In the light of the foregoing, the inescapable conclusion is that at least there was no clear intention on the part of Congress to amend Article 68. Indeed the rational presumption is that if there had been such an intention the lawmakers should have said so expressly, instead of leaving the change to inference. As such it should be maintained, under the present set-up of legal provisions, that minors between the ages of 16 and 18 years do not come under the penultimate paragraph of Article 80 but are still entitled to the privileged mitigating circumstance of minority under Article 68, paragraph 2, thereby making the penalty imposable upon them lower by one degree.

MANUEL J. JIMENEZ, JR.

STAMPING OUT THE TRAMP

The existence of vagrancy statutes is a familiar fact to anyone who lives in modern society. The restless wanderings which seem to take possession of men, the young especially, and which induce them to squeeze all from life till the silent hours of the night, expose them likewise to the harsh reality called the law. For the law, reaching out to every phase of human activity equally regulates these wanderings of society's members and imposes penalties on vagrants.

Vagrancy statutes actually date back to common law and the only reason why this is not so readily recognized is because most states have chosen to define its own concept of the offense and to prescribe its own penalty.[1] Nevertheless, despite differences, some of them basic, it may be safely said that the rationale for these laws is the same for all states. These laws are premised upon the "economic truth that industry is necessary for the preservation of society and that he who being able to work and not able otherwise to support himself, deliberately plans to exist by the labor of others, is an enemy to society and to the commonwealth."[2] The Corpus Juris Secundum elaborates on this:

> The purpose of vagrancy statutes is to subject persons whose habits of life are such as to make them objectionable members of society to police regulations promotive of the safety or good order of the community in which they are found and to prevent them from becoming charges on the public but not to punish them for the doing of specific overt acts.[3]

It may be asserted then that the purpose of vagrancy laws ultimately is the preservation of the state. This is achieved for by outlawing vagrants, persons are forced to work, thus relieving the state of the responsibility of directly caring for them. The result is economic stability, so indispensable a condition as modern states are now beginning to realize. Secondly, the clean-up drive that sweeps tramps out of public places and streets promotes good order and constitutes a step towards beautification, a field now receiving serious consideration from state authorities. Finally and most significantly, the regulatory measures embodied in these tramp laws strike at once at the breeding places of crime and cut off its roots before it is given a chance to burst out with its destructive effects. Penalizing vagrants primarily prevents crimes or

[1] 55 AM. JUR., SEC. 1.
[2] *Ibid.*
[3] 91 C.J.S., SEC. 1.

is intended to, at least.[4] This is not too difficultly seen for it has been rightly said that an idle mind is the devil's workshop. A person who loiters around aimlessly is subjected to the strongest temptation to do some mischief, in most cases just to drive away sheer boredom, crippling *ennui*. Thrill killers trace their genesis to vagrancy arrests. That is how their apparently senseless acts assume a degree of intelligibility.

Now, it is at this juncture that the peculiar nature of vagrancy as an offense emerges to the clear. It has been vaguely hinted at in the Corpus Juris Secundum actually when it stated that vagrancy laws aim at subjecting persons with objectionable habits to police regulations and not at punishing them for specific overt acts. Indeed, vagrancy laws do not punish individuals for specific overt acts but for a condition, a status. Phrased differently, vagrancy, in essence, is a status offense. Doubtless, this is manifested through the means of acts (which the laws obligingly define) but such fact does not detract from the real nature of vagrancy as an offense; it remains a status offense. The overt acts mentioned in the statutes merely provide for the standards or clues as to when a person is deemed to have acquired the status. when he can be considered and prosecuted as a vagrant. At bottom, the result is the same: a vagrant is punished not for *doing* certain acts but by *being* what he is.

What we are trying to point out is that really there is no inconsistency. On the contrary, the law is just being consistent. For where felony is usually defined as an act or omission, then no one can be prosecuted except for an act or an omission. Ostensibly this seems to be the case also insofar as vagrants are concerned and indeed the prosecution can point to specific overt acts performed by the vagrant, such as loitering, wandering and the like. Nonetheless, it does not take an especially acute mind to notice that these acts do not in themselves constitute criminal reprehensibility. Their very nature certainly precludes any analogy with murder for instance. What this really shows is that the acts of the vagrant are not the decisive factors for his prosecution but something else. He is not punished for loitering; that in itse'f is harmless. He is punished for his condition which causes him to loiter. In short, it all boils down again to the ineradicable nature of vagrancy as a status offense.

Most states, convinced perhaps of their efficaciousness, have passed laws penalizing the tramp, and the Philippines provides no exception. Article 202 of the Revised Penal Code is specific enough:

[4] 55 AM. JUR., SEC. 2.

> Art. 202. *Vagrants and prostitutes — Penalty.* — The following are vagrants:
>
> 1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;
>
> 2. Any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support;
>
> 3. Any idle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes;
>
> 4. Any person who, not being included in the provisions or other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;
>
> 5. Prostitutes.
>
> For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Also the provision is clear on the penalty:

> Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.[5]

Vagrancy thus in the Philippines is beyond question a criminal offense. It must be mentioned, furthermore, that the vagrancy law in the Philippines is not confined to the Code. The innumerable cities and municipalities throughout the country, in a demonstration of doting concern for the welfare of their inhabitants, have chosen to enact their own ordinances on the matter and if jurisprudence is sorely lacking on the codal provision, it is, to a large extent, because arrests and prosecutions are more frequently made on the basis of the local ordinances, with which apparently peace officers are more acquainted, rather than the provision of the Code.

The general agreement on the matter, that is, that vagrancy is a penal offense, bespeaks likewise a general consensus on the validity or constitutionality of tramp laws. Apparently, the basic purposes cited earlier for which they exist are enough justifica-

[5] ART. 202, REV. PENAL CODE.

tion and render them inoffensive to the fundamental law. Indeed, viewed from those purposes, it would seem legitimate to conclude that the enactment of these statutes properly come within the fold of the state's police power. These statutes are valid exercises of that inherent attribute of sovereignty. Jurisprudence on the matter has clothed it with the respectable adjective of "well-settled."

In the Philippines, particularly, the validity of the vagrancy law and ordinances has at least been implicitly affirmed. Or this much is true: it is a matter of record that they have continued to remain unchallenged. The scant jurisprudence available does not touch upon any constitutional issue but clearly, however, it enforces the law, thereby implying the law's validity. There are cases even when the law is construed. Hence one reads the case of *U.S. v. Molina,*[6] where the conviction of the accused was affirmed; also, *U.S. v. Hart,*[7] which clarified the meaning of "without visible means of support" and *People v. Barabasa*[8] *People v. Gonzales,*[9] both of which gave effect to the Manila ordinance on vagrancy.

