clause, the minimum contacts standard elucidated in *International Shoe* shall be used.

The practice of requiring that a foreign corporation must be doing business in the Philippines before it becomes subject to *in personam* jurisdiction effectively limits the exercise of jurisdiction by the court. In the United States, that practice has given way to the application of the 'minimum contacts' standard which effectively expanded the exercise of jurisdiction by U.S. Courts.

Whether or not a foreign corporation is 'doing business' in the Philippines is an issue which is quite difficult to resolve inspite of the standards laid down in the Omnibus Investments Code. However, the new direction charted by the Supreme Court in *Facilities Management Corporation* oversimplifies the standard to be used in determining whether our courts can exercise *in personam* jurisdiction over foreign corporations.

It is desirable to increase the ability of our courts to exercise *in personam* jurisdiction over foreign corporations in the light of increasing volume of transnational transactions. But the expansion resulting from the decision in *Facilities Management Corporation* seems to exceed the bounds of reasonableness. It may be necessary to immediately lay down reasonable criteria which will temper the application of the new standard adopted by the court.

ENFORCEMENT OF CIVIL LIABILITY FOR CRIMINAL ACTS OR OMISSIONS

ANGELIQUE SANTOS*

I. INTRODUCTION

In a paper[1] presented before the delegates of the Tenth National Convention of the Philippine Political Science Association on May 29, 1989, Chief Justice Marcelo B. Fernan stated that an efficient court system would require the streamlining of procedural rules. To this end, the Supreme Court created the Revision Committee of the Rules of Court to study "proposed amendments that would cut procedural red-tape and limit avenues for the abuse of technical rules to delay litigation".[2]

The foregoing statement of objectives, though made six months after the effectivity of the New Rules on Criminal Procedure[3], certainly influenced the introduction of changes in the system. Particularly on the subject of enforcement of civil liability for criminal acts or omissions, the amendments introduced are viewed as an expression of the policy of the Supreme Court "to consolidate proceedings, most obviously for the benefit of the parties and in the interest of a speedy and inexpensive determination of the controversy".[4]

The objectives of the amendments, however, can only be achieved if our courts comply with the new rules. To command obedience, the new rules would have to pass the test of validity, i.e. they must not increase, diminish or modify substantive rights.[5] Set against this test, the new rules on enforcement of civil liability for criminal conduct, contained in Rule 111, may not stand to see the realization of the goals of the Revision Committee of the Rules of

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* J.D. Candidate, 1992, Notes and Comments Editor, Ateneo Law Journal, 1991.

[1] *See* Fernan, *The Judiciary and Challenge of the Times*, 35 ATENEO L.J. 1, 11 (February 1991).

[2] *Id.* at 18.

[3] *See* Supreme Court Resolution dated June 17, 1988.

[4] Gupit, *The Civil Action Under the 1988 Amendments to the Rules on Criminal Procedure*, PHIL. L.G., February 1989 at 5, 11.

[5] PHIL. CONST. OF 1987, Art. VII, Sec. 5 (5).

Court.

The Revision Committee has evidently thought otherwise. After a thorough consideration of the provisions of the Civil Code, it reached the consensus that the New Rule 111 provides for purely procedural rules which do not deprive a party of any of his substantive rights. The lone dissent of Judge Sangco, a consultant, was dismissed with a plea "to give the rule a chance to work".[6]

This article assesses the possibility of success of the New Rule 111 and identifies the problems that may arise in connection with its implementation in the light of Supreme Court decisions under the 1964 Rules of Court, after which it seems to have been patterned.

II. THE NEW RULE 111

Section 1, Rule 111 of the 1985 Rules on Criminal Procedure provides:

> When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action, or reserves his right to institute it separately. However, after the criminal action has been commenced, the civil action cannot be instituted until final judgment has been rendered in the criminal action.

The Revision Committee amended this provision to read:

> When a criminal action is instituted, the civil action for recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.
>
> Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.
>
> A waiver of any of the civil actions extinguishes the others. The insitution or reservation of the right to file, any of said civil action separately waives the others.

[6] Minutes of the Meeting of the Rules of Court Revision Committee, April 1, 1987 at 8.

> The reservation of the right to institute the separate civil action shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.
>
> In no case may the offended party recover damages twice for the same act or omission of the accused.[7]

The following changes may be noted from a comparative reading of the above-quoted provisions of the 1985 and 1988 Rules on Criminal Procedure:

1. The civil action which the New Rule 111 considers impliedly instituted with the criminal action is no longer limited to an action for recovery of indemnity under Article 100 of the Revised Penal Code, but now extends to an action for damages either under Article 32, 33, 34 or 2176 of the Civil Code.

