been, to the condition of a mere right of action, it can well be *likened to a promissory note.* Like the latter, therefore, it should be submitted as a claim to the probate court where the settlement of the estate of the deceased debtor is pending.[31] (citations omitted).

2. Obligations With A Period

Justice Jose B. L. Reyes had the occasion in the Dizon years to interpret Article 1197 of the New Civil Code. The article reads:

> Art. 1197. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.
>
> The courts shall also fix the duration of the period when it depends upon the will of the debtor.
>
> In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them.

In the case of Gregorio Araneta, Inc. v. Phil. Sugar Estates Development Co., Ltd.,[32] Justice Reyes held:

> [w]here the issue raised in the pleadings was whether the seller of the land was given in the contract of sale a reasonable time within which to construct the streets around the perimeter of the land sold, the court, in an action for specific performance to compel the construction of said streets or for recovery of damages, cannot fix a period within which the seller should construct the streets. The court should determine whether the parties had agreed that the seller should have reasonable time to perform its part of the bargain. If the contract so provided, then there was a period fixed, a "reasonable time," and all that the court should have done was to determine if that reasonable time had already elapsed when the suit was filed. If it had passed, then the court should declare that the petitioner had breached the contract, as averred in the complaint, and fix the resulting damages. On the other hand, if the reasonable time had not yet elapsed, the court perforce was bound to dismiss the action for being premature. But in no case can it be logically held that, under the pleadings, the intervention of the court to fix the period for performance was warranted, for Article 1197 of the New Civil Code is precisely predicated on the absence of any period fixed by the parties.
>
> Article 1197 of the New Civil Code involves a two-step process. The court must first determine that the obligation does not fix a period (or that the period depends upon the debtor's will), and that the intention of the parties, as may be inferred from the nature and circumstances of the obligation, is to have a period for its performance. The second step is to ascertain the period probably contemplated by the parties. The court cannot arbitrarily fix a period out of thin air.
>
> Where the seller obligated itself to construct streets around the perimeter of the land sold (site of the Santo Domingo Church in Quezon City) and the parties were aware that the land, on which the streets would be constructed, was occupied by squatters, the time for the performance of the seller's obligation should be fixed at the date that all the squatters on the affected areas are finally evicted therefrom. While this solution would render the date of performance indefinite, still the circumstances of the case admit of no other reasonable view. This very indefiniteness explains why the contract did not specify any exact period of performance. The ruling that the obligation should be performed within two years is not warranted.[33]

30. *Id.* at 503.
31. *Id.* at 503-04. [emphasis supplied].
32. 20 SCRA 330 (1967).

E. *Contracts*

1. Mutuality Of Contracts

The Civil Code provisions on Contracts, prescribe five basic principles that are of paramount importance: namely, autonomy or liberty, consensuality, mutuality, obligatoriness, and relativity.

By the principle of autonomy (or liberty) of contracts, "the contracting parties may establish stipulations, clauses, terms and conditions...not contrary to law, morals, good customs, public order or public policy."[34] Consensuality of contracts means that "contracts are perfected by mere consent and from that moment the parties are bound."[35] The precept of mutuality of contracts mandates that "the contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."[36] The doctrine of obligatoriness of contracts ordains that "obligations arising from contracts have the force of law between the contracting parties and should be complied with

33. *Id.* at 334-36.
34. CIVIL CODE, art. 1306.
35. *Id.* art. 1315.
36. *Id.* art. 1308.

in good faith."[37] Finally, by the maxim of relativity, "contracts (generally) take effect only between the parties, their assigns and heirs."[38]

The principle of mutuality was explained with lucidity and applied with precision by Justice Dizon in *Garcia v. Rita Legarda, Inc.*[39]

The case involved respondent Rita Legarda, Inc., a corporation organized under Philippine laws, engaged in the sale and resale of residential lots in Manila and the suburbs.