The same instance has been consistently displayed by American courts which have firmly established the validity of these laws. That vagrancy statutes satisfy the constitutional requirements to entitle them to come within the fold of police power has so long been recognized to need citation of cases. The standard references present an impressive array of decisions upholding the constitutionality of tramp laws. That is why the July 7, 1967 case of *Fenster v. Leary,*[10] decided by the New York Court of Appeals comes as one of the biggest surprises in recent years. John M. Murtagh, Justice of the Supreme Court of the State of New York, describes it as a piece of most progressive, even radical, judicial thinking on status offenses.[11] One thing is certain: it breaks away from the traditional rule.

The *Fenster* case started in late 1964 when the New York police on three occasions, each about a month apart, arrested Charles Fenster for vagrancy. The charge was that Fenster was a person who "not having visible means to maintain himself, lives without employment all in violation of Sec. 887 (1) of the New York Code of Criminal Procedure".

[6] 23 Phil. 471. (1912).
[7] 26 Phil. 149. (1913).
[8] 64 Phil. 399. (1937).
[9] 56 O.G. 35 (1959).
[10] 20 N.Y. 2d 309, 229 N.E. 2d-282 NYJ 2d (1967)
[11] Murtagh, John M., *Status Offenses and Due Process of Law,* 36 FORDHAM L. REV. 51 (1967).

The first two arrests resulted in acquittals. On his third arrest, Fenster initiated a novel defense and sought an order to prohibit the Criminal Court of New York from hearing the case on the ground that the vagrancy statute allegedly violated was unconstitutional. After surviving a maze of procedural difficulties, peculiar to the American legal system, the state Court of Appeals finally gave due course to his appeal and by a vote of 5-2 sustained Fenster's contention, declaring the statute, violative of the Constitution.

The statute, held the court, constituted "an overreaching of the police power and violated the requirements of due process."[12] It described vagrancy as in no way impinging on the rights or interests of others and "that therefore a statute prescribing such harmless conduct as a penal offense bears no substantial relationship to the prevention of crime or the prevention of public order."

Continuing, the court asserted further:

> Today the only persons arrested and prosecuted as common-law vagrants are alcoholic derelicts and other unfortunates, whose only crime, if any, is against themselves and whose main offense usually consists in their leaving the environs of skid row and disturbing by their presence the sensibilities of residents of nicer parts of the community.

The New York Court of Appeals, thus, evidently, albeit with a touch of the melodramatic, has gone far ahead, ahead even of the New York Revised Penal Law which took effect on Sept. 1, 1967. For surprisingly, this new law, true to tradition and precedents, contains a provision on vagrancy.

Perhaps it is because the United States Supreme Court has made no pronouncement on the matter. There is, to date, no decision yet from the highest American tribunal and it has the final word on issues such as this. However, the same Mr. Murtagh is quick to point to a significant statement of Justice Douglas in a dissenting opinion in the case of *Hicks v. District of Columbia,*[13] which may serve as an indication of what position the U.S. Supreme Court may eventually take when given the chance to pass upon this issue. Justice Douglas remarks in his dissent:

> I do not see how economic or social status can be made a crime any more than being a drug addict can be.

True, drug addiction is quite different from vagrancy but they agree in one respect: they are both status offenses. And it may also be true that Justice Douglas is not the Supreme Court; none-

[12] *Ibid.*
[13] 383 U.S. 252. (1967).

theless, long experience has shown amply that dissents have a way of working themselves into the majority. At any rate, what is sure is that the seed of change has penetrated the court and that seems sufficient to give odds to the possibility of change.

The beginning of this shift in the American outlook on vagrancy cannot be without significance. It may well augur a change of attitude in other jurisdictions, the Philippines included. For there is, to our mind, no radical difference between our vagrancy statute and that of New York. In fact, the Philippine law appears to be broader and more far-reaching than its American counterpart. And if vagrancy prohibitions originate from common law, then the American stance will have, for good or ill, its effect on other states, influenced by American and common law.

There are several points that favor the changed outlook. An offense, based on a person's status, taken in itself, at once looks unjust. There is nothing wrong in punishing an individual for deliberately doing or omitting an act but something seems amiss when a person is penalized simply for attaining a certain condition in life. It becomes akin, when one reverses the tables, to penalizing the rich for being rich. The persons who take to vagrancy are usually the poor. They cannot go into business because they lack capital either in cash or in property. And neither can they borrow. They cannot find work because they do not possess the necessary education. Thus, they easily degenerate into tramps. What this implies is that vagrancy laws leave the impression of being a law against the poor, therefore a law of the affluent. They, who live in "nicer parts of the community", seeking only what agrees with their sensibilities, drive the vagrants off their haunts. Tramps are unpleasant; they destroy the view. It may well be conceded that all this is true. But then perhaps the remedy lies not in turning tramps into criminals but in positive measures of transforming them into responsible citizens.

Moreover, one may validly ask what it is that drives people to vagrancy. As suggested in the preceding paragraph, it is poverty. In a few exceptional cases, perhaps other reasons exist, like wanderlust, family troubles or even plain laziness. By and large, however, it does not seem too inaccurate to assert that the number one cause is still poverty. No proof is necessary to know that vagrancy proliferates usually when the economic conditions of society become exceedingly deficient. When jobs are scarce and prices are high and the distribution of wealth is acutely imbalanced, more tramps are seen in the streets. And this is when it becomes an alarming problem.

This, we think, unravels the fact that the whole thing is not as simple as it appears at first glance. For what this means, in effect, is that the problem of vagrancy at the very least is partly attributable to the state itself. It bears a large part of the blame. For vagrancy will find it difficult to fester unless somehow, somewhere the state has failed in its functions, has mismanaged its affairs. What right, therefore, has the state to send the victims of its own failings to jail? Again, this is what precludes any analogy between vagrancy and murder, or any other crime. For ordinarily, the murderer cannot rightly point to the state as equally or partly to blame. He alone is responsible. Not so with the vagrant. The point we are driving at becomes all the more glaring in the light of the present tendency of the states to be socialistic, expanding bit by bit the scope of its police power. This again opens up the thought that perhaps what tramps precisely need is not imprisonment but reformation, not the clenched fist of retribution but the open hand of mercy, not intolerance but understanding.