2. The New Rule 111 reinstates the 1964 Rules of Court's reservation requirement for the filing of a separate civil suit even for cases falling under the above-mentioned articles of the Civil Code.

3. The New Rule 111 limits the period within which reservation of the right to file a separate civil action may be made.

4. The New Rule 111 provides that a choice of one remedy operates as a waiver of the others. This bars a situation where a civil action for damages arising out of the same criminal act or omission will be litigated twice - once in the criminal action and again, in a separate civil suit.[8]

The above-enumerated changes represent a major shift in the juristic thinking of the Supreme Court. Back in 1985, reservation of the right to file a separate civil action was regarded as unnecessary if the law authorizes a separate and independent civil action as in the cases falling under Articles 32, 33, 34, and 2176 of the Civil Code.[9] The reason invariably given was that in such cases, the law itself makes the reservation.[10] The reservation requirement, insofar as applied to cases falling under Articles 32, 33, 34 and 2176 of the Civil Code, was also regarded as constitutionally objectionable for

[7] Rules of Court, Rule III, Sec. 1 (October 1, 1988).

[8] Gupit, *Supra* note 4 at 9.

[9] *Id.* at 6.

[10] *Id.*; Bernales v. Bohol Land Transportation, 7 SCRA 276 (1963); Estrada v. Briones, 56 O.G. no. 12 at 2041 (1959).

modifying the substantive right of a party to file an independent civil suit.[11]

Swayed by the considerations that the reservation requirement will prevent not only multiplicity of suits, but also avoid conflicts in decisions of the criminal and civil courts, several members of the Revision Committee argued against the then controlling view. The discussions of the Committee on the subject are quoted hereunder.

> Justice Paras agreed completely with one of the proposals of Justice Vasquez, which is to make a reservation essential even if the action is an independent civil action; ... some members of the Supreme Court are of the opinion, however, that the reservation is not essential because it is already provided in the law, and that if a reservation is required it will be unconstitutional because it will be changing the substantive part of the law; but he always insisted that such a reservation is not really unconstitutional; it does not change at all the giving of independent civil actions; it just provided for one additional requisite; examples, he said, are the rights in the Civil Code; that before a party can maintain an action for the exercise of those rights, there are certain procedural requirements that must be complied with , like paying the docketing fees within the proper period; that even if the civil code gives an independent civil action, there is nothing wrong in the Rules of Court providing that even in those cases, there should be an express reservation.[12]
>
> Reacting to Justice Vasquez' proposal in relation to Art. 2177 that a party cannot have two actions at the same time, Dean Gupit said another justification is that Art. 2177 expressly prohibits the right of double recovery; that whatever right he has will be delimited by that prohibition; so he does not even have to say that the rules will be in conflict with the Civil Code because the Code itself says that he does not have a right against (sic) double recovery, and therefore that prohibits also the filing of the second civil action if one was already filed.[13]
>
> Justice Narvasa observed that when the right ... to bring an independent civil action under Art. 33 is granted ... there is no additional requirement ... to reserve ... and they are providing it now. He then asked whether this is procedural.
>
> Justice Maceren believed it is substantive, that this

[11] *See* Abellana v. Marave, 57 SCRA 106 (1974); Garcia v. Florido, 52 SCRA 420 (1973); Mendoza v. Arrieta, 91 SCRA 113 (1979).

[12] Minutes of Meeting of the Rules of Court Revision Committee, February 26, 1987 at 4.

[13] *Id.* at 5.

> independent civil action was given precisely to give the party a chance to present his claim regardless of a smaller amount of evidence because in a civil action only a preponderance of evidence is required ...
>
> Justice Paras said that even if the criminal action is brought and there is no reservation on the civil action the criminal carries with it the civil; regarding the criminal aspect, proof of guilt beyond reasonable doubt is required, but as to the civil aspect, even if that is a criminal case, only a preponderance of evidence is required.[14]

Whether the justifications offered by the Committee for reinstating the reservation requirement will gain acceptance in legal circles, particularly among members of the Bench, remains to be seen. Note, however, should be made of cases decided during the effectivity of the 1988 Rules on Criminal Procedure which, though not indicative of the Supreme Court's rejection of the New Rule 111, show that long standing objections thereto, particularly on the reservation requirement, have not died down.[15]

III. HISTORICAL NOTE

Before the enactment of the New Civil Code, the Supreme Court consistently ruled that the civil liability of an accused, in the absence of a waiver by the offended party of his civil claim or of an express reservation of his right to institute a civil action after the termination of the criminal case, should be determined in the criminal action.[16] The rulings were based on the pertinent provisions[17] of our procedural rules which trace their beginnings

[14] *Id.* at 6.