> During the years 1947 and 1948, petitioners-spouses Maria A. Garcia and Marcelino Timbong acquired the rights of their predecessors who were the original buyers in three (3) separate Contracts To Sell covering their respective residential lots. For failure of petitioners to pay stipulated monthly installments and after several demands by respondent for the amounts in arrears, respondent seller cancelled the Contracts To Sell. On May 20, 1953, petitioners filed their action in the trial court against the respondent to declare the Contracts To Sell as existing and subsisting and to compel respondent seller to accept payments tendered by them. After trial, the court of origin declared the Contracts To Sell as existing and subsisting and ordered respondent to accept the payments tendered by the petitioners. Respondent appealed to the Court of Appeals which then reviewed the decision of the lower court and affirmed the lawful cancellation of the Contracts To Sell. Appeal was taken by the petitioner-spouses to the Supreme Court. The focus of the assignments of errors invoked by petitioners is Article 1308 of the New Civil Code, which reads as follows: "The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."[40]

In behalf of the Supreme Court, Justice Dizon ruled:

> The above legal provision is a virtual reproduction of Article 1256 of the old Civil Code but it was so phrased as to emphasize the principle that the contract must bind *both* parties. This, of course, is based firstly, on the principle that obligations arising from contracts have the force of law between the contracting parties, and secondly, that there must be mutuality between the parties based on their essential equality which is repugnant to have one party bound by the contract leaving the other free therefrom. Its ultimate purpose is to render void a contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties.
>
> Paragraph 6 of the contracts in question — which is the one claimed to be violative of the legal provision above quoted — reads as follows:
>
> "SIXTH — In case the party of the SECOND PART fails to satisfy any monthly installments, or any other payments herein agreed upon, he is granted a month of grace within which to make the retarded payment, together with the one corresponding to the said month of grace; it is understood, however, that should the month of grace herein granted to the party of the SECOND PART expire, without the payments corresponding to both months having been satisfied, an interest of 10% per annum will be charged on the amounts he should have paid; it is understood further, that should a period of 90 days elapse, to begin from the expiration of the month of grace herein mentioned, and the party of the SECOND PART has not paid all the amounts he should have paid with the corresponding interest up to that date, the party of the FIRST PART has the right to declare this contract cancelled and of no effect, and as consequence thereof, the party of the FIRST PART, may dispose of the parcel or parcels of land covered by this contract in favor of other persons, as if this contract had never been entered into. In case of such cancellation of this contract, all the amounts paid in accordance with this agreement together with all the improvements made on the premises, shall be considered as rents paid for the use and occupation of the above mentioned premises, and as payment for the damages suffered by failure of the party of the SECOND PART to fulfill his part of the agreement; and the party of the SECOND PART hereby renounces all his right to demand or reclaim the return of the same and obliges himself to peacefully vacate the premises and deliver the same to the party of the FIRST PART.[41]

37. *Id.* art. 1159.

38. *Id.* art. 1311.

39. 21 SCRA 555 (1967).

40. *Id.* at 556-58.

Subjecting Paragraph 6 to microscopic analysis, Justice Dizon said:

> [t]he above stipulation, to our mind, merely gives the vendor "the right to declare this contract cancelled and of no effect," upon fulfillment of the conditions therein set forth. It does not leave the validity or compliance of the contract entirely "to the will of one of the contracting parties;" the stipulation or agreement simply says that in case of default in the payment of installments by the vendee, he shall have (1) "a month of grace," and that (2) should said month of grace expire without the vendee paying his arrears, he shall have another "period of 90 days" to pay "all the amounts he should have paid," then the vendor "has the right to declare this contract cancelled and of no effect." We have heretofore upheld the validity of similar stipulations. In *Taylor v. Ky Tieng Piao*, 43 Phil. 873, 876-878, the ruling was that a contract expressly giving to one party the right to cancel, the same if a resolutory condition therein agreed upon — similar to the one under consideration — is not fulfilled, is valid, the reason being that when the contract is thus cancelled, the agreement of the parties is in reality being fulfilled. Indeed, the power thus granted cannot be said to be immoral, much less unlawful, for it could be exercised — not arbitrarily — but only upon the other contracting party committing the breach of contract of non-payment of the installments agreed upon. Obviously, all that said party had to do to prevent the other from exercising the power to cancel the contract was for him to comply with his part of the contract. And in this case, after the maturity of any particular installment and its non-payment, the contract gave him not only a *month grace* but an additional *period of 90 days*.
>
> Having arrived at the above conclusions, We now come to the question of whether or not by having previously accepted payments of overdue installments the respondent had waived its rights to declare the contracts cancelled and of no effect.
>
> In this connection, the record shows that on June 11, 1952, when the Contracts to Sell Nos. 234 and 965 were cancelled, the vendees were ten months in arrears, and that in the case of Contract To Sell No. 322, the vendees had never resumed payment of a single installment from the date when, upon their petition, said contract was reinstated on September 28, 1952. The contracts under consideration are not of absolute sale but mere contracts to sell — on installment. They give the respondent (vendor) the right to declare the contracts cancelled and of no effect — as in fact it did — upon fulfillment of certain conditions. All said conditions — so the record

41. *Id.* at 558-59.

shows — have been fulfilled. Consequently, respondent's (vendor's) right to cancel the contracts cannot be doubted.[42]

2. Distinction between Lease of Services and Agency

An area of confusion in the new Civil Code is the distinction between two very similar contracts — Lease of Services and Agency.