At bottom, then, of the vagrancy problem is the failure of a whole society. It is when a man is deprived of reasonable opportunity to make good that he turns to the streets in aimless wanderings. This touches off the enormous complexity of the problem. It cannot now be relegated simply to penology; the presence of economics, politics, sociology is detected as necessarily involved.

It is also of common knowledge that the police has made much use or abuse of the vagrancy law. It has come to be regarded as a ready made weapon which comes in handy when arresting suspects. To detain them without sweat, book them for vagrancy. Their availability thus for investigation (which takes many forms) is assured. Abuses inevitably arise and far from preventing crime, the prohibition against tramps breeds more crimes as extortion and police brutality. A person, going home from a late movie, is accosted just in front of his house and before he knows what happened, he is accused of a crime.

Cops out for added income, stop innocent promenaders and threaten them with this offense unless they come across with something substantial, preferably in the form of peso bills. The fear of scandal and embarassment usually simplify matters for the so-called officers of the law. Booked for vagrancy, the individual is a helpless prey within the confines of a police precinct.

One may also well put to serious doubt the effectivity of the vagrancy statute as a means of crime prevention. It is interesting to note that the *Fenster* decision categorically stated that the law bears no substantial relationship to the prevention of crime or the preservation of good order. How well has the vagrancy law fulfilled its purpose? Has its presence dragged down the line in the graph to any significant degree? If the present situation in the Philippines can serve as an index, the answer is not very far. Definitely not. Crime is still on the rise. It does seem reasonable to suppose that keeping a fellow off the streets will not in

itself erase a criminal intent already hatched. He will still commit the crime if he is really determined. And in this case, does it really matter whether he got the ideas while wandering in the street or sitting in an office?

The rise of criminality, the existence of the vagrancy law notwithstanding, is enlightening. Moreover, it does not sound right to prevent crimes by multiplying them. And yet this is what the vagrancy law in effect accomplishes. It prevents a person from committing a felony by making him a felon at the very outset. Something's wrong somewhere.

As earlier indicated, there are strong grounds to support that crime is more effectively checked if the vagrant is not slapped with the harsh hand of the law but on the contrary is viewed with the eyes of understanding. Penalizing the tramp in many cases only makes him defy the law. The law instead of appearing as his protector, assumes the posture of an enemy, cold and unjust. This should not mean, however, that the tramp must be pampered or turned into a parasite that he already is. It may be difficult, even utopian, but better results are obtainable if by presenting him with opportunities that reasonably lie within his reach, he can with his own efforts largely, succeed in emerging out of his rut. At least these possibilities can be explored.

But be all this as it may, the *Fenster* case succeeds in one thing: it has awakened the need of re-examining the concept of vagrancy. New justifications are being called for to ground its continued presence in the statute books.

JOSE MARIO BUÑAG

THE NEGLECTED CRIME OF NEGLIGENCE

The development of a doctrine of law may take the form of dramatic reversals of well-established rulings.[1] This form of development, though it may constitute an embarrassing admission of a past injustice, has one saving virtue: it is definitive. It points at the erroneous decision, holds it up, and slays it.

A doctrine of law may likewise develop in slow and imperceptible degrees, by clarifications, elaborations and modifications which may erode the old ruling to the point of extinction. It is doctrinal development of this sort which actually gives rise to more controversies and stirs up more serious disturbances in jurisprudence. It is vexing, it confounds; and so one must needs reconcile, quality, and distinguish.

One such disturbance occurred in the jurisprudence on criminal negligence. Is negligence or imprudence, as defind in Article 365 of the Revised Penal Code, merely a manner of incurring criminal responsibility? Or, is it a crime distinct in itself?

There had been no doubt, a little more than a decade ago, that negligence or imprudence was merely a manner of incurring criminal responsibility; the Supreme Court had so ruled quite categorically in 1939.[2] Not until 1955.

What happened in 1955 that put an end to this certainty? The Supreme Court, in the case of *Quizon v. Justice of the Peace* decided in that year, said:

> In intentional crimes the act itself is punished; in negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible.*[3]

The implications of such a ruling, no doubt, are stunning. As a matter of fact, doubts were expressed in certain quarters about its ability to survive the passage of time. Would it eventually be abrogated by subsequent decisions? Or would it be reaffirmed?

It was reaffirmed; first, in the case of *People v. Cano,*[4] promulgated in 1966; then, in the case of *Pabularío v. Palarca,*[5] pro-

[1] An instance of this is the abrogation of the Moncado Doctrine by the Stonehill Case on the question of the admissibility of illegally obtained documentary evidence.

[2] This was in the case of *People v. Faller*, 67 Phil. 529 (1939).

[3] 97 Phil. 342, 345 (1955).

[4] G.R. L-No. 19660, 24 May 1966.

[5] G.R. L-No. 23000, 4 November 1967.

mulgated in 1967. The ruling, however, is not so neat and simple as it appears; if applied indiscriminately it can result in absurdities. By reaffirming the ruling, the two last-mentioned cases have only served to stress the need for clarifying the ruling, for fixing the limits of its application, by making, alas, more distinctions.

The problem at hand then is: what is the state of Philippine jurisprudence on criminal negligence; how may the ruling in the latest cases be reconciled with the general principles of criminal law; what are the limits of its application? In answering these questions, we shall try to trace the development of Philippine jurisprudence on the matter. But before we do this, it would be well to restate some basic notions on criminal negligence.

Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. Simple imprudence consists in the lack of pre-aution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest. [6]

Criminal negligence has also been defined as the omission to do something which a reasonable or prudent person would do, or the doing of something which such person would not do under the circumstances surrounding the particular case. [7]

According to some authority, the negligence which will impose criminal liability must be of a higher degree than is required to establish negligence upon a mere civil issue. [8] In the light of the express provision of Article 365 of the Revised Penal Code, however, it is doubtful whether a real distinction can be made between that degree of negligence required upon a mere civil issue and that degree sufficient to characterize the negligent act as criminal. Article 365 does not only punish reckless imprudence but also simple imprudence or negligence; and one can hardly imagine any degree of negligence, no matter how slight, that will not fall somehow under the category of simple negligence. An act, therefore, has to be either criminally negligent, or it is not negligent at all.