[15] The cases of Jarantilla v. CA, 171 SCRA 429 (1989) and Andamo v. IAC, G.R. No. 74761 (November 6, 1990) involved the application of the 1964 and 1985 Rules of Court, respectively. These cases, eventhough penned after the effectivity of the 1988 Rules on Criminal Procedure, reiterated doctrines laid down in earlier cases negating the applicability of the reservation requirement at least to cases involving quasi-delicts.

[16] *See* Rakes v. Atlantic, Gulf & Pacific Co., 7 Phil. 359 (1907); Almeida v. Abaroa, 8 Phil. 178 (1907); U.S. v. Heery, 25 Phil. 600 (1913); People v. Celorico, 67 Phil. 185 (1939); *cf.* United States v. Maquiraya, 14 Phil. 243 (1909).

[17] SPANISH CODE OF CIVIL PROCEDURE, Art. 112 (1882); General Orders No. 58, Sec. 107 (1900); RULES OF COURT, Rule 107, Sec. 1 (1940).

from the Spanish Code of Civil Procedure.[18]

The introduction of the concept of independent civil actions in the Civil Code, which took effect in 1950, changed much of the jurisprudential picture on the subject. The provisions of the Civil Code authorizing the bringing of independent civil actions for certain offenses were seen to have partially amended Rule 107 of the 1940 Rules of Court - the then governing rule on enforcement of civil liability for criminal acts or omissions.[19] With this as premise, the Supreme Court started a decisional trend to the effect that where the law authorizes an independent civil action, the offended party may file a separate civil suit regardless of whether or not he has reserved his right to institute the same in the criminal action.[20]

Against this historical backdrop, it may be reasonably expected that the Supreme Court, in updating the 1940 Rules of Court, would remove the reservation requirement insofar as it referred to cases involving criminal offenses for which the Civil Code grants an independent civil relief. Surprisingly, however, the Supreme Court chose to preserve the requirement in the 1964 Rules of Court.

It was not until after two decades that the rules were amended to conform to decisional trends that preceded the promulgation of the 1964 Rules of Court. The decisions of the Supreme Court during the two decades of operation of the 1964 Rules of Court provide valuable insights on the nature of the right given by the Civil Code to an offended party when it provides for an independent civil action. A clear understanding of the nature of an independent civil action is necessary to determine the validity of the conclusion reached by the Revision Committee that the reimposition of the reservation requirement is purely procedural and does not in anyway deprive a party of any of his substantive rights.

IV. REVIEW OF JURISPRUDENCE UNDER THE 1964 RULES OF COURT

The case of *Abellana v. Marave*[21] was the first to squarely question the constitutional validity of the reservation requirement under the 1964

[18] Annot., 156 SCRA 333 (1987).

[19] Dyogi v. Yatco, 100 Phil. 1095 (1957).

[20] Reyes v. Dela Rosa, 52 O.G. 6548 (1956); *Bernales*, 7 SCRA 276; *Estrada*, 56 O.G. No. 12 at 2041.

[21] 57 SCRA 106.

Rules of Court insofar as it was imposed in cases where the law authorizes an independent civil action. In that case, Abellana was charged with the crime of reckless imprudence resulting in physical injuries. He was convicted and sentenced to pay damages to the injured parties. He appealed his conviction. At this stage, the injured parties filed a civil action for recovery of damages against Abellana and his employer. The defendants moved to dismiss the case on the ground that the offended party did not reserve the right to file a separate civil suit in the criminal case. Ruling for the plaintiffs, the Supreme Court, through Justice Fernando, said:

> The restrictive interpretation they would place on the applicable rule does not only result in its emasculation but also gives rise to a serious constitutional question. Article 33 of the Civil Code is quite clear: "In cases of ...physical injuries, a civil action for damages, entirely separate and distinct from the criminal action may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence." That is a substantive right, not to be frittered away by a construction that could render it nugatory, if through oversight, the offended parties failed at the initial stage to seek recovery for damages in a civil suit. As referred to earlier, the grant of power to this Court, both in the present Constitution and under the 1935 charter, does not extend to any diminution, increase or modification of a substantive right. It is well-settled doctrine that a court is to avoid construing a statute or a legal norm in such a manner as would give rise to constitutional doubt.[22]