Article 1644 provides, "[i]n the lease of work or service, one of the parties binds himself to execute a piece of work or to render to the other some service for a price certain, but the relation of principal and agent does not exist between them."

Article 1868 reads "[b]y the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

Justice Calixto Zaldivar compared and distinguished these two contracts in *Nielsen & Company, Inc. v. Lepanto Consolidated Mining Company*:[43]

> In both agency and lease of services one of the parties binds himself to render some service to the other party. Agency, however, is distinguished from lease of work or services in that the basis of agency is representation, while in the lease of work or services the basis is employment. The lessor of services does not represent his employer, while the agent represents his principal....Agency is a preparatory contract, as agency "does not stop with the agency because the purpose is to enter into other contracts." The most characteristic feature of an agency relationship is the agent's power to bring about business relations between his principal and third persons. "The agent is destined to execute juridical acts (creation, modification or extinction of relations with third parties). Lease of services contemplate only material (non-juridical) acts."[44] (citations omitted).

F. Damages

1. Breach of Contract of Carriage

The law on Damages is a subject that fascinated Justice Dizon who rendered very incisive rulings on this topic in two notable cases, the *Cariaga* case and the *Yepes* case. First, let us discuss *Cariaga v. L. T. B. and Manila Railroad Co.*[45] The record shows that:

> [a]t about 1:00 p.m. on June 18, 1952, Bus No. 133 of the Laguna Tayabas Bus Company (LTB)...driven by Alfredo Moncada, left its station at Azcarraga St., Manila, for Lilio, Laguna, with Edgardo Cariaga, a fourth-year medical student of the University of Santos Tomas, as one of its passengers. At about 3:00 p.m., as the bus reached that part of the poblacion of Bay, Laguna, where the national highway crossed a railroad track, it bumped against the engine of a train then passing by with such terrific force that that the first six wheels of the train were derailed, the engine and front part of the body of the bus were wrecked, and the driver of the bus died instantly, while many of its passengers, Edgardo among them, were severely injured.[46]

Justice Dizon sustained the findings of the trial court, to the effect that:

> Firstly, that the whistle of the locomotive was sounded four times — two long and two short — "as the train was approximately 300 meters from the crossing;" secondly, that another LTB bus which arrived at the crossing ahead of the one where Edgardo Cariaga was a passenger, paid heed to the warning and stopped before the "crossing," while — as the LTB itself...admits...the driver of the bus in question totally disregarded the warning.[47]

Justice Dizon took significant note of the deposition of Dr. Romeo Gustilo, a neurosurgeon that:

> "[a]s a result of the injuries suffered by Edgardo, his right forehead was fractured necessitating the removal of practically all of the right frontal lobe of his brain." Justice Dizon observed that from the testimony of Dr. Jose A. Fernandez, a psychiatrist, it may be gathered that, "because of the physical injuries suffered by Edgardo, his mentality has been so reduced that he can no longer finish his studies as a medical student; that he has become completely misfit for any kind of work; that he can hardly walk around without someone helping him, and has to use a brace on his left leg and feet."
>
> Upon the whole evidence on the matter, the lower court found that the removal of the right frontal lobe of the brain of Edgardo reduced his intelligence by about 50%; that due to the replacement of the right frontal bone of his head with a tantalum plate Edgardo has to lead a quiet and retired life because "if the tantalum plate is pressed in or dented it would cause his death."[48]

Justice Dizon opined that this evidence shows that "as a result of the physical injuries suffered by Edgardo Cariaga, he is now in a helpless condition, virtually an invalid, both physically and mentally."