In the concrete, criminal negligence is difficult to define. Conduct of the "reasonable and prudent man" is too general and abstract a criterion to enable one to determine *a priori* whether an act constitutes criminal negligence or not. The determination of

[6] Art. 365, REVISED PENAL CODE.

[7] 65 C.J.S. p. 1271 note 31.

[8] 38 AM. JUR., NEGLIGENCE, SEC. 9.

criminal negligence, therefore, will have to depend upon the peculiar facts of each case.

Liability for negligence, of course, depends upon a showing that the injury suffered by the plaintiff was caused by the alleged wrongful act or omission of the defendant. Merely to show a connection between the negligence and the injury is not sufficient to establish liability for negligence. The connection must be such that the law will regard the negligent act as the proximate cause of the injury. [9]

According to some decisions in the United States, a negligent act is not in itself actionable, and only becomes the basis of an action where it results in injury to another. Accordingly, it is said that the injury is the gravamen of a cause of action for negligence. [10]

DEVELOPMENT OF PHILIPPINE JURISPRUDENCE ON CRIMINAL NEGLIGENCE

THE FALLER CASE

That negligence is not a crime in itself but simply a way of committing it was asserted most categorically in the case of *People v. Faller;* [11] and so it is with this case that we will begin to trace the development of Philippine jurisprudence on criminal negligence.

Faller was charged with the crime of damage caused to another's property wilfully and maliciously. After hearing the evidence, the trial court found that the damage was not caused wilfully or maliciously but through reckless imprudence, and it convicted him of violation of Article 365 of the Revised Penal Code which states:

> When the execution of [the negligent act] shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than twenty-five pesos.

On appeal Faller claimed that he was sentenced for a crime with which he was not charged, saying that a crime maliciously and wilfully committed is different from that committed through

[9] *Ibid., Sec.* 27

[10] Ibid., Sec. 28, Note, however, that the ruling in the *Quizon* case departs somewhat from this principle. It says that what is principally penalized is the "mental attitude or condition behind the Act."

[11] *Supra* note 2.

reckless imprudence. The issue, in effect, was whether damage to property through reckless imprudence, under Article 365, was a crime distinct in itself or merely a form of malicious mischief, [12] committed not wilfully but through reckless imprudence. If it was a crime distinct in itself, then Faller would be correct in his contention that he was convicted of a crime with which he was not charged. If not distinct in itself, but simply a negligent form of malicious mischief, then the conviction of Faller would be proper.

The Supreme Court adhered to the latter view. It said:

> x x x The appellant was convicted of the same crime of damage to property with which he is charged. Reckless imprudence is not a crime in itself. It is simply a way of committing it and merely determines a lower degree of criminal liability. [13]

The allegation in the information, not objected to, that the damage to the property was done not only "wilfully and maliciously" but also "unlawfully and criminally," is broad enough to cover the other form of damage to property, *viz*, that committed through reckless imprudence.

The opinion of Justice Laurel, concurring in the result but dissenting with the rationale of the judgment, is interesting in that it anticipated the ruling in the *Quizon* case *infra*. Said Laurel:

> If malicious mischief (Art. 327, Revised Penal Code) is an offense distinct from damage to property by reckless imprudence (Art. 365, Revised Penal Code) and the latter is not necessarily included in the former or the situation does not call for the application of other exceptions laid down by this court, the conviction of the accused under article 365 of the Revised Penal Code, notwithstanding his prosecution under article 327 thereof, was erroneous. An accused is entitled to be informed of the nature and cause of the accusation against him (par. 17, sec. 1, Art. 111, Constitution of the Philippines, in relation to section 15, par. 2, and section 6, par. 3, of General Orders, No. 58), and for this purpose the law requires that a complaint or information must charge but one offense, subject to a single exception (sec. 11, General Orders, No. 58). [14]

Justice Laurel, however, concurred in the result for two reasons. First, the accused himself, in the course of the trial, put up the defense that at most he was responsible for damage to property

[12] Art. 327 provides: "Any person who shall deliberately cause to the property of another any damage not falling within the terms of the next preceding chapter [i.e., Arson and Other Crimes Involving Destruction] shall be guilty of malicious mischief."

[13] People v. Faller, *supra* note 2 at

[14] *Id.*, at 530.

by reckless imprudence. "Secondly, *assuming* that the two offenses here are distinct, I think that they are at least akin to each other so as to justify the application of the rule laid down in United States v. Solis (7 Phil., 195), and United States v. Quevengco (2 Phil., 412)." [15]

There is, to be sure, a note of difference in Justice Laurel's assertion of the distinctness of damage to property through reckless imprudence as a crime. As a matter of fact, he does not really assert it; for he hides behind such suppository words as "if" and "assuming." Nevertheless, the idea had been broached. And it was up to subsequent decisions to convert the supposition into an assertion.

THE QUIZON CASE

The supposition was converted into an assertion, making it the rationale of the judgment, in *Quizon v. Justice of the Peace.* [16]

A criminal complaint was filed against Quizon in the Justice of the Peace Court of Bacolor, Pampanga, for damage to property through reckless imprudence, the value of the damage amounting to ₱125.00. Quizon filed a motion to quash on the ground that under Article 365 of the Revised Penal Code the penalty which might be imposed on him ranges from ₱125.00 to ₱375.00 (i.e., three times the value of the damage). This latter amount was in excess of that which may be imposed by the Justice of the Peace Court, which is ₱200.00. The justice of the peace forwarded the case to the Court of First Instance of Pampanga, but the latter remanded the case to him for trial on the merits, saying that the justice of the peace court had jurisdiction. Quizon appealed from this ruling of the Court of First Instance.

Under the Judiciary Act of 1948, before its amendment, [17] the Court of First Instance had original and exclusive jurisdiction over "all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos." [18] Under the same Act, justice of the peace and municipal courts are given original jurisdiction to try "all criminal cases arising under the laws relating to [among seven others] malicious mischief." [19] Jurisdiction over cases of malicious mis-

[15] *Id.*, at 531.

[16] *Supra* note 3.

[17] The amendatory Act was R.A. 3828, approved on 22 June 1961, which raised the ceiling of the inferior courts' jurisdiction from ₱200.00 to ₱3000.00.

[18] Sec. 44, Judiciary Act of 1948.

