

stating that the judgment debtor was insolvent. Subsequently, the judgment creditor filed a motion for examination of the properties of the judgment debtor in the same court under the provisions of Sec. 34 of Rule 39 of the Rules of Court. Motion was granted and the examination of the defendant was set in the City of Manila. The judgment debtor failed to appear on the appointed date. Whereupon, the court issued an order declaring the judgment debtor guilty of contempt. Thus, this petition for certiorari. *Held*, a judgment debtor can only be required to appear and answer concerning his property and income before the CFI of the province in which he resides or is found so that an order issued by any other CFI declaring the judgment debtor in contempt and ordering his arrest for failure to appear for such examination is null and void as issued in excess of jurisdiction. *CHION BU HONG v. TAN*, (CA) 57 O.G. 3143 April 24, 1961.

BOOK NOTE

Civil Code of the Philippines Annotated
Vol. II; By Edgardo L. Paras;
Rex Book Store, 1729 Azcarraga, Manila, 1961.
Pp. 590. P.—

Good commentaries are needed in the study of law. As an eminent jurist once said: "the vast body of complicated statutes cannot be fully understood and effectively enforced without the notes and comments of experts and scholars who have made researches on the background, scope and significance of said statutes". Recently, there came out of the press a book which is an answer to this need. We are referring to "Civil Code of the Philippines Annotated, Volume II (Property) by Edgardo L. Paras".

The second in a set of five volumes, this book does not follow the topical approach but is made in outline form. The method of presentation proceeds by first citing the law, then the author's comments which include definitions, classifications or requisites, then examples, and finally some questions or problems brought about by the law and the author's answers or solutions to them. In explaining the law, the author also defines and gives the meaning of each term used. The cases cited are the applications of the law as well as the principles derived from the same, and factual examples are best understood. The book makes use of enumerations and likewise contains tables of distinctions to differentiate a mode, concept, term or provision from a similar one — a method that is more convenient and practical than when made or stated in paragraph form. The author compares certain provisions in the New Civil Code with those found in the Old Code to show the timely changes in the law as caused by the necessities of justice and human rights and personality. To remind the law students of important matters for purposes of the bar examination, the book occasionally mentions previous bar questions on certain topics with the corresponding answers.

The author's adherence to a comprehensive discussion of the law is well illustrated in his commentary as to the reasons for the insertion of the phrase "*ipso facto*" in Article 461 of the New Civil Code concerning change of river beds. Although a member of the Code Commission is of the opinion that the words "*ipso facto*" were inserted in order to make it clear that the rule applies by the mere fact of the occurrence of a na-

tural change in the course of the waters, the validity of this observation is however doubted by the author because of this reason: "Since the article contemplates abandoned river beds, and since 'abandonment' implies an intent not to return, if steps are therefore undertaken to restore the river to its original course then there is no abandonment. What 'ipso facto' should mean as used in Art. 461, is that the prejudiced landowner automatically becomes the owner of the abandoned river bed once the conditions stated in the article are fulfilled or manifest, without the necessity of any action or exercise of possession on their part. In other words, their mode of acquisition would be by virtue of the law. The acquisition would thus be *ipso facto* — provided there is really an abandonment."

Clarity and simplicity pervade the whole work and it is shorn of elegant language and high-flown diction. The author has written simply with particular emphasis on substance rather than on form. Indeed, we can say that this opus, the product of an authoritative ingenuity based on legal and scholarly experience, is recommendable.

ANSWERS TO 1961 BAR EXAMINATION

CRIMINAL LAW

Answered by Judge Luis B. Reyes

I

- (a) Define "crime" and give an example of an "Impossible crime", as defined in the Revised Penal Code.

Crime is defined as an act committed or omitted in violation of a public law forbidding or commanding it. (Reyes, Revised Penal Code, Vol. I, p. 1, 1960 Ed.)

An example of impossible crime is, as follows: A, believing that B was only sleeping, with intent to kill, shot at the latter's body then lying on bed. It turned out that B had been dead an hour before A fired at his body.

- (b) A is charged with the forcible abduction with lewd designs of X, a girl, 16 years old and Y, a 20-year old female friend of X. The evidence shows that the abduction was with their consent. Decide the case with reasons.

A should be sentenced to suffer the penalty for consented abduction in which X is the offended party, she being 16 years old and presumed to be a virgin, it not appearing that she is married. She is presumed to be a woman of good reputation.

A should be acquitted of the charge of forcible abduction insofar as Y is the offended party, because the element of "that the abduction is against her will" is absent; and he could not be convicted of consented abduction, because Y is over 18 years of age. (Reyes, Revised Penal Code, Vol. II, pp. 637; 648; 653; 1961 Ed.)

II

- (a) If an insane person commits a crime, who should first be civilly liable, his legal guardian, or the insane person with his property? Why?

The civil liability for acts committed by an insane shall devolve upon his legal guardian, unless it appears that there was no fault or negligence on the part of the latter. If the legal guardian be insolvent, the insane person who committed the crime shall respond with his own property exempt from execution, in accordance with the civil law. (Art. 101, Revised Penal Code).

Hence, the legal guardian should first be civilly liable. (Reyes, Revised Penal Code, Vol. I, p. 629, 1960 Ed.)

Guardians are liable for damages caused by the incapacitated persons who are under their authority and live in their company. The responsibility of the guardians shall cease when they prove that they observed all the diligence of a good father of a family to prevent damage. (Art. 2180, N.C.C.)

(b) *Specify two (2) offenses which prescribe in one (1) year.*

Offenses punished only by a fine or by imprisonment for not more than one month, or both, prescribe after one year. (Reyes, Revised Penal Code, Vol. I, p. 595, 1960 Ed.)

Specifically, the following offenses prescribe after one year:

(1) *Failure to brand or register cattle.* — Any person who shall fail, neglect, or refuse to brand or register his large cattle shall be punished for each animal not branded or registered by a fine of not less than two nor more than five pesos, or by imprisonment for not less than five days nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. (Sec. 2667, Revised Adm. Code)

(2) *Unlicensed signs, signboards, or billboards.* — Any person who shall erect, construct, maintain, display, or expose a sign, signboard, or billboard without first paying the lawful tax therefor shall be fined not exceeding one hundred pesos or be imprisoned not exceeding one month. (Sec. 2729, Revised Adm. Code)

III

A issues a P100 check by signing the name of a bank depositor, imitating the signature of the latter. If he succeeds in cashing said check, what crime or crimes, if any, have been committed? Why?

A committed a complex crime of estafa through falsification of a commercial document. When he imitated the signature of the bank depositor on the check for P100 and issued the same, A committed the crime of falsification of a commercial document. By cashing the check, A committed estafa by means of deceit. And since the crime of falsification was a necessary means for committing the crime of estafa, A committed the complex crime of estafa through falsification of commercial document. (Reyes, Revised Penal Code, Vol. I, p. 449, 1960 Ed; Vol. II, p. 565, 1961 Ed.)

IV

Specify two (2) modifying circumstances in the imposition of the penalty which can be considered aggravating at times, and mitigating at other times. Give illustrative examples.

They are: (1) relationship and (2) intoxication (Art. 15, R.P.C.)

A and B were convicted of slight physical injuries inflicted on C. A was the son of C and B was the father of C. In this case, relationship is a mitigating circumstance in the imposition of the penalty on B and an aggravating circumstance in the imposition of the penalty on A. Relationship is a mitigating circumstance in crimes against persons, when the offender is a relative of a higher degree than the offended party. It is an aggravating circumstance when the offender is a relative of a lower degree than the offended party.

A killed B when the former was in the state of intoxication. If the intoxication of A was accidental, it is a mitigating circumstance. If it is habitual or subsequent to the plan to commit the crime, his intoxication is an aggravating circumstance. (Reyes, Revised Penal Code, Vol. I, pp. 309; 312; 315; 487-488, 1960 Ed.)