> Appellant LTB admits that under Art. 2201 of the Civil Code, the damages for which the obligor, guilty of a breach of contract but who acted in good faith, is liable, shall be those that are the natural and probable consequences of the breach and which the parties had foreseen or could have reasonably foreseen at the time the obligation was constituted, provided such damages, according to Art. 2199 of the same Code, have been duly proved. Upon this premise, LTB claims that only the actual damages suffered by Edgardo Cariaga consisting of medical, hospital and other expenses in the total sum of P17,719.75 are within this category.[49]

Justice Dizon ruled that:

42. *Id.* at 559-60 [emphasis supplied].
43. 26 SCRA 540 (1969).
44. *Id.* at 546-47.
45. 110 Phil 346 (1960).
46. *Id.* at 347.
47. *Id.* at 350.
48. *Id.* at 350-51.
49. *Id.* at 351.

> [t]he income which Edgardo Cariaga could earn if he should finish the medical course and pass the corresponding board examinations must be deemed to be within the same category because they could have reasonably been foreseen by the parties at the time he boarded the Bus No. 133 owned and operated by the LTB. At that time he was already a fourth-year student in medicine in a reputable university. While his scholastic record may not be first rate...it is, nevertheless, sufficient to justify the assumption that he could have finished the course and would have passed the board test in due time.[50]

Upon consideration of all the facts and the income that he could possibly earn as a medical practitioner, the Court held that "the compensatory damages awarded to Edgardo Cariaga should be increased to P25,000.00."

> Plaintiffs' claim for moral damages cannot be granted. Article 2219 of the Civil Code enumerates the instances when moral damages may be recovered and the case under consideration does not fall under any one of them. The present action cannot come under paragraph 2 of said article because it is not one of quasi-delict and cannot be considered as such because of the pre-existing contractual relation between the Laguna Tayabas Bus Company and Edgardo Cariaga. Neither could defendant Laguna Tayabas Bus Company be held liable to pay moral damages to Edgardo Cariaga under Article 2220 of the Civil Code on account of breach of its contract of carriage because said defendant did not act fraudulently or in bad faith in connection therewith. Defendant Laguna Tayabas Bus Company had exercised due diligence in the selection and supervision of its employees like the drivers of its buses in connection with the discharge of their duties and so it must be considered an obligor in good faith."[51]

The Court concluded that:

> [w]hat has been said heretofore relative to the moral damages claimed by Edgardo Cariaga obviously applies with greater force to a similar claim...made by his parents. The claim made by said (parent-spouses) for actual and compensatory damages is likewise without merits. As held by the trial court, in so far as the LTB is concerned, the present action is based upon a breach of contract of carriage to which said spouses were not a party, and neither can they premise their claim upon the negligence or *quasi delict* of the LTB for the simple reason that they were not themselves injured as a result of the collision between the LTB bus and the train owned by the Manila Railroad Company.[52]

2. Waiver Of Claim For Damages

Damages arising from breach of contract of carriage received further attention from Justice Arsenio Dizon in the case of *Yepes and Susaya v. Samar Express Transit.*[53] Said Justice Dizon:

> On July 23, 1959, appellees (Filemon Yepes and Mateo Susaya) boarded appellant's Bus No. 56, with its driver, Alfredo Acol, at the wheel, at Borongan, bound for Dolores, both in the province of Samar. While on its way the bus turned turtle and caught fire, causing injuries to some of its passengers, amongst them the appellees (Yepes and Susaya) who suffered serious burns. Appellant (Samar Express Transit) had them taken to the Borongan Emergency Hospital in Borongan, Samar, where they received medical treatment, but were later brought, upon their request, to the Leyte Provincial Hospital at Tacloban City, for further treatment. Appellant (Samar Express Transit) paid all the expenses for their hospitalization and medical treatment. It appears that before their transfer to the Leyte Provincial Hospital, appellees were asked to sign as, in fact, they signed the document Exhibit I wherein they stated that "in consideration of the expenses which said operator has incurred in properly giving us the proper medical treatment, we hereby manifest our desire to waive any and all claims against the operator of the Samar Express Transit." This document notwithstanding, appellees (Yepes and Susaya) filed with the lower court separate complaints for damages for breach of contract of carriage (Civil Cases Nos. 2709 and 2815) against appellant (Samar Express Transit). In its answers to the complaints the latter invoked the following defenses: (a) that the accident was due to a fortuitous event beyond its control and/or due to the negligence of one of its passengers; and (b) that the plaintiffs (appellees here) had waived their right to claim for damages against it.
>
> After a joint trial, the lower court rendered judgment ruling the above-mentioned waiver null and void as being contrary to public policy, and awarding damages...to appellees Filemon Yebes and Mateo Susaya, respectively, and...attorney's fees, and costs. Hence the present appeal.
>
> Sole contention of appellant (carrier) is that the lower court erred in declaring that the "waiver" made by appellees (passengers) pursuant to Exhibit I is against public policy and morals, and therefore void.[54]