[19] Sec. 87 (c)-6, Judiciary Act of 1948.

chief (and the seven others) is concurrent with the Court of First Instance when the penalty to be imposed is more than six months imprisonment or a fine of more than ₱200.00. [20]

The issue, therefore, was "whether the justice of the peace court has concurrent jurisdiction with the court of first instance when the crime charged is damage to property through reckless negligence or imprudence if the amount of the damage is ₱125.00," (i.e., if the maximum amount of the penalty is ₱375.00).

The High Court, through Mr. Justice J.B.L. Reyes, answered in the negative. To hold that the justice of the peace court has jurisdiction over damage to property through reckless imprudence because it has jurisdiction over cases of malicious mischief, is to assume that the former offense is but a variant of the latter. This assumption is not legally warranted. Invoking the authority of the Spanish commentator Cuello Calon, the Court said that in cases of malicious mischief the felon should "act under the impulse of a *specific desire to inflict injury* to another; 'que en el hecho concurra animo specifico de dañar.' " [21]

The Supreme Court then proceeded to discuss the nature of criminal negligence, as defined in Article 365 of the Revised Penal Code. This portion of the decision was quoted verbatim by the two subsequent cases of *People v. Cano* [22] and *Pabulario v. Palarca*: [23]

> The proposition (inferred from Art. 3 of the Revised Penal Code) that "reckless imprudence is not a crime in itself but simply a way of committing it and merely determines a lower degree of criminal liability" is too broad to deserve unqualified assent. There are crimes that by their structure cannot be committed through imprudence: murder, treason, robbery, malicious mischief, etc. In truth, criminal negligence in our Revised Penal Code is treated as a mere *quasi offense*, and dealt with separately from wilfull offenses. It is not a mere question of classification or terminology. In intentional crimes, the act itself is punished; in negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible*. Much of the confusion has arisen from the common use of such descriptive phrases as "homicide through reckless imprudence," and the like; when the strict technical offense is, more accurately, "reckless imprudence resulting in homicide;" or "simple imprudence causing damages to property."

[20] People v. Palmon, 86 Phil. 850 (1950); People v. Peñas, 86 Phil. 596 1950); and Natividad v. Robles, 87 Phil. 834 (1950).

[21] Quizon v. Justice of the Peace, *supra* note 3 at 344.

[22] *Supra* note 4.

[23] *Supra* note 5.

> Were criminal negligence but a modality in the commission of felonies, operating only to reduce the penalty therefor, then it would be absorbed in the mitigating circumstances of Art. 13, specially the lack of intent to commit so grave a wrong as the one actually committed. Furthermore, the theory would require that the corresponding penalty should be fixed in proportion to the penalty prescribed for each crime when committed wilfully. For each penalty for the wilful offense, there would then be a corresponding penalty for the negligent variety. But instead, our Revised Penal Code (Art. 365) fixes the penalty for reckless imprudence at *arresto mayor maximum*, to *prision correccional* minimum, if the wilful act would constitute a *grave felony*, notwithstanding that the penalty for the latter could range all the way from *prision mayor* to death, according to the case. It can be seen that the actual penalty for criminal negligence bears no relation to the individual wilful crime, but is set in relation to a whole class or series of crimes. [24]

Reckless negligence resulting in damage to property being a crime distinct from malicious mischief, it does not fall within the jurisdiction of the justice of the peace court. [25] The Judiciary Act of 1948 has given the justice of the peace court a special original jurisdiction over cases of malicious mischief, but not over cases of damage to property through reckless imprudence; this, notwithstanding the fact that the former is more serious than the latter because of the presence of malice or intent.

In his dissenting opinion, Justice Jugo defended quite ably the traditional view that negligence is merely a way of committing a crime and not a crime itself. Article 3 of the Revised Penal Code states that "felonies are committed not only by means of deceit (*dolo*) but also by means of fault (*culpa*). (Note that the law uses the phrase *by means of*, indicating thereby that culpa or negligence is simply a means, a manner of committing a crime, and not the crime itself.) In line with the principle laid down by Article 3, malicious mischief can be committed not only intentionally but also through imprudence.

But how explain the qualifying word *malicious?* Justice Jugo goes back to the Spanish original, which after all prevails over the English text, to seek its true meaning. Jugo observed:

> We should not be misled by the word "malicious" in the phrase "malicious mischief" for that is only a translation of the word "*daños*" as used in the Spanish text which governs. (People v. Abilong, 46 O.G. 1012). The drafter of Article 327 of the Revised Penal Code in using the word "malicious" in the phrase "malicious mischief" did not add

[24] Quizon v. Justice of the Peace, *supra* note 3 at 345.

[25] Unless, of course, the penalty imposable was ₱200.00 or less. Under R.A. 3828, which amended the Judiciary Act, this crime will come within the jurisdiction of the inferior court if the penalty imposable is ₱3000.00 or less.

> anything to the general concept of crimes as defined in Article 3, but may have used the word "mischief" simply to distinguish it from damages which may give rise only to civil liability. However that may be, it is clear that he referred to damage in general which may be committed with deliberate intent or through reckless negligence.[26]

Justice Jugo likewise invoked the *Faller* ruling. According to that case, Jugo said, "a person accused of malicious mischief may be convicted of damage to property through reckless negligence. If the latter crime is *essentially* different from malicious mischief, then the accused could not have been convicted of it."[27]

It will be observed that Justice Laurel's diffident dissent in the *Faller case* has become the majority opinion, and the majority opinion has been reduced to a mere dissent.

Justice Jugo throws a question, rather caustic in its tenor, at the majority: If damage to property (*daños*, in the original Spanish text, but translated unhappily into malicious mischief) can be committed only with malice, but never through reckless imprudence, then why was the case remanded to the court of first instance for trial? If there is no such crime as damage to property through reckless imprudence, then neither the Court of First Instance nor the Justice of the Peace Court can punish it. Justice J.B.L. Reyes' reply is interesting: There is no such crime as damage to property (malicious mischief) through reckless imprudence, but there is such a crime as reckless imprudence resulting in damage to property penalized by Article 365 of the Revised Penal Code. It was in order to punish the latter crime that the Supreme Court remanded the case to the Court of First Instance.

Is the change in designation merely a matter of semantics? We shall later see that it is not; indeed the implications of such a change are tremendous. What is the effect of the *Quizon* ruling on Article 3 of the Revised Penal Code? What is now the precise relation between Article 3 and Article 365? We shall postpone consideration of these questions to a later page. First, let us turn to a discussion of the *Cano* and *Pabulario* cases.