V

(a) *Specify two (2) criminal acts constituting a violation of the Election Law.*

The following are criminal acts constituting violations of the Election Law:

(1) It is unlawful to carry deadly weapons in the polling place and within a radius of thirty meters thereof during the days for registration, voting and canvass. (Sec. 53)

(2) It is unlawful for any candidate, political committee, voter or any other person to give or accept, free of charge, directly or indirectly, transportation, food, or drinks during a public meeting in favor of any or several candidates and during the three hours before and after such meeting, or on registration days, on the day preceding the voting and on the day of the voting; or to give or contribute, directly or indirectly, money or things of value for such purposes. (Sec. 51)

(b) *Specify two (2) criminal acts constituting a violation of the Corporation Law.*

The following are criminal acts constituting violations of the Corporation Law:

(1) It shall be unlawful for any corporation organized for the purpose of engaging in agriculture or in mining to be in anywise interested in any other corporation organized for the purpose of engaging in agriculture or in mining.

(2) It shall be unlawful for any person owning stock in more than one corporation organized for the purpose of engaging in agriculture or in mining to own more than fifteen per centum of the capital stock then outstanding and entitled to vote of each of such corporations. (Act No. 1459, as amended, Sec. 13 (5))

(c) *When may the death penalty not be imposed although the accused is really guilty of a capital offense, with aggravating circumstance and no mitigating circumstances?*

In the following cases:

- (1) When the guilty person is over 70 year of age; and
- (2) When on appeal or revision of the case by the Supreme Court eight Justices are not unanimous in their voting as to the propriety of the imposition of the death penalty. (Reyes, Revised Penal Code, Vol. I, p. 439, 1960 Ed.)

VI

If a Chief of Police deliberately hides his son who has been accused of murder, does said Chief of Police incur any criminal liability?

No, because the Chief of Police is only an accessory and under the Revised Penal Code the penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of paragraph 1 of Art. 19 (Art. 20, Revised Penal Code)

The Chief of Police does not fall within the provisions of paragraph 1 of Art. 19, because he neither profited nor assisted the principal offender to profit by the effects of the crime.

Since the son has been accused of murder and, therefore, is already being prosecuted therefor when the Chief of Police hides him, the latter cannot be held liable for dereliction of duty in the prosecution of offenses under another provision of the Revised Penal Code. (Art. 208, R.P.C.)

VII

A, a married man, cohabits with B, the wife of C. D, the wife of A, cohabits with E, a male friend. Cohabitation has been going on for five (5) years with the knowledge of A and D of each other's infidelity. A and B know of each other's marital status. E also knows of D's married state.

- (a) *What crime or crimes have been committed? Reasons.*
- (b) *What defenses, if any, may be set up if A, C and D should file criminal complaints in Court? Reasons.*

The crime committed by each of the offenders is adultery. A and B also committed concubinage, the former being a married man who cohabited with B, a woman not his wife, and B knowing him to be married.

If A should file a criminal complaint against D and E for adultery, or if D should file a complaint for concubinage against A and B, the accused could set up the defense that the offended parties cannot institute criminal

prosecution for adultery and concubinage if they shall have consented or pardoned the offenders. (Art. 344, R.P.C.) In this case, there was consent on the part of A and D.

This defense is also available to E (People vs. Avelino, C.A., 40 O.G., Sup. 11, 194, cited Reyes, Revised Penal Code, Vol. II, p. 620, 1961 Ed.)

If C is the complainant, such defense is not available to the accused, because C did not consent to the adulterous act of the accused or pardon them.

VIII

A drunk chauffeur recklessly drove at night his master's car which he had taken from the garage (while the master was sleeping). He hit another automobile whose driver was not a fault. The collision caused the death of a passenger in the latter car, slight injury on a child passenger that was cured in 5 days, the expelling out of a foetus from the body of a pregnant woman passenger, and damage to the "innocent" car. What criminal acts were committed? Why?

The chauffeur committed three separate and distinct crimes, namely: (1) qualified theft, (2) homicide with abortion (if the foetus died) or at least less serious physical injuries (if the foetus survived) and damage to property through reckless imprudence, and (3) slight physical injury through reckless imprudence.

He committed qualified theft, because the essential elements of theft are present, namely: (1) there was a taking of the car, (2) which is a personal property; (3) that the personal property belongs to another, his master; (4) that the taking was without the consent of the owner of the car; and (5) that there was intent to gain. It is qualified theft, because the property taken is a motor vehicles.

The element of intent to gain is present, because the use or enjoyment of another's property is sufficient to establish that element.

As to the element of "taking", the Supreme Court held that there is taking of an automobile when the offender drove it without the consent of its owner. (People vs. Fernandez, 38 O.G. 985)

In some cases, the Court of Appeals held that if at the time of the taking the accused did not have the intention of withholding the thing with the character of permanency, the element of "taking" in the crime of theft is lacking and, hence, the crime is not committed.

He also committed the complex crime of homicide with abortion or at least less serious physical injuries, and damage to property, as the damage could not be less than ₱100, through reckless imprudence, because the three offenses are all less grave felonies and they were the results of one single act of reckless driving. (Art. 48, R.P.C.)

There is such crime as abortion through reckless imprudence when, as in this case, the violence was not intentionally exerted and the foetus died as a consequence.

If the foetus survives in spite of the violence, the offender is liable for at least less serious physical injuries, because the mother must necessarily suffer internal injuries due to the expulsion of the foetus.

The offense of slight physical injury, being a light felony, cannot form a complex crime. Hence, it shall be treated and punished as a separate offense. (Reyes, Revised Penal Code, Vol. I, pp. 443-444, 1960 Ed.)

IX

Distinguish slander by deed from libel.

In slander by deed, the offender performs any act not included in the crime of libel or slander; in libel, the offender avails himself of written or printed words, or words published by means of radio, phonograph, painting or theatrical or cinematographic exhibition in besmirching the reputation of another person.

The two offenses are similar in the sense that in both offenses (1) there must be publicity and (2) that the acts performed or the words published cast dishonor, discredit or contempt upon the offended party. (Reyes, Revised Penal Code, Vol. II, pp. 682; 707, 1961 Ed.)

X

Distinguish "trespass to dwelling" from "trespass to property" (other forms of trespass).

In "trespass to dwelling", the offender is a private person; in "trespass to property" (other forms of trespass), the offender is any person. In the first, the offender enters a dwelling house of another; in the second, the offender enters the closed premises or the fenced estate of another. In the first, the place entered by the offender is inhabited; in the second, the place entered is uninhabited. In the first, the act constituting the crime is by entering the dwelling against the will of the owner; in the second, it is by entering the closed premises or the fenced estate without securing the permission of the owner or caretaker thereof. In the first, the prohibition to enter the dwelling of another is express or implied; in the second the prohibition to enter the closed premises or the fenced estate of another must be manifest. (Reyes, Revised Penal Code, Vol. II, pp. 415; 422, 1961 Ed.)

