# CASES NOTED

## CIVIL LAW

WHEN THE TERM OF PAYMENT OFFERED FOR A SUBSCRIPTION IS NOT EXPRESSLY ACCEPTED, THE RELATION HAS NOT RIPENED INTO ENFORCEABLE CONTRACT.

FACTS: On June 1, 1948, Damasa Crisostomo, sent a letter of subscription to the Quezon College, Inc., the pertinent portion of which reads:

> Please enter my subscription to dalawang daan (200) shares of your capital stock with a par value of ₱100 each. Enclosed you will find (babayaran kong lahat pagkatapos na ako makapagpahuli ng isda) pesos as my initial payment and the balance payable in accordance with law and the rules and regulations of the Quezon College. I hereby agree to shoulder the expenses connected with said shares of stock. I further submit myself to all lawful demands, decisions or directives of the Board of Trustees of the Quezon College and all its duly constituted officers . . .

Damasa Crisostomo died on October 26, 1948. As no payment appears to have been made on the subscription, the Quezon College presented a claim before the CFI of Bulacan in her testate proceedings, for the collection of ₱20,000 as value of the stock. The claim was opposed, and after hearing, it was dismissed. Claimant appealed.

HELD: As the application was written in general form and the records do not show that the Quezon College accepted the term of payment suggested by the subscriber which was an absolute necessity, the latter was not bound thereby. The relation, in the absence,





as in the present case, of acceptance, did not ripen into an enforceable contract.

In the present case, express acceptance becomes more imperative, as the condition of payment[1] is dependent upon the sole will of the subscriber which renders it void under Article 1115 of the old Civil Code.[2] It cannot be argued that the condition solely is void, because it would have served to create the obligation to pay, unlike the case exemplified by Osmeña *vs.* Rama (14 Phil. 99) wherein only the potestative condition was held void because it referred merely to the fulfillment of an already existing indebtedness.[3] (*Nazario Trillana, Administrator-Appellee, vs. Quezon College, Inc., Claimant-Appellant,* G. R. No. L-5003, Promulgated June 27, 1953.)

Appealed order affirmed.

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A CONDITION THE PERFORMANCE OF WHICH IS LEFT TO THE WILL OF THE DEBTOR IS FACULTATIVE AND THEREFORE VOID, BUT THE OBLIGATION IS NOT; CREDITOR'S REMEDY IS TO ASK COURT TO FIX PERIOD OF PAYMENT.

FACTS: This is an appeal from the decision of the trial court ordering the defendant to pay the plaintiff the debt within four months from the promulgation of the decision.

The cause of action arises from a promissory note, the period of payment of which was left to the will of the debtor due to the phrase "as soon possible or as soon as I have money," thus reducing the issue into whether the condition is null and void.

HELD: According to Art. 1115 of the Civil Code, said condition is null and void, although the obligation is not. If through inadvertence or ignorance, the parties agree on a condition that contravenes the law, it is improper to convert the obligation into a pure and simple one, so that it becomes immediately demandable, for the intention of the parties is to give the debtor a period for payment. To do so would be tantamount to giving a criterion different from that agreed upon by the parties.

[1] To pay the value of the subscription after she had harvested fish.

[2] Entirely preserved in Art. 1182 Civil Code of the Philippines.

[3] A condition, facultative as to the debtor, is obnoxious to the first sentence contained in article 1115 and renders the whole obligation void (*Taylor vs. Uy Tieng Piao et al.,* 43 Phil. 873, 879).

Considering the doctrines and rulings in several cases,[1] the conclusion is that when the period of payment of an obligation is left to the exclusive will of the debtor, the same should be annulled. However, said annulment does not convert the condition into an obligation simple and pure. The recourse left for the creditor is to resort to the courts asking for the fixing of the period of payment.

As the plaintiff asks for the payment of the obligation without first asking the court to fix the period of payment, the filing of the action is premature.

Decision appealed from is reversed. (*Salud Patente vs. Roman Omega, G. R. No. L*-4433, Promulgated May 29, 1953.)

[1] Osmeña *vs.* Rama (14 Phil. 99), Eleizegui *vs.* Manila Lawn Tennis Club (2 Phil. 325), Levy Hmos. *vs.* Paterno (18 Phil. 357), Seoane *vs.* Franco (24 Phil. 320), Yu Chin Piao *vs.* Lim Tuaco (33 Phil. 98) and Gonzales *vs.* De Jose (66 Phil. 369).

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## CRIMINAL LAW

### Justifying Circumstance of Defense of Relatives cannot be Invoked when Accused Killed the Victim in Actual Adultery with His (Accused's) Wife; Conditional Plea of Guilty is Equivalent to Plea of Not Guilty.

Facts: On November 11, 1949, the City Fiscal of Basilan City filed an information for murder qualified by treachery and evident premeditation in the Court of First Instance of Zamboanga, against the accused Moro Sabilul. Before the hearing of the case on November 24, 1949, counsel for the accused manifested to the court that his client would plead guilty to the charge and prayed that the defendant be sentenced to *destierro* because the alleged murder was committed while the deceased Lario was in the act of committing sexual intercourse with accused's wife. The Fiscal argued that the deceased was murdered in cold blood while taking a bath in the creek and that there was evidence that previous to the killing, appellant's wife, who was divorced from the former according to Moro customs, had illicit relations with the deceased. On the basis of these manifestations and without any evidence, the judge found



the appellant guilty of murder and in open court sentenced him accordingly.

On appeal, the Supreme Court rendered decision on June 21, 1951, reversing the judgment appealed from on the ground that as contended by the Solicitor General there must have been misunderstanding as to the entry of plea of guilty by the accused which was conditioned on the penalty provided for in Art. 247, and ordering at the same time that the case be returned to the trial court for new trial. Pursuant to said decision, the lower court set the case for hearing on November 7, 1951, for the reception of evidence. The lower court, having in mind appellant's admission of the killing, his conditional plea of guilty, and the manifestation of his counsel that the accused need not be arraigned, asked the defense to present its evidence, reserving to the prosecution the right to introduce rebuttal evidence. On the evidence thus presented and applying the provisions of section 106 of the Administrative Code for Mindanao and Sulu, the court sentenced him to an indeterminate penalty of 6 years and 1 day to 8 years of *prisión mayor,* with the accessories prescribed by law, to indemnify the heirs of the deceased Moro Lario in the sum of ₱2,000.00, and the costs. Hence the appeal.

Held: The original decision was set aside and new trial ordered in accordance with the observation of the Solicitor General that there must have been misunderstanding as to the entry of the plea of guilty made by the accused. As an accused may not enter a conditional plea of guilty in the sense that he admits his guilt provided that a certain penalty be imposed upon him, the appellant must be considered as having entered a plea of not guilty.

The insinuation that the appellant and his wife had admitted before the fiscal that they were divorced simply because, after the deceased Moro Lario was once caught in appellant's house near Mora Mislayan, both the latter and Moro Lario were fined in the sum of fifty pesos by Moro Iman Ilul, an indication of divorce, cannot prevail over the positive admission of the spouses in open court that they had not been divorced,—not to mention the fact that there is evidence indicating that the fines were not paid and the spouses never lived apart.

The writer (Chief Justice Paras) is of the opinion that from the facts the appellant is entitled to an acquittal on account of the justifying circumstance of having killed the victim in defense of the person and rights of his wife.[1] There was unlawful aggression on

[1] Art. 11, par. 2, Revised Penal Code.