THE CANO CASE

In August 1961 the Provincial Fiscal of Pampanga filed an information accusing Cano of the crime of damage to property with multiple physical injuries, thru reckless imprudence. The information alleged that on 21 September 1960 Cano was driving a La Mallorca Pambusco bus "at a speed more than that allowed by law

[26] Quizon v. Justice of the Peace, *supra* note 3 at 349.
[27] *Ibid.*

and on the wrong side of the road," as a result of which the bus bumped a Philippine Rabbit bus causing damages to the latter bus in the amount of ₱5,923.55 and inflicting physical injuries on the passengers of both buses. Four of the passengers suffered serious physical injuries; 36 suffered slight physical injuries.

Upon arraignment, Cano pleaded not guilty. Months later, he filed a motion to quash the information on three grounds. The first two were prescription of the offense and lack of jurisdiction The third ground, which is the main issue of the case, was "that the crime of slight physical injuries thru reckless imprudence cannot be complexed with damage to property, serious and less serious physical injuries thru reckless imprudence."

The Court of First Instance granted the motion and ordered the prosecution to amend the information within 10 days by striking out all references to slight physical injuries. Reconsideration having been denied, the prosecution appealed.

Th court premised its order upon the theory that the offense of slight physical injuries through reckless negligence cannot be complexed with that of damage to property with multiple physical injuries through reckless imprudence, because "misdemeanor" may not, under Article 48 of the Revised Penal Code, be complexed with grave or less grave felonies.

Was the order proper? Can the crime of slight physical injuries through reckless imprudence be complexed with the crime of damage to property with multiple physical injuries through reckless imprudence, without violating Article 48 of the Revised Penal Code? Is reckless imprudence merely a mode of committing crimes or is it a crime distinct in itself?

The Supreme Court, through Chief Justice Roberto Concepcion, ruled against the propriety of the order.

The information, the Court said, did not really purport to complex two offenses namely slight physical injuries through reckless imprudence and damage to property and serious and less serious physical injuries through reckless imprudence. It merely alleged that through the reckless negligence of the defendant, the bus driven by him hit another bus resulting in slight physical injuries, on one hand, and serious and less serious physical injuries and damage to property, on the other. It is the negligence itself, and not its effect, which is the "vital factor" in offenses committed through negligence.

The Court, furthermore, quoted the same portion of the *Quizon* decision which we reproduced earlier. Reckless negligence is not simply a mode of committing an offense, but an offense distinct in itself. What is principally penalized is the "mental attitude, or

condition behind the act, the dangerous recklessness, lack of care or foresight; the *imprudencia punible.*"

At this stage of the decision, the Court had really said enough to support its judgment. The reckless negligence of Cano was a crime distinct in itself; regardless then of the number and nature of its effects only one crime was committed. Article 48 of the Revised Penal Code, therefore, was irrelevant to the determination of the case; its application was not called for. The Court, however, went on to cite other reasons to bolster its judgment:

> From the viewpoint of trial practice and justice, it is doubtful whether the prosecution should split the action against the defendant by filing several informations, one for damage to property and serious and less serious physical injuries thru reckless negligence before the court of first instance, and another for slight physical injuries thru reckless negligence before the justice of the peace or municipal court. Such splitting would work unnecessary inconvenience because it would result in the presentation of substantially the same evidence in the court of first instance and in the municipal court. Worse still, in the event of conviction in the municipal court and appeal to the court of first instance, said evidence would still have to be introduced once more in the latter court. [28]

These last reasons — procedural expediency and justice — are superfluous. Their inclusion has only served to betray a lack of self-confidence in the ruling that negligence is a distinct offense and in its ability to bear the full burden of the judgment, so that other grounds must be sought to share that burden.

The Pabulario Case

Pabulario was charged in the municipal court of Iligan City in that on or about 26 July 1961, being then the chauffeur of a truck, he drove said truck along the intersection of two streets in such negligent, careless and imprudent manner that said truck bumped a passenger jeep, causing actual damages to said passenger jeep in the total amount of ₱397.00 and causing slight physical injuries to two passengers of the jeep.

Pabulario moved to quash the information on the ground that it charged more than one offense, namely, that of damage to property through reckless imprudence and that of multiple slight physical injuries through reckless imprudence. The motion to quash was denied and so were the motions for reconsideration.

Did the reckless imprudence of *Pabulario* give rise to two different offenses, namely damage to property through reckless imprudence and slight physical injuries through reckless imprudence?

The High Court ruled that the accused committed only one offense: reckless imprudence (under Article 365 of the Revised Penal Code) resulting in damage to property and multiple slight physical injuries. In spite of the multiplicity of its effects such offense may be charged in a single information. The facts of the case are so analogous to those of the *Cano* case that the Court (again speaking through Chief Justice Concepcion) merely quoted its decision in the latter case.

Present State of Philippine Jurisprudence on Criminal Negligence

The *Quizon* ruling has now achieved a certain measure of stability. The last two cases reaffirming it received a unanimous assent. We must now consider the questions we posed in the beginning: How reconcile this ruling with the general principles of criminal law, especially that laid down in Article 3 of the Revised Penal Code? What are the limits of its application?

It will be observed that the *Quizon* case did not declare as totally erroneous the traditional view based on Article 3 of the Revised Penal Code that negligence is merely a manner of committing a crime. In the words of the Court, "The proposition (inferred from Art. 3 of the Revised Penal Code) that reckless imprudence is not a crime in itself but simply a way of committing it and merely determines a lower degree of criminal liability is *too broad to deserve unqualified assent.* There are crimes that by their structure cannot be committed through imprudence: murder, treason, robbery, malicious mischief, etc." [29]

It will perhaps clarify matters if we spread out in our imagination the crimes defined by the Revised Penal Code and arrange them into a spectrum of four divisions. The division on the extreme right stands for criminal negligence (Art. 365). The division second from the right consists of those "crimes that by their structure cannot be committed through imprudence: murder, treason, robbery, malicious mischief, etc." [30] The third division from the right consists of those crimes in which negligence is not an essential element but which can nevertheless result from negligence. The division on the extreme left consists of those crimes in which negligence is an essential element.

There is no controversy with regard to the second division from the right (consisting of those crimes which by their structure cannot be committed through imprudence) because the question of negligence is never involved.

---

[28] People v. Cano, *supra.*

[29] Quizon v. Justice of the Peace, *supra;* italics supplied.