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- Aggravating Circumstance** — Shooting the victim at the back is not treachery if the defendant had no intent to employ such method in the execution of the crime. **People v. Tengyao**, G.R. No. L-14675, Nov. 29, 1961 (4) 374
- Exempting Circumstance** — A person who commits a crime is presumed to be in his right mind. **People v. Fausto**, G.R. No. L-16381, Dec. 30, 1961 (4) 374
- Illegal Possession of Forged Treasury Notes** — The possession of genuine treasury notes of the Philippines, any of the figures of which had been altered, with knowledge of such alteration, and with the intent to use such notes, constitutes illegal possession of forged treasury notes. **Dei Kosario v. People**, G.R. No. L-16806, Dec. 22, 1961. (4) 374
- Less Serious Physical Injuries** — Where the information alleges that less serious physical injuries have been inflicted with the manifest intent to insult or offend the injured person or under circumstances adding ignominy to the offense, the crime charged should be the single offense of less serious physical injuries with manifest intent to offend and insult the complainant as penalized and defined under par. 2 of Art. 265 of the R.P.C. and not the complex crime of slander by deed with less serious physical injuries. **People v. Lasala**, G.R. No. L-12141, Jan. 30, 1962. (4) 375
- Malversation of Public Funds** — Where the accused is acquitted in a criminal case for malversation of public funds, the trial court is without power to order payment of back salary during the period of suspension. **People v. Daleon**, G.R. No. L-15630, March 24, 1961 (1) 61

- Quasi-Recidivism** — For purposes of the effects of quasi-recidivism, it is immaterial whether the crime, for which the accused is serving sentence at the time of the commission of the offense charged, falls under the R.P.C. or under a special law. **People v. Peralta**, G.R. No. L-15959, Oct. 11, 1961 (3) 293
- Rape With Murder** — Where the rape is separate from the crime of murder the trial court has no jurisdiction over the former where the victim is a minor and the complaint is not signed by her parents, grandparents or guardian. **People v. Obaldo**, G.R. No. L-13976, April 29, 1961 (1) 62
- Robbery** — Palay is included in the term "cereals" used in Art. 303 of the R.P.C., defining the crime of robbery of cereals, fruits, or firewood in an uninhabited place or private building. **People v. Rada**, G.R. No. L-16988, Dec. 30, 1961. (4) 375

LABOR LAW

- Court of Agrarian Relations** — The CAR has the power to extend the period for filing a motion for reconsideration of its orders or decisions upon motion of the aggrieved party. **Gonzales v. Hon. Santos**, G.R. No. L-1635556, April 28, 1961. (1) 62
- Court of Industrial Relations** — Sec. 16-C of R.A. 602 requiring the CIR to act *in banc* in certain cases does not preclude the assignment of one judge for the reception of evidence. **Benguet Consolidated, Inc. v. Labor Union (NLU)**, G.R. No. L-17202, April 29, 1961. (1) 63
- Court of Industrial Relations** — When in the opinion of the President a labor dispute exists in an industry indispensable to the national interest and he certifies it to the CIR, the latter acquires jurisdiction to act thereon in the manner provided for by law. **Pasudeco v. CIR**, G.R. No. L-13178, March 25, 1961 (1) 64
- Court of Industrial Relations** — The CIR has jurisdiction over claims for overtime, separation and differential pay when reinstatement is sought. **The Phil. Food Products, et al., v. CIR, et al.**, G.R. No. L-15279, June 30, 1961. (2) 200
- Court of Industrial Relations** — Findings of fact of the Court of Industrial Relations are conclusive upon the Supreme Court in the absence of abuse of discretion amounting to lack or excess of jurisdiction. **San Miguel Brewery v. Rueda**, G.R. No. L-12682, Aug. 31, 1961. (3) 293
- Court of Industrial Relations** — The Court of Industrial Relations may not grant reinstatement upon a negative finding in an unfair labor practice case, its powers being limited to dismissing said case. **National Labor Union v. Insular-Yebana Tobacco**, G.R. No. L-15363, July 31, 1961. (3) 294
- Court of Industrial Relations** — The requirement that the court shall receive *en banc* a motion for reconsideration,

- simply demands that all available judges shall take part. **San Miguel Brewery v. Rueda**, G.R. No. L-12682, Aug. 31, 1961. (3) 294
- Court of Industrial Relations** — The CIR has no jurisdiction over unfair labor practice committed by landlords over their agricultural workers. **Santos v. Court of Industrial Relations**, G.R. No. L-17196, Dec. 28, 1961 (4) 376
- Dismissal** — An employee discharged while on temporary employment, and subsequently adjudged entitled to reinstatement, may not be reinstated as a permanent employee. **San Miguel Brewery v. Rueda**, G.R. No. L-12682, Aug. 31, 1961 .. (3) 295
- Eight-Hour Labor Law** — The criterion in determining whether or not sailors are entitled to overtime pay is not whether they are on board and cannot leave the ship beyond the regular eight working hours a day but whether they actually rendered service in excess of said number of hours. **National Shipyard and Steel Corporation v. CIR & Malondras**, G.R. No. L-17068, Dec. 30, 1961. (4) 376
- Employer-Employee Relationship** — Whether the owner of an establishment hires a contractor to do a piece of work and the owner of said establishment has direct control and supervision over the workers of the contractors, the owners of the establishment becomes the statutory employer of the workers of the contractor. **The Manila Railroad Co. v. Vda. de Oliveros**, G.R. No. L-14204, June 29, 1961 (2) 201
- Industrial Peace Act** — A foreman supervisor is included in the definition of employee in Sec. 3 of R.A. 75. **Atlantic Gulf & Pacific Co. v. Court of Industrial Relations**, G.R. No. L-16991, Dec. 23, 1961. (4) 377
- Industrial Peace Act** — The certification of a dispute involving an industry indispensable to national interest by the Executive Secretary "By authority of the President" is a valid certification. **GSIS Employees Association v. Court of Industrial Relations & GSIS**, G.R. No. L-18734, Dec. 30, 1961. (4) 377
- Social Security Act** — Employees may avail of sickness benefit under the Social Security Act even though they may have received half-pay from their employer during their illness. **Mosuela v. Philippine Long Distance Telephone Co.**, G.R. No. L-16693, Jan. 30, 1962. (4) 378
- Social Security Act** — An employer is still liable to pay his contributions to the Social Security Commission on account of his employee who is on leave even without pay. **Insular Life Assurance Co. Ltd. v. Social Security Commission**, G.R. No. L-16359, Dec. 28, 1961 (4) 378
- Social Security System** — The beneficiary whether a member of the family or a stranger is entitled to death benefits under the System. **Tacson v. Social Security System**, G.R. No. L-15798, Dec. 28, 1961 (4) 379

- Workmen's Compensation Act** — An employer who has paid compensation to an employee who is injured shall succeed the injured to the right of recovery from the persons responsible for the injury. **Clareza v. Rosales**, G.R. No. L-15364, May 31, 1961 (2) 201
- Workmen's Compensation Act** — Where the employer has knowledge of the accident resulting in the death of an employee, the failure or delay to give notice of the accident does not bar the widow from filing her claim under the Workmen's Compensation Act. **The Manila Railroad Co. v. Vda. de Oliveros**, G.R. No. L-1420, June 30, 1961. (2) 202
- Workmen's Compensation Act** — A casual employee whose work is done in connection with the business of the employer is a laborer within the purview of the definition of employee or laborer under the Workmen's Compensation Act. **Bautista v. Murillo**, G.R. No. L-13374, Jan. 1962. (4) 379
- Workmen's Compensation Act** — An employee who dies as a result of a fall sustained while attempting to overtake and ride on a vehicle used to convey employees to and from their work is entitled to compensation as he is deemed to have died in the course of his employment. **Martin v. Philippine Engineer's Syndicate Inc.**, G.R. No. L-17533, Jan. 31, 1962. (4) 380
- Workmen's Compensation Commission** — Mere filing of the claim for compensation beyond the period in Section 24 of the Workmen's Compensation Act does not deprive the Workmen's Compensation Commission or its Hearing Officer of jurisdiction to hear and determine said claim. **Century Ins. Co. v. Fuentes**, G.R. No. L-16039, Aug. 31, 1961. (3) 295

LAND TITLES AND DEEDS

- Act 3344** — To be registrable under Act 3344, the instrument must refer to unregistered land and its improvements only. **Salita v. Calleja**, G.R. No. L-17314, June 30, 1961. (2) 203
- Land Registration Act** — Lands registered under the Torrens System may not be acquired by prescription or adverse possession. **Rodriguez v. Francisco**, G.R. No. L-12029, June 20, 1961. (2) 203
- Land Registration Act** — Prior unregistered sale of a registered land does not affect an innocent third person who subsequently purchases the same land and to whom certificate of title is issued. **Rodriguez v. Francisco**, G.R. No. L-12039, June 30, 1961. (2) 204
- Land Registration Act** — A homestead, sales or free patent once registered under the Land Registration Act and certificate of title issued in lieu thereof, becomes indefeasible as a Torrens title and any title subsequently issued covering the same property is null and void. **Duran v. Oliva**, G.R. No. L-16589, Sept. 29, 1961. (3) 296