As may easily be surmised, the plaintiffs and the defendant including the trial court judge himself completely missed the point. They all apparently conceded the existence of the contractual waiver and just harped endlessly on the barren and far-fetched issue of "public policy and morals." With admirable calm and patience, Justice Dizon declared that:

> [e]ven a cursory examination of the document mentioned above will readily show that appellees (passengers) did not actually waive their right to claim damages from appellant (carrier) for the latter's failure to comply with their contract of carriage. All that said document proves is that they expressed a "desire" to make the waiver — which obviously is not the same as making an actual waiver of their right. A waiver of the kind invoked by appellant must be clear and unequivocal (Decision of the Supreme Court of Spain of July 8, 1887) — which is not the case of the one relied upon in this appeal.[55]

Hence, Justice Dizon declared the supposed waiver as non-existent.

Without any harsh words heaped upon the parties, their lawyers, and the judge of the trial court, Justice Dizon with serene equanimity said, "[i]n the light of the above conclusion, We deem it unnecessary to consider the question of whether or not such waiver, if actually made upon the

50. *Id.* at 351-52.

51. *Id.* at 352.

52. *Id.* at 355.

53. 17 SCRA 91 (1966).

54. *Id.* at 92-93.

55. *Id.* at 93.

consideration stated in the document already referred to, is against public policy and morals."[56]

3. Mutual Promise To Marry

One of the most difficult provisions of Civil Law is the Statute of Frauds. The Statute reads in part: [57]

> ART. 1403. The following contracts are unenforceable, unless they are ratified: ...
>
> (2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents: ....
>
> c) An agreement made in consideration of marriage, other than a mutual promise to marry....

Discoursing on an agreement consisting of a "mutual promise to marry", two stalwarts of the Dizon years expounded on the rules to determine whether or not the breach of the promise to marry is an actionable wrong.

Justice Jose P. Bengzon laid down the basic rule and the exception in *Wassmer v. Velez*,[58] Justice Bengzon said:

> The record reveals that on August 30, 1954, plaintiff and defendant applied for a license to contract marriage, which was subsequently issued...Their wedding was set for September 4, 1954. Invitations were printed and distributed to relatives, friends and acquaintances...The bride-to-be's trousseau, party dresses and other apparel for the important occasion were purchased...Dresses for the maid of honor and the flower girl were prepared. A matrimonial bed, with accessories, was bought. Bridal showers were given and gifts received...And then with but two days before the wedding, defendant, who was then 28 years old, simply left a note for plaintiff stating: "Will have to postpone wedding — My mother opposes it." He enplaned to his home city in Mindanao, and the next day, the day before the wedding, he wired plaintiff: "Nothing changed rest assured returning soon." But he never returned and was never heard from again.
>
> Ordinarily, a mere breach of promise to marry is not an actionable wrong. But to formally set a wedding and to go through all the necessary preparations and publicity, only to walk out of it when the matrimony is about to be solemnized, is quite different. This is palpably and unjustifiably contrary to good customs, for which the erring promissor must be held answerable in damages in accordance with Article 21 of the New Civil Code.
>
> When a breach of promise to marry is actionable under Article 21 of the Civil Code, moral damages may be awarded under Article 2219 (10) of the said Code. Exemplary damages may also be awarded under Article 2232 of said Code where it is proven that the defendant clearly acted in a wanton, reckless and oppressive manner.[59]

Justice Jose B. L. Reyes, on the other hand, expounded on the "exception to the exception" in the case of *Tanjanco v. Court of Appeals*.[60] Justice Reyes ruled:

> The essential allegations of the complaint are to the effect that, from December, 1957, the defendant (appellee herein), Apolonio Tanjanco, courted the plaintiff, Araceli Santos, both being of adult age; that "defendant expressed and professed his undying love and affection for plaintiff who also in due time reciprocated the tender feelings;" that in consideration of defendant's promise of marriage plaintiff consented and acceded to defendant's pleas for carnal knowledge; that regularly until December 1959, through his protestations of love and promises of marriage, defendant succeeded in having carnal access to plaintiff as a result of which the latter conceived a child; that due to her pregnant condition, to avoid embarrassment and social humiliation, plaintiff had to resign her job as secretary in IBM Philippines, Inc., where she was receiving PhP230.00 a month; that thereby plaintiff became unable to support herself and her baby; that due to defendant's refusal to marry plaintiff, as promised, the latter suffered mental anguish, besmirched reputation, wounded feelings, moral shock, and social humiliation. The prayer was for a decree compelling the defendant to recognize the unborn child that plaintiff was bearing; to pay her not less than PhP430.00 a month for her support and that of her baby, plus PhP100,000.00 in moral and exemplary damages, plus PhP10,000.00 attorney's fees.[61]
>
> The essential feature is seduction, that, in law, is more than mere sexual intercourse, or a breach of promise of marriage; it connotes essentially the idea of deceit, enticement, superior power or abuse of confidence on the part of the seducer, to which the woman has yielded. Where for one whole year, from 1958 to 1959, plaintiff-appellee, a woman of adult age, maintained intimate sexual relations with the defendant, with repeated acts of intercourse, such conduct is incompatible with the idea of seduction. Plainly, there is here voluntariness and mutual passion, for had the plaintiff been deceived, had she surrendered exclusively because of deceit, artful persuasions and wiles of the defendant, she would not have again yielded to his embraces, much less for one year, without exacting early fulfillment of the alleged promises of marriage, and she would have cut short all sexual relations upon finding that the defendant did not intend to fulfill his promises. Hence, no case is made under Article 21 of the Civil Code and, no other cause of action being alleged, no error was committed by the Court of First Instance in dismissing the complaint. Of course, the dismissal must be understood as without prejudice to whatever actions may correspond to the child of the plaintiff against defendant-appellant, if any.[62]

III. CONCLUSION

These are the legacies of jurisprudence bequeathed to us by the venerable honorees of this 13th Centennial Lecture. As we respectfully return with

56. *Id.*
57. CIVIL CODE, art. 1403.
58. 12 SCRA 648 (1964).
59. *Id.* at 652-53.
60. 18 SCRA 994 (1966).
61. *Id.* at 995.
62. *Id.* at 997.

reverent hands these heirlooms of wisdom to the vaults of legal history, we bid them adieu without the roll of drums and the boom of cymbals ending a grand symphony.

In their decisions, as quietly as they toiled and lived, our honorees did not shake the moorings of the world nor rock the foundations of the nation, did not delve into the mechanics of governance nor soar into the metaphysics of power.

The *ponencias*, which we viewed afresh and visited anew, were simple judgments that brought the comforts of the law to the problems of the family, to the conflicts of property claims, and to the contentious interplay of rights and obligations in the daily lives of common people. Most importantly, they restored harmony to human relations, peace to the home, and order to the community.

As we unfold the pages of the next hundred years in the epic existence of the Supreme Court and the Justice System, allow me to paraphrase the parting words in my address which I delivered twenty-one years ago at the Law Day Celebration of the Philippine Bar Association.

The next millennium "is a time for reassessment, for reappraisal not only of systems but also of values, seeing the light of truth and hearing the call of reason which are truly there — not the shadows of spectral gloom, nor the voices of disembodied spirits...for there are really none."

A Note on Incorporation: Creating Municipal Jurisprudence from International Law

*José M. Roy III**

Many scholarly thoughts have been devoted to the sources of international law. Rather than presume to contribute to that already rich collection of work, this brief note is confined to some observations relating to the incorporation of the sources of international law in municipal law.

The mechanism for incorporation is set forth in the Constitutional provision that adopts generally accepted principles of public international law as part of the law of the land.[1] By the doctrine of incorporation, rules of international law *ipso facto* become operative and effective within the municipal legal system.[2] The alternative mode for the application of rules of public international law, the doctrine of transformation, is also found in the

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1. PHIL. CONST. art. II, § 2: "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

2. *See* U.S.A. v. Guinto, et al., 182 SCRA 644 (1990) (where the Court correctly suggests that the mention of the doctrine in the Constitution is unnecessary). Speaking for the Court, Justice Cruz wrote:

> Even without such affirmation [in the Constitution], we would still be bound by the generally accepted principles of international law under the doctrine of incorporation. Under this doctrine, as accepted by the majority of states, such principles are deemed incorporated in the law of every civilized state as a condition and consequence of its membership in the society of nations. Upon its admission to such society, the state is automatically obligated to comply with these principles in its relations with other states.

Cf. The Holy See v. Rosario, Jr., 238 SCRA 524 (1994); U.S.A. v. Guinto, 182 SCRA 644 (1990).