[30] *Ibid.*

It is submitted that with regard to those crimes comprising the division on the extreme left (where negligence is an essential element), the pertinent articles of the Revised Penal Code must govern them, both as to their designation and penalty. The *Quizon* ruling should not be made to apply. It is to this class of crimes that Article 3 and the traditional view that negligence is merely a mode of committing a crime apply. To hold that the negligence in these crimes is a crime distinct in itself and falls under Article 365 is virtually to wipe out the articles in which such crimes are defined; it would be judicial repeal. The court must interpret the law (in this case, the Revised Penal Code) in such a way as to give meaning and effect to all its provisions. An example of this kind of crime is *judgment rendered through negligence.*[31] If this crime is committed, its designation will not be *reckless negligence resulting in a manifestly unjust judgment* but *judgment rendered through negligence.* The penalty, likewise, will be that provided for by Article 205, namely *arresto mayor* and temporary disqualification, and not *arresto mayor* in its minimum and medium periods, which is the penalty provided in Article 365 for a recklessly negligent act which, had it been intentional, would have constituted a less grave felony. (Art. 205 is a less grave felony because it provides for a correctional penalty.)

With regard to the third division from the right, consisting of those crimes in which negligence is not an essential element but which nevertheless may result from negligence, a distinction must be made. If they are committed with deliberate intent, then they will be governed by the particular articles in which they are defined, both as to their designation and penalty. On the other hand, if they are committed through, or result from negligence, then they will be governed by Article 365 both as to their designation and penalty. In the latter case, Article 3 of the Revised Penal Code will not apply. The negligence will not simply be a manner of committing an offense, but an offense itself.

For instance, if homicide is committed with deliberate intent the designation of the crime will simply be homicide[32] and the penalty will be *reclusion temporal.* On the other hand, if the homicide merely results from reckless imprudence, the crime will be designated *reckless imprudence resulting in homicide* and the

[31] Art. 205. Any judge who, by reason of inexcusable negligence or ignorance, shall render a manifestly unjust judgment in any case submitted to him for decision shall be punished by *arresto mayor* and temporary disqualification.

[32] Art. 249 provides: "Any person who, not falling within the provisions of article 246 [parricide], shall kill another without the attendance of any of the circumstances enumerated in the next preceding article [murder], shall be deemed guilty of homicide and be punished by *reclusion temporal.*"

penalty will be *arresto mayor* in its maximum period to *prision correccional* in its medium period. The latter penalty is the penalty imposed by Article 365 of the Revised Penal Code on "any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony x x x."

The question then is: which of the crimes in the Revised Penal Code require negligence as an essential ingredient, and which do no so require but may nevertheless result from negligence?

An article in a previous issue of this journal[33] made a list of those crimes in the Code "where imprudence is involved, either as an element expressly provided by the Revised Penal Code or as an alternative characteristic whose presence would result in the commission of the crime, though not expressly indicated by the literal tenor of the law."[34] The article listed down 37 crimes in the Code in which negligence is involved.[35] Of these crimes only six

[33] General, Rodolfo, *When Negligence Is Criminal,* 5 ATENEO L. J. 200 (1955).

[34] *Id.,* at 201.

[35] These crimes are: (1) Inciting to war or giving motives for reprisals (Art. 118), (2) Arbitrary detention (Art. 124), (3) Delay in the delivery of detained prisoners to proper judicial authorities (Art. 125), (4) Delaying release (Art. 126), (5) Search warrants — abuse in the service of those legally obtained (Art. 129), (6) Searching domicile without witnesses (Art. 130), (7) Offending the religious feelings (Art. 133), (8) Unlawful use of means of publication (Art. 154), (9) Tumults and other disturbances of public order (Art. 153), (10) Other cases of evasion of service of sentence (Art. 159), (11) Commission of another crime during service of penalty imposed for another previous offense (Art. 160), (12) Falsification by public officer, employee or notary or ecclesiastical minister, or by a private individual (Arts. 170-174), (13) Grave scandal and immoral doctrines (Art. 200), (14) Judgment rendered through negligence (Art. 205), (15) Prevarication (Art. 208), (16) Betrayal of trust by an attorney or solicitor — Revelation of secrets (Art. 209), (17) Malversation of public funds or property (Arts. 217-221), (18) Infidelity in the custody of prisoners (Arts. 224-225), (19) Removal, concealment, or destruction of documents (Art. 226), (20) Officer breaking seal (227), (21) Opening of closed documents (Art. 228), (22) Homicide through reckless imprudence (Art. 249), (23) Parricide (Art. 246), (24) Abortion practiced by a physician or midwife and dispensing of abortives (Art. 259), (25) Physical injuries (Arts. 263 and 265), (26) Abortion (Art. 257), (27) Unlawful arrest (Art. 269), (28) Abandonment of persons in danger and abandonment of one's own victim (Art. 275), (29) Abandoning a minor (Art. 276), (30) Indifference of parents (Art. 277), (31) Removal, sale, or pledge of mortgaged property (Art. 319), (32) Unjust vexation (Art. 287), (33) Arson (Arts. 320 to 324 and Art. 326), (34) Substitution of one child for another (Art. 347), (35) Bigamy (Art. 349), (36) Slight insult or defamation (Art. 358), and (37) Damage to property (Art. 365).

require negligence as an essential element.[36] They are: judgment rendered through negligence (Art. 205), betrayal of trust by an attorney or solicitor — revelation of secrets (Art. 209), malversation of public funds or property (Art. 217), infidelity in the custody of prisoners (Arts. 224 and 225), indifference of parents (Art. 277), and damage to property (Art. 365).

REPERCUSSIONS OF THE QUIZON RULING

It is characteristic of judicial rulings that depart from, or vary (no matter how slightly) old doctrines to extend their effects to other unsuspected areas of law. Indeed, the *Quizon* ruling has produced repercussions in certain hitherto settled areas of law, if we are to pursue its logic to the end. Let us examine a few of these areas and see how they are affected by *Quizon*.

First, the designation of crimes. In that portion of the *Quizon* case which we reproduced earlier, Justice J.B.L. Reyes pointed out the inaccuracy of "such descriptive phrases as 'homicide through reckless imprudence,' and the like; when the strict technical offense is 'reckless imprudence resulting in homicide;' or 'simple imprudence causing damages to property.'" As pointed out earlier, however, this new designation should apply only to those crimes in which negligence is not an essential element but which may nevertheless result from negligence. It should not apply to those crimes where negligence is an essential ingredient.