- Land Registration Act** — A motion to dismiss under the Rules of Court avails parties in land registration proceedings. **Duran v. Oliva**, G.R. No. L-16589, Sept. 29, 1961. (3) 296
- Public Land Act** — Act 2847 applies to all alienations or conveyances of land grants by homestead or free patent irrespective of whether the land has been acquired under said Act or any other law. **Francisco v. Certeza**, G.R. No. L-16849, Nov. 29, 1961. (4) 380
- Public Land Law** — Section 118 of C.A. No. 141 explicitly permits the encumbrance, by mortgage or pledge, of the improvements and corps on the land, without any limitation in point of time. **Tolentino v. Baltazar**, G.R. No. L-14597, March 27, 1961 (1) 64
- Torrens Certificate of Title** — Where a certificate of title covers a parcel of land and a new certificate of title is issued to cover lots subsequently segregated therefrom, and there being no cancellation of the first nor any annotation therein of the segregation, the first certificate still covers the segregated lots and annotations thereon bind said lots. **Register Of Deeds v. Nicandro and Nicandro**, G.R. No. L-16448, April 29, 1961. (1) 65

LEGAL ETHICS

- Contempt of Court** — Where it appears that on the same day the judge signed two decisions in regard to a criminal case, one of conviction and one of acquittal, counsel for losing party could not be blamed for filing a complaint for misconduct against the judge. **People v. Elpedes and Anosa**, G.R. No. L-16535, April 29, 1961. (1) 66
- Disbarment** — Double Jeopardy is not a proper defense in disbarment proceedings because they do not partake of the nature of a criminal case. **De Jesus-Paras v. Vailcoes**, Adm. Case No. 439, April 12, 1961. (1) 67
- Disbarment** — Where the act which constitutes gross misconduct in office and a violation of the oath of office is done not for monetary considerations but out of pure generosity, then disbarment is too severe. **Acuña v. Dunca et al.**, Admin. Case No. 128, May 31, 1961. (2) 204

POLITICAL LAW

- Administrative Law** — A justice of the peace suspended by adm. order is not entitled to payment of salary during suspension unless so provided in the order of suspension or of reinstatement. **Abuda v. Auditor General**, G.R. No. L-16371, April 29, 1961. (1) 67
- Administrative Law** — Auctioned property of the municipality may be redeemed by the mayor without municipal council's

- authorization, in the exercise of his duty to protect the interest of the municipality. **Geronimo v. Mun. of Caba and Mangaser**, G.R. No. L-16221, April 29, 1961. (1) 68
- Administrative Law** — Injunction bond responds merely for the release of the merchandise but not the payment of all charges that the importer may be found chargeable under Sec. 1397 of the Rev. Adm. Code. **Mendoza v. Eriberto y David**, G.R. No. L-9452, March 27, 1961. (1) 68
- Administrative Law** — The owner of a piece of land, which is private property, is not required to resort to administrative remedies as a condition precedent to a judicial recourse for the protection of his alleged right. **Baladjay v. Castrillo**, G.R. No. L-14756, April 26, 1961. (1) 69
- Administrative Law** — An increase in an appropriation or salary does not automatically entitle the holder of the position to such increased salary. **Gesolgon, et. al., v. Lacson, et al.**, G.R. No. L-16507, May 31, 1961. (2) 205
- Administrative Law** — Failure of a party to exhaust the administrative remedies provided for by law affects his cause of action, but not the jurisdiction of the court over the subject matter of the case. **Atlas Consolidated Mining & Development Corp. v. Mendoza**, G.R. No. L-15809, Aug. 30, 1961. (3) 297
- Administrative Law** — The Court of Tax Appeals is not vested with jurisdiction to issue writs of prohibition and injunction independently of, and apart from, an appealed case. **Collector v. Yuseco**, G.R. No. L-12518, Oct. 28, 1961. (3) 297
- Administrative Law** — To be a "qualified voter", registration as a voter is not an essential condition. **Aportadera v. Sotto**, G.R. No. L-18876, Nov. 30, 1961. (4) 381
- Administrative Law** — The cashier of the MRR is not an officer of the government and the funds handled by him belong to the MRR as a private corporation and therefore Sec. 636 which refers to government property and Sec. 637 (R.A.C.) which refers to liability of officers accountable for government funds, cannot be made to apply to the MRR cashier causing loss to the company due to the payment by him of forged checks. **Tanchoso v. GSIS**, G.R. No. L-16926, Jan. 31, 1962. (4) 381
- Administrative Law** — A non-civil service eligible cannot invoke the Civil Service Law that he can only be removed for cause, for abolition of his office in good faith is not removal. **Ulep v. Carbonell**, G.R. No. L-17807, Jan. 31, 1962. (4) 382
- Constitutional Law** — Where the applicant for naturalization, before taking the oath, consents to the placing of his citizenship as Filipino in a deed of sale of realty where he is the vendee, he has violated the provisions of the Naturalization Law. **Tan Tian v. Republic**, G.R. No. L-14802, May 30, 1961. .. (2) 206

- Constitutional Law** — Laws enacted in the exercise of police power, to which R.A. No. 119 belongs, may affect tenancy relations created before the enactment or effectivity thereof. Vactions created before the enactment or effectivity thereof. **Valencia v. Surtida**, G.R. No. L-17277, May 31, 1961 (2) 206
- Constitutional Law** — A petition for continuation of naturalization proceedings may be filed after final decision is rendered, but before it becomes executory. **Tan Lin v. Republic**, G.R. No. L-1386, May 31, 1961. (2) 207
- Constitutional Law** — A petition for naturalization should be filed in the CFI of the province in which the petitioner has resided at least one year immediately preceding the filing of the petition in order that such court shall have exclusive original jurisdiction to hear the same. **Sy Cesar v. Republic**, G.R. No. L-14009, May 31, 1961. (2) 208
- Constitutional Law** — A census enumeration, although not final and still subject to correction, may be considered official and made the basis of a redistricting statute. **Macias v. Commission**, G.R. No. L-18648, Sept. 14, 1961. (3) 298
- Constitutional Law** — Disproportionate representation constitutes sufficient ground to avoid a redistricting statute. **Macias v. Commission**, G.R. No. L-18648, Sept. 14, 1961. (3) 298
- Constitutional Law** — Every citizen deprived of his elective franchise has personality to question the validity of a redistricting statute. **Macias v. Commission**, G.R. No. L-18648, Sept. 14, 1961. (3) 299
- Constitutional Law** — The validity of apportionment laws is a judicial question cognizable by the court. **Macias v. Commission**, G.R. No. L-18648, Sept. 14, 1961. (3) 299
- Constitutional Law** — The outgoing President's administration during the period following the proclamation of the election of the new President-elect by Congress and before the latter's assumption of office is no more than a "care-taker" administration. **Aytona v. Castillo**, G.R. No. L-19313, Jan. 19, 1962. (4) 382
- Constitutional Law** — An alien who, in any immigration matter, shall knowingly make under oath any false statement or representations shall be guilty of and offense, and upon conviction thereof, shall, aside from the penalties imposed by law, be subject to deportation. **Shiu Shun Man v. Galang**, G.R. No. L-16486, Dec. 30, 1961. (4) 383
- Election Law** — The absence of the signature of the party in a certificate of candidacy filed by a political party is not necessarily fatal to the candidate. **Alily v. Commission**, G.R. No. L-16165, July 31, 1961. (3) 299
- Election Law** — The judge *motu proprio* may appoint a commissioner to receive, for identification purposes, evidence ob-