The seemingly sweeping statement in *Abellana* led many to believe that Section 2, Rule 111 of the 1964 Rules of Court[23] was inoperative as it infringed the substantive right of an offended party to file an independent civil suit.[24] This persuasion culminated in the elimination in the 1985 Rules of Court of the requirement to reserve the right to file an independent civil

[22] *Id.* at 112-13.

[23] Sec. 2. Independent Civil Action. - In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

[24] Pano, *Overview of Amendments to 1985 Rules on Criminal Procedure*, PHIL. L.G., November 1988 at 2.

action in cases involving violation of political rights,[25] fraud,[26] defamation,[27] physical injuries,[28] refusal to give police aid,[29] and quasi-delict.[30]

A survey of the cases, however, shows that Abellana had rarely, if at all, been relied upon as precedent. More often invoked was the case of *Garcia v. Florido*;[31] where the court ruled that the institution of the civil action for damages during the pendency of the criminal case in which the offended party did not intervene; should have the same effect as an express reservation of the right to file an independent civil suit. The Court explained thus:

> There is no question that the petitioners never intervened in the criminal action instituted by the Chief of Police against the respondent, much less has the said criminal action been terminated either by conviction or acquittal of said accused. It is evident that by the institution of the present civil action for damages, petitioners have abandoned their right to press recovery for damages and have opted instead to recover them in the present civil case. As a result of the action of the petitioners, the civil liability of private respondent to the former has ceased to be involved in the criminal action. Undoubtedly, an offended party loses his right to intervene in the prosecution of a criminal case not only when he has waived the civil action or expressly reserved his right to institute, but also when he has actually instituted the civil action. For by either of such actions, his interest in the criminal case has disappeared.[32]

The Court, in *Garcia*, could have stopped in ruling that reservation of the right to file an independent civil suit need not be express, but may be implied from the institution of the civil action during the pendency of the criminal case. With such a ruling, the Supreme Court would have achieved an amendment of Rule 111 without rendering it totally inoperative. However, the Court chose to raise as alternative argument the footnote of Justice

[25] CIVIL CODE OF THE PHILIPPINES (N.C.C.), Rep. Act. 386, Art. 32 (1950).

[26] N.C.C., Art. 32.

[27] *Id.*

[28] *Id.*

[29] N.C.C., Art. 34.

[30] N.C.C., Art. 2176

[31] 52 SCRA 420.

[32] *Id.* at 248.

Capistrano in *Corpus v. Paje*[33] that Section 2, Rule 111 of the 1964 Rules of Court constitutes an unauthorized amendment of the provisions of the Civil Code on independent civil actions.

> Hence, the proviso in Section 2, Rule 111 with reference to ... Articles 32, 33, and 34 of the Civil Code is contrary to the letter and spirit of the said articles, for the articles were drafted ... and are intended to constitute the exceptions to the general rule stated in what is now Section 1 of Rule 111. The proviso, which is procedural, may also be regarded as an unauthorized amendment of substantive law, Articles 32, 33 and 34 of the Civil Code, which do not provide for the reservation required in the proviso.[34]

Unlike in *Abellana*, the Court in *Garcia* manifested an ambivalent attitude towards the reservation requirement under the 1964 Rules of Court. Although it viewed the requirement as an unauthorized imposition of a precondition to the exercise of the right to institute an independent civil action, the Court was not prepared to rule that the requirement may be entirely dispensed with. Such a ruling would indeed make Articles 32, 33, 34 and 2176 of the Civil Code exceptions to the salutary principles of *lis pendens* and *res judicata*. Under the Rules, the civil action for damages arising from the offense charged was deemed impliedly instituted with the criminal action. The alternative holding in *Garcia* would allow the institution of a separate civil suit for damages based on the same cause of action, i.e., the act or omission complained of as a felony, without, however, requiring the offended party to withdraw his civil interest in the criminal case. The result would be the litigation of an offended party's civil claim in two separate actions.

In *Garcia*, the Court emphasized the fact that the offended party did not intervene in the prosecution of the criminal case. It thereby implied that had the offended party intervened, an altogether different result might have been reached.