Second, the change in designation is not merely a matter of semantics: it is accompanied by a corresponding change in penalty. Thus, if the reckless imprudence results in homicide, the penalty is *arresto mayor* in its maximum period to *prision correccional* in its medium period. (Art. 365). Were the crime to be penalized under Article 249, which defines and penalizes homicide, *reclusion temporal* would be the penalty imposable. In the latter case, we have to consider, of course, the imprudent manner of committing the crime as a mitigating circumstance, especially the circumtance that the offender had no intention to commit so grave a wrong as that committed. Even then, this will only have the effect of imposing the penalty of *reclusion temporal* in its minimum period; the vast difference in the gravity of the penalty still remains.

Third, the *Quizon* ruling has affected Article 48 on the complexing of crimes. As held in the *Cano* and *Pabulario* cases, although a single negligent act has resulted in injuries which, had

[36] Although the article (note 53) says that imprudence is an essential element in those crimes defined in Arts. 218-221, the letter of the law, however, does not require it. It is only in Art. 217 where the law expressly makes imprudence an essential element.

they been intentional, would have constituted light and grave or less grave felonies, the two felonies may properly be complexed. Or more accurately, the question of proper complexing is irrelevant because only one crime has been committed, *viz.*, imprudence, which resulted in light and grave or less grave felonies.

Fourth, the imposition of a lower penalty will have the effect of bringing down certain cases within the jurisdiction of the inferior courts. Let us take Article 227, (breaking of seal by an officer),[37] which, according to some authorities,[38] may be committed by imprudence. This crime is punishable by *prision correccional* in its minimum and medium periods. It is, therefore, a less grave felony. The medium period of *prision correccional* ranges from 2 years, 4 months and one day to 4 years and 2 months.[39] This is beyond the jurisdiction of inferior courts. (Under R.A. 3828, which amended the Judiciary Act of 1948, inferior courts shall have original jurisdiction over offenses, except violations of election laws, "in which the penalty provided by law is imprisonment for not more than three years, or a fine of not more than three thousand pesos, or both such fine and imprisonment.") If the breaking of the seal, however, resulted from imprudence, which court will have jurisdiction: the court of first instance, or the inferior court? If the crime were *breaking of seal through reckless imprudence*, then the court of first instance would have jurisdiction because the maximum penalty imposable is more than three years. On the other hand, if the crime were *reckless imprudence resulting in the breaking of seal* (Art. 365), the penalty imposable would be *arresto mayor* in its minimum and medium periods[40] (which is below 3 years)[41] and would therefore come within the jurisdiction of the inferior courts. Under the *Quizon* doctrine, the inferior courts will have jurisdiction over the case.

Fifth, where a single negligent act produces two effects which, had the act been intentional, would have constituted two different offenses, is there a necessity for filing two informations? Or is one information sufficient? As held in the *Pabulario case*, only one information is required because there is actually only one offense

[37] Art. 227 provides: "Any public officer charged with the custody of papers or property sealed by proper authority, who shall break the seals or permit them to be broken, shall suffer the penalties of *prision correcional* in its minimum and medium periods, temperary special disqualification, and a fine not exceeding 2,000 pesos."

[38] PUIG PEÑA, cited by General, *supra*, p. 213.

[39] Art. 27, REV. PENAL CODE.

[40] Art. 365 provides: "x x x if [the act committed through reckless imprudence] would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed x x x".

[41] Art. 27, REV. PENAL CODE.

committed, namely imprudence, which produced two effects. (In the *Pabulario* case, the effects were slight physical injuries and damage to property.)

CONCLUSION

The traditional view, based on Article 3 of the Revised Penal Code and reaffirmed in the *Faller* case, that negligence is simply a way of committing an offense has been modified. The *Quizon* case has declared that negligence is not merely a manner of committing a crime but a crime itself punishable under Article 365 of the Revised Penal Code. This ruling, however, has to be qualified. With regard to crimes in which negligence is an essential element, the *Quizon* ruling does not apply; the negligence is not a crime in itself, but simply a way of committing a crime. (Art. 3). With regard to crimes in which negligence is not an essential element but which may nevertheless result from negligence, the *Quizon* ruling applies; the negligence is not only a manner of committing an offense, but an offense distinct in itself. (Art. 365) We have enumerated those crimes in the Revised Penal Code in which negligence is an essential element, and those in which it is not but may nevertheless result from it. This we did by referring to a previous issue of this journal. Lastly, we discussed the repercussions of the *Quizon* ruling in five other areas of law, namely, the designation of offenses, the gravity of the penalties, the complexing of crimes, the jurisdiction over the offenses, and the number of informations to be filed.

RAUL R. CABRERA

A QUESTION OF EXHAUSTION

I. INTRODUCTION

To the three branches of the government, a fourth one can be added, namely, the administrative agencies. These agencies administer the law. In doing so, they promulgate rules and regulations which have the force of law. In the exercise of their power of regulation, they hear and decide cases.

Although administrative agencies are vested with broad powers, their decisions are always subject to court review. However, aggrieved parties cannot immediately resort to court action. The doctrine of exhaustion of administrative remedies is well entrenched in Philippine jurisprudence. Like other legal doctrines, the doctrine of exhaustion of administrative remedies is riddled with exceptions.

As modern society becomes more complicated, we can expect Congress to create more administrative agencies. Hence, it is of paramount importance to know when an aggrieved party must exhaust all administrative remedies before resorting to court action and when he need not exhaust administrative remedies.

II. THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES

A. STATEMENT OF THE DOCTRINE

The Supreme Court has explained the doctrine of exhaustion of administrative remedies in the following terms:

> The doctrine of exhaustion of administrative remedies requires that where an administrative remedy is provided by statute, relief must be sought by exhausting this remedy before the courts will act. The doctrine is based on considerations of comity and convenience. If a remedy is still available in the administrative machinery this should be resorted to before resort can be made to the courts, not only to give the administrative agency opportunity to decide the matter by itself correctly but also to prevent unnecessary and premature resort to the courts.[1]

The application of the doctrine presupposes that the administrative remedy is (a) available to the aggrieved party on his initiative (b) more or less immediately and (c) will substantially protect his claim or right.[2]

[1] Montes v. Civil Service Board of Appeals, 101 Phil. 490, 493 (1957). See also Lamb v. Phipps, 22 Phil. 456, 491 (1912).

[2] JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 424.