- jected to by the litigants. **Asis v. Hon. Ilaos**, G.R. No. L-17451, Jan. 31, 1962. (4) 383
- Election Law** — Only precincts included in the protest may be revised. **Matias v. Hon. Romero**, G.R. No. L-16897, Jan. 31, 1962. (4) 384
- Election Law** — There is no appeal from the CFI's judgment in election contests for vice-mayor. **Gonzales v. Court of Appeals**, G.R. No. L-18255, Nov. 21, 1961. (4) 384
- Election Law** — Only the Supreme Court, not the CFI, has jurisdiction to pass upon decisions, orders and rulings of the Commission on Elections. **Albano v. Hon. Arranz**, G.R. No. L-19260, Jan. 31, 1962. (4) 385
- Expropriation** — The fair market value of property under expropriation is determined as of the time of the actual taking possession, if taken possession of before condemnation proceedings, otherwise as of the time of the filing of the complaint. **Republic v. Phil. Bank of Commerce**, G.R. No. L-14158, April 12, 1961. (1) 70
- Expropriation** — The words "tenants or occupants" used in acts providing for the expropriation of landed estates to be sold at cost to tenants or occupants do not include squatters. **Republic v. Vda. de Caliwan**, G.R. No. L-6927, May 31, 1961 (2) 208
- Law of Public Officers** — The rule that an appointment once cannot be reconsidered specially where the appointee has qualified, does not apply to mass ad-interim appointments. **Aytona v. Castillo**, G.R. No. L-19313, Jan. 19, 1962. (4) 385
- Law of Public Officers** — Upon reaching sixty five years of age, a government employee is automatically retired, as provided for by law. **Fragante v. PHHC**, G.R. No. L-16020, Jan. 30, 1962. (4) 386
- Naturalization** — The decision rendered in a naturalization proceeding is not *res judicata* as to any of the reasons or matters which would support a judgment cancelling the certificate of naturalization for illegal or fraudulent procurement. **Republic v. Go Bon Lee**, G.R. No. L-11499, April 29, 1961. (1) 70
- Naturalization** — Failure to state in petition for citizenship petitioner's former places of residence constitutes violation of the Naturalization Law fatal to his petition. **Keng Giok v. Republic**, G.R. No. L-13347, Aug. 31, 1961. (3) 300
- Naturalization** — Where petitioner resides in Manila, has a family of six to support, owns no real estate and has no other source of income than his salary as manager of a store, his annual income of P8,687.50 is not lucrative for purposes of naturalization. **Keng Giok v. Republic**, G.P. No. L-13347, Aug 31, 1961. (3) 300
- Police Power** — Sec. 770 in relation to Sec. 2678 of the Rev. Adm. Code punishing illegal practice of medicine is constitutional. **People v. Ventura**, G.R. No. L-15079, Jan. 31, 1962. (4) 386

- Public Corporations** — The power of the municipal board to regulate the operation of cockpits does not include the authority to fix the date on which cockfighting may be held. **Quim-sing v. Lachica**, G.R. No. L-14683, May 30, 1961. (2) 209
- Public Corporations** — The vice-mayor has the right to assume the office of the mayor when the latter is "effectively absent". **Paredes v. Antillon**, G.R. No. L-19168, Dec. 22, 1961. (4) 387
- Public Corporations** — The five-day period for motion for reconsideration of decision of the Exec. Secretary refers to both the mayor and respondent or whoever may be adversely affected by the decision. **Vito v. Lacson**, G.R. No. L-16173, Dec. 23, 1961. (4) 387
- Public Corporations** — Municipal ordinances must satisfy the requirement that they should "provide for the health and safety, etc. of the municipality and its inhabitants" in order to be valid. **Pampanga Bus Co. Inc. v. Mun. of Tarlac**, G.R. No. L-15759, Dec. 30, 1961. (4) 388
- Taxation** — For purposes of computing the advance sales tax due to imported automobiles, the particular mark-up as fixed in Sec. 183 (B) in relation to Secs. 184 and 185 of the NIRC shall be added to the landed cost. **Mayon Motor v. Commissioner of Int. Rev.**, G.R. No. L-15000, Mar. 29, 1961. (1) 71
- Taxation** — R.A. No. 1125 provides a remedy to the taxpayer, but not to the government, so that where the taxpayer neither pays his taxes nor contests its validity before the CTA, the government cannot seek recourse to the CTA but has to enforce collection in the ordinary courts. **Republic v. Dy Chay**, G.R. No. L-15705, April 15, 1961. (1) 72
- Taxation** — Where an offer of compromise to pay the tax liability is made and accepted, but the taxpayer fails to pay the full amount of the tax so that a criminal action is instituted, after which the taxpayer pays the balance, the criminal action will not prosper because of the compromise. **People v. Magdaluyo**, GR. No. L-16235, April 20, 1961. (1) 72
- Taxation** — The fact that a suit was filed for the declaration of nullity of ordinances imposing a tax and for the recovery of taxes paid thereunder, tax payments are deemed to be made under protest. **Santos Lumber Co. v. City of Cebu**, G.R. No. L-14618, May 30, 1961. (2) 210
- Taxation** — Money solicited from different persons and given to a school to help the same, is not subject to gift tax, since such money comprises the separate contributions of individuals. **Collector of Internal Revenue v. St. Stephen's Association**, GR. No. L1552, May 31, 1961. (2) 211
- Taxation** — A manufacturer who whole-sells his products at a store maintained by him, apart from his manufactory, is a wholesale dealer taxable as such. **Co Tuan v. City**, G.R. No. L-12481, Aug. 31, 1961. (3) 301

- Taxation** — Associations not organized in accordance with the Cooperative Marketing Law are not entitled to the tax exemption provided therein. **Mithing Bayan Coop. Marketing Ass'n. v. Araneta**, G.R. No. L-14575, July 31, 1961. (3) 301
- Taxation** — Non-taxability of properties used exclusively for religious, charitable and educational purposes is determined by the primary object to which they are devoted. **Herrera v. QC Bd. of Assessm. Appeals**, G.R. No. L-15279, Sept. 30, 1961. (3) 302
- Taxation** — Where the net proceeds of a fund-raising exhibition are substantial and the expenses are exorbitant, the promoter is liable for amusement tax despite the application for exemption. **Calanoc v. Collector of Internal Revenue**, G.R. No. L-15922, Nov. 29, 1961. (4) 388
- Taxation** — The unaltered and unmodified letter of demand or assessment sent by the Collector of Internal Revenue containing a determination of tax liability is considered a decision appealable to the Tax Court; the 30-day period for appeal is jurisdictional and commences to run from the receipt of said letter of demand or assessment. **Ker & Co. v. Court of Tax Appeals**, G.R. No. L-12396, Jan. 1962. (4) 389

REMEDIAL LAW

- Civil Procedure** — The act of counsel in abruptly resting the case of the defendant in the latter's absence does not constitute a confession of judgment. **Fernandez v. Tan Tiong Tick**, G.R.No. L-15877, April 28, 1961. (1) 73
- Civil Procedure** — A complaint seeking to reduce the monthly rental fixed by a final judgment of the court, there being no law to the contrary, states no cause of action. **Quemuel v. Olaes**, G.R. No. L-11084, April 29, 1961. (1) 74
- Civil Procedure** — A decision directing partition is not final, hence not appealable. **Vda. de Zalduarriaga v. Hon. Enriquez**, G.R. No. L-13252, April 29, 1961. (1) 75
- Civil Procedure** — Failure to answer a counterclaim warrants an order of default, except as to a cause in the counterclaim which if answered would merely require a repleading of the complaint. **Zambales College v. Court of Appeals**, G.R. No. L-16371, Mrch 28, 1961. (1) 75
- Civil Procedure** — The negligence of counsel in not informing his client that he had rested his case does not constitute excusable negligence. **Fernandez v. Tan Tiong Tick**, G.R. No. L-15877, April 28, 1961. (1) 76
- Civil Procedure** — Where the defendant appeared in response to summons, presented a motion to dismiss, and the complaint is subsequently amended, no new summons need be served upon him with respect to the amended complaint. **Ong Peng v. Custodio**, G.R. No. L-14911, March 25, 1961. (1) 76