In *Roa v. De la Cruz*[35], a 1960 case, the offended party actively participated in the prosecution of the accused for defamation without, however, reserving his right to institute a separate civil action later. Judgment was rendered convicting the accused of slight slander and sentencing her to pay the fine of P50.00. No award of civil damages was, however, made in favor of the aggrieved party. Holding that the offended party could no longer hold

[33] 28 SCRA 1062 (1969).

[34] *Garcia*, 52 SCRA at 428-29.

[35] 107 Phil. 8 (1960).

the accused liable for damages in a subsequent civil case, notwithstanding Article 33 of the New Civil Code, the Court said:

> Article 33 of the New Civil Code provides:
>
> . . . .
>
> Under the above provisions, independently of a criminal action for defamation, a civil suit for the recovery of damages arising therefrom may be brought by the injured party. It is, apparent, however, from the use of the words "may be", that the institution of such suit is optional. In other words, the civil liability arising from the crime charged may still be determined in the criminal proceedings if the offended party does not waive to have it adjudged, or does not reserve his right to institute a separate civil action against the defendant.
>
> In the instant case, it is not disputed that plaintiff Maria C. Roa- upon whose initiative the criminal action for defamation against the defendant Segunda de la Cruz was filed - did not reserve her right to institute an independent civil action. Instead, she chose to intervene in the criminal proceedings as private prosecutor through counsel employed by her. Such intervention, as observed by the court below, could only be for the purpose of claiming damages or indemnity, and not to secure the conviction and punishment of the accused therein as plaintiff now pretends. This must be so because an offended party in a criminal case may intervene, personally or by attorney, in the prosecution of the offense, only if he has not waived the civil action or expressly reserved his right to institute it, subject always to the direction and control of the prosecuting fiscal....
>
> Plaintiff having elected to claim damages arising from the offense charged in the criminal case through her appearance or intervention as private prosecutor, we hold that the final judgment rendered therein constitutes a bar to the present civil action for damages based upon the same cause.[36]

The doctrine in *Roa* was followed in later cases and construed as an exception to the general rule of separability and independence of civil actions contemplated by Articles 32, 33, 34 and 2177 of the Civil Code.[37] Two

[36] *Id.* at 11-12.

[37] Azucena v. Potenciano, 5 SCRA 468-69 (1962).

requisites, however, must concur for the applicability of the Roa doctrine: (1) there must be an intervention of the offended party in the criminal case; and (2) said offended party did not reserve her right to file an independent civil suit.

The Supreme Court in the case of Reyes v. *Sempio-Diy*,[38] which involves a belated application of the 1964 Rules of Court, had the opportunity to elaborate on the Roa doctrine. In that case, the accused pleaded guilty to the offense of intriguing against honor. Because of his plea of guilty, the offended party, who was represented in the criminal action by a private prosecutor, was unable to present evidence of civil damages. Neither was the offended party able to reserve her right to file a separate civil action. When the offended party filed a civil case for recovery of damages, the accused moved to dismiss the case. The trial court granted the motion allegedly in consonance with the holding in *Roa* that the intervention of the offended party in a criminal case in which a judgment of conviction has been rendered and has become final would bar a subsequent civil suit. The Supreme Court reversed the ruling of the trial court by holding that the mere appearance of the private prosecutor in the criminal case did not constitute intervention as would call for the application of the *Roa* doctrine.

The application of Section 2, Rule 111 of the 1964 Rules of Court was even more problematic in cases involving an act or omission which constitutes both a crime and a quasi- delict.[39] The Civil Code does not expressly authorize an independent civil action for actions based on quasi-delict. It merely provides in Article 2177 that responsibility for fault or negligence constituting a quasi- delict is entirely separate and distinct from civil liability arising from negligence under the Penal Code.

The independent prosecution of civil liability based on quasi-delict, the Supreme Court has ruled, may be anchored upon Article 31 of the Civil Code which provides: "When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter."[40] So based, the civil action for quasi-delict, according to the extreme view, may be considered as falling completely outside the ambit of criminal procedural rules, particularly of the rule on implied institution and

[38] 141 SCRA 208 (1986).

[39] Barredo v. Garcia, 73 Phil. 607 (1942).