- Civil Procedure** — Where the mayor redeems municipality property, the fact that the redemption money did not come from the municipality does not taint the transaction with invalidity. **Geronimo v. Municipality of Caba and Mangaser**, G.R. No. L-16221, April 29, 1961. (1) 77
- Civil Procedures** — Notice given orally in open court as to the denial of a motion does not constitute service under Rule 27 of the Rules of Court. **Pineda v. Veloria**, G.R. No. L-15145, June 30, 1961. (2) 211
- Civil Procedure** — Although a case appealed from an inferior court to the court of first instance stands for trial de novo, the parties may not raise in the latter court issues not raised in the former. **Zambales Chromite Mining Co. v. Robles**, G.R. L-16182, Aug. 29, 1961. (3) 302
- Civil Procedure** — Appellate jurisdictional amount in the Court of Appeals and in the Supreme Court is determined by the individual claims of the litigants not by the totality of all their claims. **Northwest Tractor & Equip. (Phil.) Corp. v. Morales Shipping Co.**, G.R. No. L-5733, Oct. 19, 1961. (3) 302
- Civil Procedure** — Even where private counsel handled the prosecution of the criminal case, notwithstanding his reservation to file a separate civil action, judgment in the criminal case, awarding civil liability, constitutes no bar to the subsequent filing of the civil action against persons who may be liable and not parties to the criminal action. **Canlas v. Chan Lin Po**, G.R. No. L-16929, July 31, 1961. (3) 303
- Civil Procedure** — Execution pending appeal must be for weighty reasons in all cases, especially where public office is involved. **Tabuena v. Court of Appeals**, G.R. No. L-16290, Oct. 31, 1961. (3) 304
- Civil Procedure** — Failure of counsel's mailing clerk to forward a pleading required in the action may constitute accident or excusable negligence affording relief from the order dismissing the action for the omission. **Nat. Abaca & Other Fibers' Corp. v. Pore**, G.R. No. L-16779, Aug. 16, 1961. (3) 304
- Civil Procedure** — The rule that a judgment on a compromise agreement is not appealable and is immediately executory does not apply where the judgment is indefinite or uncertain, or conditional. **Cotton v. Almeda-Lopez**, G.R. No. L-14113, Sept. 19, 1961. (3) 305
- Civil Procedure** — The power to issue a writ of execution is judicial in nature and cannot be vested in administrative bodies like the Workmen's Compensation Commission. **Divinagracia v. Court of First Instance**, G.R. No. L-17690, Dec. 28, 1961. (4) 389
- Civil Procedure** — The counsel cannot assume that he is entitled to a 30-day extension for his period of appeal by reason

- of "pressure of work from other cases". **Hon. Bello v. Fernando**, G.R. No. L-16970, Jan. 30, 1962. (4) 390
- Civil Procedure** — In the redemption of properties sold at an execution sale, the amount to be paid is not the judgment debt but the purchase price and the tender of a part thereof is insufficient. **Castillo v. Nagtalon**, G.R. No. L-17079, Jan. 29, 1962. (4) 390
- Criminal Procedure** — The jurisdiction of the court in criminal offenses is determined by the penalty provided by law for the offense and not that imposed on the accused after trial. **People v. Cuello**, R.G. No. L-14307, March 27, 1961. (1) 78
- Criminal Procedure** — The law does not impose upon the court the duty to appraise the accused of the nature of the penalty to be meted out to him in case he pleads guilty to the charge with the assistance of counsel. **People v. Ama**, G.R. No. L-14783, April 29, 1961. (1) 78
- Criminal Procedure** — A sworn written complaint need not be filed in the office of the fiscal before he can conduct the required preliminary investigation preparatory to the filing of a formal charge except if the offense is one which cannot be prosecuted de officio or is private in nature or when it pertains to those cases which need to be endorsed by specified public officers. **Hernandez v. Albano**, G.R. No. L-17081, May 31, 1961. (2) 212
- Criminal Procedure** — The subsequent arrest of the principal on another charge while he is out on bail does not operate ipso facto as a discharge of his bail. **People v. Otiak**, G.R. No. L-14457, June 30, 1961. (2) 213
- Criminal Procedure** — Where the principal issues in both civil and criminal cases are the same and arise from the same facts, it is not necessary that the civil case should first be resolved before taking the criminal case. **Benitez v. Concepcion**, G.R. No. L-14646, May 30, 1961. (2) 213
- Criminal Procedure** — Inferior courts have original jurisdiction over the specific crimes prescribed in Section 87 of the Judiciary Act, and over all the incidents thereof, irrespective of the penalties provided by law therefor and of the nature of such incidents. **Paringit v. Masakayan**, G.R. No. L-16578, July 31, 1961. (3) 305
- Criminal Procedure** — Conviction or acquittal can be had upon a defective complaint if no objection is raised. **People v. Silva**, G.R. No. L-15974, Jan. 30, 1962. (4) 391
- Criminal Procedure** — The acquittal of the accused from a lesser offense which is an ingredient of a more serious one constitutes a bar to the prosecution of the latter under the principle of double jeopardy. **People v. Silva**, G.R. No. L-15974, Jan. 30, 1962. (4) 391
- Criminal Procedure** — A person's testimony under oath in the witness stand is sufficient compliance with the requirement

- of filing an affidavit of merit in a motion for new trial. **Pa-
redes v. Borja**, G.R. No. L-15559, Nov. 29, 1961. (4) 392
- Criminal Procedure** — A mere recommendation of dismissal
by an assistant city fiscal who conducted the preliminary in-
vestigation of a case is not a final resolution of dismissal. **Peo-
ple v. Yu Go Kee**, G.R. U-16155, Nov. 29, 1961. (4) 392
- Judiciary Act** — The justice of the peace, not the municipal
mayor, has the power to appoint a clerk of court. **Garcia v.
Pascual**, G.R. No. L-16950, Dec. 22, 1961. (4) 393
- Provisional Remedies** — Property subject to the jurisdiction
of one court cannot be interfered with through injunction by
another court of equal and coordinate jurisdiction. **National
Power Corporation v. Hon. De Veyra**, G.R. N. L-15763, Dec.
22, 1961. (4) 393
- Provisional Remedies** — A judgment against a defendant can-
not per se be enforced against the surety without a final
judgment against the latter's counterbond. **Vet Bros. & Co.
Inc. v. Movido**, G.R. No. L-16662, Jan. 31, 1962. (4) 394
- Special Civil Actions** — Mandamus will not lie to compel a
judge to decide on the merits a motion for admission to bail
when the accused has not yet been arrested. **Feliciano v.
Pascolan**, G.R. No. L-14657, July 31, 1961. (3) 306
- Special Civil Actions** — For mandamus to lie, the right must
be clear, the duty enjoined must be clearly defined and there
must be no other remedies available. **Alido v. Alar**, G.R. No.
L-16822, Nov. 29, 1961. (4) 394
- Special Civil Actions** — Certiorari or prohibition, not a direct
action of annulment, is the proper remedy to set aside the de-
cision of the Board of Liquidators. **Alvarez v. Board of Li-
quidator**, G.R. No. L-14834, Jan. 31, 1962. (4) 395
- Special Proceedings** — A sale of properties of the estate of a
deceased s beneficial to the interested parties must be made
only after due notice to the heirs and a hearing of the appli-
cation for authority to sell. **Bonaga v. Soler**, G.R. No. L-15717,
June 30, 1961. (2) 214
- Special Proceedings** — A guardian cannot be legally removed
from his trust except for the causes mentioned in the Rules of
Court and the court in using its discretion to remove him must
confine itself to any of those grounds. **Bengzon v. PNB**, G.R.
No. L-17066, Dec. 1961. (4) 395
- Special Proceedings** — Notice to the heirs and other interested
persons is mandatory for the validity of any conveyance of
property held in trust by the deceased, otherwise, the order
of conveyance and the conveyance itself are void. **De Jesus v.
De Jesus**, G.R. No. L-16553, Nov. 29, 1961. (4) 396
- Special Proceedings** — Attorney's fees, being administration
expenses, shall be borne by the estate under administration,
not by the administratrix. **Montemayor v. Heirs of Gutierrez**,
G.R. No. L-16959, Jan. 30, 1962. (4) 396

- Special Proceedings** — An extra-judicial partition made with-
out the knowledge of the other heirs does not bar them from
contesting it. **Beltran v. Ayson**, G.R. No. L-14662, Jan. 30, 1962. (4) 397

COURT OF APPEALS CASE DIGEST

CIVIL LAW

- Agency** — There is an implied agency where the principal
fails to repudiate the acts of the unauthorized agent and,
instead, accepts the benefits therefrom. **Basa v. Sobremonte**,
(CA) No. 24558-R, Apr. 27, 1960. (3) 307
- Compromise** — An amicable settlement entered into by a party
litigant is valid though the signature of his counsel does not
appear in the compromise agreement. **Sison v. Fernandez**,
(CA) No. 24943-R, Nov. 23, 1959. (1) 79
- Contracts** — In an assignment of credit the consent of the
debtor is not essential, nor is it necessary to make him liable
to the assignee. **Elizalde & Co., Inc. v. Binan Transportation
Co.**, (CA) No. 12037-R, Apr. 6, 1960. (2) 215
- Credit Transactions** — Mandamus will not lie to compel the
sheriff to release property seized in an extra-judicial fore-
closure of a chattel mortgage on petition of a third-party
claimant. **Hodges v. The Prov'l. Sheriff of Negros Occidental**,
(CA) No. 23372-R, Sept. 28, 1959. (1) 79
- Credit Transactions** — A chattel mortgage constituted on a
house is a nullity and its registration in the Chattel Mortgage
Registry is merely a futile act. **Genove v. Manalo**, (CA) No.
21423-R, April 8, 1960. (2) 215
- Damages** — Where the plaintiff is guilty of contributory neg-
ligence, the liability of the defendant is mitigated. **People v.
de Joya**, (CA) No. 22963-R, Jan. 28, 1960. (1) 80
- Damages** — A consumer is entitled to recover moral damages
from an electric company that disconnects its service wires
without notice and without just cause and fails to reconnect
the same despite an order of the Public Service Commission.
Aguzap v. San Marcelino Elec. Co., (CA) No. 24403-R, May 26,
1960. (3) 307
- Damages** — Damages recoverable for the loss or impairment of
earning capacity in cases of temporary or permanent personal
injury and in case of death caused by quasi-delict are based on
the loss or impairment of the earning capacity of the victim
himself and not of any relative or next of kin of the injured
person. **Repato v. La Mallorca**, (CA) No. 23389-R, May 26, 1960. (3) 308
- Damages** — Answers to questions propounded by commis-
sioner acting for the court in the course of a judicial proceed-
ing, although they may be defamatory in nature, when relevant
and material to a matter in issue, constitute privileged matter

- and cannot give rise to any liability for damages. **Dy Piao v. Ty Sin Tei**, (CA) No. 24966-R, May 30, 1960. (4) 398
- Human Relations** — A breach of promise to marry is actionable within the meaning of Art. 21 of the New Civil Code. **Bobiles v. Almine**, (CA) No. 241-63-R, Mar. 4, 1960. (3) 308
- Obligations and Contracts** — For a contract to be rescinded in fraud of creditors, the plaintiff seeking the rescission must legally enjoy the character of a creditor; there must be fraud; and the credit cannot be satisfied in any other manner. **Araneta Institute of Agriculture v. Gapuz**, (CA) No. 24670-R, March 5, 1960. (2) 216
- Partnership** — The sale of shares to additional partners, though unregistered, renders the incoming partners liable for the partnership obligations. **PNB v. M. M. Domingo & Co.**, (CA) No. 1543-R, Jan. 30, 1960. (2) 217
- Partnership** — Misappropriation of partnership capital ipso facto terminates the partnership supposed to be formed and there is no need for dissolution. **Ventura v. Pabalan**, (CA) No. 24205-R, May 28, 1960. (4) 398
- Persons** — Irregularities in the application for and issuance of the marriage license do not necessarily vitiate the marriage, if all the essential requisites for the validity of the same are complied with. **San Gabriel v. San Gabriel**, (CA) No. 23727-R, Nov. 27, 1959. (1) 81
- Persons** — The prosecuting officer, in case of nonappearance of the defendant in an action for the annulment of marriage, shall inquire whether or not a collusion exists; in the absence thereof, he shall intervene for the state to take care that the evidence for the plaintiff is not fabricated. **San Gabriel v. San Gabriel**, (CA) No. 23727-R, Nov. 27, 1959. (1) 81
- Persons** — A husband living with and taking care of his incapacitated wife is the natural guardian over her person as well as over her part in conjugal properties, and as to her paraphernal properties, he may be appointed guardian over the same. **Espinosa v. Figueroa**, (CA) No. 24307-R, Mar. 25, 1960. (3) 308
- Persons** — Legal separation on the ground of "attempt by one spouse against the life of the other" cannot be granted where the assault is not coupled with intent to kill. **Veloira v. Veloira**, (CA) No. 24105-R, April 29, 1960. (3) 309
- Persons** — There is no fraud when a man contracts marriage knowing that the bride is pregnant. **Castro v. Dabu**, (CA) No. 23270-R, June 22, 1960. (4) 399
- Sales** — Purchasers pendente lite are not purchasers in good faith, being presumed to be aware of the litigation and, consequently, their rights depend upon the outcome of the suit. **Balanglayos v. Bejerano**, (CA) No. 23447-R, April 29, 1960. (3) 309

- Sales** — The law on double sales applies only to two different sales of the same property made by one and the same person in favor of two different buyers. **Balanglayos v. Bejerano**, (CA) No. 23437-R, April 29, 1960. (3) 309
- Torts** — The doctrine of "res ipsa loquitur" is not applicable where the facts and circumstances of the accident appear in the record. **Riingen v. Chamorro**, (CA) 57 O.G. 1789, Apr. 24, 1961. (4) 399
- Torts** — The doctrine of "attractive nuisance" imposes liability for injuries to children, even though they are technical trespassers, where such injuries are the result of the failure of the owner or the person in charge to take proper precautions to prevent injuries to children by instrumentalities or conditions which he should, in the exercise of ordinary judgment and prudence, know would naturally attract them into unsuspected danger. **Bautista v. Taguba**, (CA) No. 18986-R, June 10, 1960. (4) 399

COMMERCIAL LAW

- Insurance** — Sec. 2 of R.A. No. 487 impliedly repealed Sec. 91-B of the Insurance Act, ordaining the payment of 12 per cent of the amount of the claim due the insured, and which provides that "the lapse of two months from the occurrence of the insured risk will be considered prima facie evidence of unreasonable delay in payment, unless satisfactorily explained. **Aguinaldo Bros. Co. Inc. v. Metropolitan Insurance Co.**, (CA) 56 O.G. 4238, Jan. 11, 1960. (1) 83
- Insurance** — It is not necessary that the insured dies of the illness concealed to prevent his beneficiaries from recovering under the policy. **Henson v. Philam Life Ins. Co.**, (CA) No. 23720-R, April 20, 1960. (3) 310
- Insurance** — The neglect of an insured to disclose the true state of his health after the issuance of his original policy but before reinstatement of his lapsed policy constitutes concealment in law. **Henson v. Philam Life Ins. Co.**, (CA) No. 23720-R, April 20, 1960. (3) 310
- Negotiable Instruments Law** — Where the reference to a chattel mortgage made in a promissory note is a simple recital of the consideration for which the note was given, or is a mere mention of the origin of the transaction, its negotiability is not affected. **Elizalde & Co. Bifian Transportation Co.**, (CA) No. 12037-R, April 6, 1960. (2) 217
- Transportation** — Fortuitous event, as a circumstance exempting the carrier from liability, must not only be the proximate cause but also its sole cause. **Vergara v. Juliano & Co., Inc.**, (CA) No. 23093-R, June 21, 1960. (4) 400

CRIMINAL LAW

- Acts of Lasciviousness** — The act of merely touching a girl's private part and nothing more, without threat or force or any consequent pain or humiliation, does not constitute acts of lasciviousness. **People v. Bernaldo**, (CA) No. 26102-R, Oct. 31, 1959. (1) 83
- Acts of Lasciviousness** — The father of the offended party, the latter being a minor, is competent to file a complaint for acts of lasciviousness. **People v. Bernaldo**, (CA) No. 26102-R, Oct. 31, 1959. (1) 84
- Aggravating Circumstances** — The fact that the offended party was in the 6th month period of pregnancy when raped, does not constitute the aggravating circumstance of abuse of superior strength. **People v. Lindo**, (CA) No. 23315-R, Nov. 13, 1959. (1) 84
- Estafa** — A formal demand for payment before the institution of a criminal action for estafa is unnecessary where the complainant is deceitfully induced to part with his money. **People v. Quesada**, CA-GR No. 23316-R, May 18, 1960. (3) 311
- Estafa** — Jewelry misappropriated which has not disappeared and still existing must be returned to the lawful owner without obligation on the part of the latter to pay the loan given for it, despite acquisition of it in good faith and by legal means on the part of the pawnshop. **People v. Quiamco**, (CA) No. 2341-R, April 8, 1960. (4) 400
- Libel** — An explanation published in a subsequent issue of the same newspaper that published the libelous article, even if considered to be an apology by accused does not constitute a defense or justification. **People v. Salumbides**, (CA) No. 14224-R, Jan. 22, 1960. (2) 218
- Maintaining Opium Dives** — The offense of maintaining an opium dive or resort is not included in nor does it necessarily include the crime of visiting said dive or resort. **People v. So**, (CA) Nos. 25774-R & 25775-R, March 9, 1960. (2) 219
- Other Similar Coercions** — Payment of the remuneration of an employee fixed and agreed upon on time and not on commission, piecework or task basis cannot be made to depend upon the success or failure of the enterprise in which he is employed. **People v. Basea**, No. 15588-R, Mar. 8, 1960. (2) 220
- Penalties** — When the penalty imposed is fine and public censure subsidiary imprisonment cannot be imposed in case of insolvency of the accused. **People v. Garcia**, (CA) No. 2674-R, Feb. 29, 1960. (2) 220
- Physical Injuries** — Where the accused voluntarily left their victim after giving him a sound thrashing, without inflicting any fatal injury although they could have easily killed the said victim, considering their superior number and the weapons

- with which they were provided, the intent to kill on the part of the accused is wanting. **People v. Malinao**, (CA) No. 25707-R, June 9, 1960. (4) 401
- R. A. No. 145** — For conviction under R.A. No. 145, it is enough that one solicits, collects, and receives an amount exceeding P20 as commission in consideration of a promised assistance. **People v. Domalaon**, (CA) No. 21585-R, Feb. 29, 1960. (2) 221
- Slander** — To constitute slander, the person defamed must be clearly and definitely identified. **People v. Halili**, (CA) 57 O.G. 3135, April 24, 1960. (4) 401
- Theft** — In theft of large cattle, evidence of subsequent disposal is not necessary for conviction. **People v. Marasigan**, (CA) No. 26054-R, Feb. 29, 1960. (2) 221

LAND TITLES AND DEEDS

- Land Registration Act** — The owner of riparian estate covered by a Torrens title obtains a registrable title to the accretion formed on the estate by the current of the river. **Etorma v. Director of Lands**, (CA) No. 23525-R, Sept. 9, 1959. (1) 84
- Mining Law** — Waiver and abandonment of a mining claim may be implied from the fact that the owner of a piece of land has allowed another to enter and locate minerals therein. **Mencza v. Marquez**, (CA) No. 21344-R, June 28, 1960. (4) 402
- Public Land Law** — A homesteader who sells his homestead and later on redeems it is obliged to reimburse the vendee for the necessary and useful expenses and the expenses of the contract. **Acacio v. Silverio**, (CA) No. 22255-R, Nov. 28, 1959. .. (1) 85

POLITICAL LAW

- Law of Public Officers** — Failure to object to appointment of another to same position held by employee estops him from demanding reinstatement. **Arieta v. Bollos**, (CA) No. 24003-R, March 3, 1960. (4) 402

REMEDIAL LAW

- Civil Procedure** — Active participation in the taking of a deposition after objecting thereto is a waiver of the objections. **Fernandez v. Roxas-Kalaw Textile Mills, Inc.**, (CA) No. 21924-R, Feb. 27, 1960. (1) 85
- Civil Procedure** — Disapproval of a record on appeal on the sole ground that it is typewritten in single space constitutes grave abuse of discretion. **Javier v. Phil. Phoenix Surety and Insurance Inc.**, (CA) No. 25371-R, Dec. 29, 1959. (1) 86
- Civil Procedure** — The exemption from execution as provided for in Sec. 12 (1), Rule 39 of the Rules of Court was not meant to defeat the satisfaction of a final judgment. **Diaz and Delena v. Enriquez**, (CA) No. 24271-R, March 23, 1960. (2) 222

- Civil Procedure** — Dismissal for failure to prosecute constitutes adjudication on the merits in the absence of evidence that it was made without prejudice. **Balanglayos v. Bejerano**, (CA) No. 23437-R, April 29, 1960. (3) 311
- Criminal Procedure** — An accused cannot be convicted of an offense not charged or necessarily included in the complaint or information, even though the offense is proved at the trial. **People v. So**, (CA) Nos. 25774 & 25775-R, March 9, 1960. (2) 222
- Criminal Procedure** — Erroneous conviction under a repealed statute does not prevent conviction under the repealing statute which punishes the same act. **People v. Basea**, (CA) No. 1558-R, March 8, 1960. (2) 223
- Criminal Procedure** — If the defendant does not move to quash the information on the ground of double jeopardy before he pleads thereto, he is deemed to have waived such objection and the same can no longer be entertained on appeal. **People v. Ballesteros**, (CA) No. 19090-R, June 13, 1960. (4) 402
- Evidence** — Although evidence of a previous criminal act is inadmissible to prove that a person performed the same or similar act at another time, the same evidence may be received to prove specific intent, negligence or habit. **People v. Bulan**, (CA) No. 26324-R, April 13, 1960. (2) 223
- Evidence** — Ante-mortem declaration is admissible, but it should be tested for its veracity in the manner in which the veracity of the testimony of any witness is tested. **People v. Delay**, (CA) No. 21622-R, Feb. 27, 1960. (2) 224
- Evidence** — Personal conclusion based on nitrate tests cannot be given credence over the testimonies of witnesses present at the scene of the crime. **People v. Cagurangan**, (CA) No. 26465, Aug. 8, 1960. (4) 403
- Provisional Remedies** — A notice of garnishment of bank deposits does not violate R.A. 1405, for it does not order an inquiry or examination of the amount deposited. **Argallon v. Hon. Lantin and Chua Tiong Chia**, (CA) No. 25419-R, Nov. 28, 1959, 56 O.G. 4449. (1) 86
- Provisional Remedies** — A void order cannot be the basis for contempt. **Chion Bu Hong v. Tan**, (CA) 57 O.G. 3143, April 24, 1961. (4) 403
- Special Proceedings** — Disbursements incidental to administration may be made out of estate funds without previous court approval but the court should thereafter hold a full hearing on the question of whether such were proper or improper. In the Matter of the Petition for the Habeas Corpus of Serrano; **Sanchez and Sanchez**, (CA) No. 27239-R, March 15, 1960. (2) 225