[40] Tayag v. Alcantara, 98 SCRA 723 (1980); *Garcia*, 52 SCRA 420; *Mendoza*, 91 SCRA 113; *cf.* Madeja v. Caro, 126 SCRA 293 (1983).

the consequent requirement of reservation to file a separate civil suit.[41]

An examination of these cases, however, shows that the separate civil actions based on quasi-delict were filed not against the accused alone, but also against the persons who may be held vicariously liable for his acts under Article 2180 of the Civil Code. As against the latter, the plea of *lis pendens* and *res judicata* may be held unavailing even without the pronouncement regarding the distinctness and individuality of quasi-delict as a cause of action. For one, persons vicariously liable under Article 2180 of the New Civil Code are not considered parties in the criminal case.[42] Also, their civil liability is based not on the act or omission of the accused in the criminal case, but on their own negligence in supervising their legal wards.[43] The foregoing ratiocination may not hold true with respect to the accused himself, whose civil liability is based on his act or omission which directly caused the injury. His inclusion, however, in the separate civil action achieves a procedural short-cut. Article 2181 of the Civil Code, provides: "Whoever pays for the damage caused by his dependents or employees may recover from the latter what he has paid or delivered in satisfaction of the claim." And the Rules of Court allows a defendant in an action to file a third party claim against anyone who may be liable to him for indemnity, contribution, subrogation or any other relief in respect of the plaintiff's claim.[44]

Another judicially recognized exception to the reservation requirement under the 1964 Rules of Court is the case where the accused is acquitted from the criminal case on reasonable doubt. This exception, the Supreme Court said, has a basis under both substantive and procedural law.[45] Under Article 29 of the Civil Code, it is provided that "[w]here the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted." On the other hand, Section 3(b) of Rule 111 of the 1964 Rules of Court states that extinction of the criminal liability does not extinguish the civil liability of the accused unless there is a pronouncement that the act from which civil liability may arise did not exist.

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[41] Elcano v. Hill, 77 SCRA 98 (1977); *Tayag*, 98 SCRA 723; *Garcia*, 52 SCRA 420; *Mendoza*, 91 SCRA 113.

[42] Gula v. Dianala, 132 SCRA 245 (1984).

[43] Mendoza v. La Mallorca Bus Co., 82 SCRA 245 (1978); *See also* JARENCIO, TORTS AND DAMAGES IN PHILIPPINE LAW 32 (4d 1983).

[44] RULES OF COURT, Rule 6, Sec. 12.

[45] *See Jarantilla*, 171 SCRA 429.

V. PROBLEM AREAS

What is an independent civil action?

Justice Vasquez, in one of the meetings of the Revision Committee, directly propounded this question to Justice Paras. The latter admitted the vagueness of the concept, but hypothesized that an independent civil action refers to an action which may be brought regardless of whether or not there is a criminal case. Justice Vasquez manifested his concurrence with this view.

> As to the meaning of an independent civil action, he (Justice Paras) does not know its precise meaning, except as can be implied from the wording itself of Arts. 32, 33, 34 and also 2176 together with 2177; his idea is that it is an action which can be brought in court regardless of whether or not there is a criminal proceeding, and these actions are given only in those specifically mentioned in Arts. 32, 33 and 34, and they can even add 2177 read together with 2176, and that in all other actions there can be separate civil actions, but not independent civil actions; that the term "independent civil actions" is put in the sense that they can proceed independently. Justice Paras and Vasquez agreed completely on this point.[46]

From the foregoing, it may be seen that what the Revision Committee concedes as a right granted an offended party by provisions of the Civil Code authorizing independent civil actions is the right to have his civil claim litigated separately from and contemporaneously with the criminal action. These provisions, according to later discussions of the Revision Committee, do not grant an offended party the right to have his claim for damages determined in two or more actions.[47]

With these as premises, the Revision Committee thought it proper to provide a manner by which an offended party may choose the action in which to pursue his civil claim. The Committee provided in the Rules that where an offended party does not institute a civil action for damages prior to the institution of the criminal case, his civil claim would be deemed merged with the criminal action.[48] The only way he can extricate himself from the choice

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[46] Minutes of Meeting of the Rules of Court Revision Committee, February 26, 1987 at 3.

[47] *Supra* p. 4-5 & note 12-13.

[48] RULES OF COURT, Rule III, Sec. 1.

made for him by the Rules is to file a reservation of the right to institute a separate civil action before the prosecution starts presenting its evidence.[49] The propriety of forcing a choice of remedy in this manner was fully discussed by the Revision Committee in this wise:

> Judge Sangco stated that he is against the inclusion of the civil action arising from the crime charged, the independent civil actions under Arts. 32, 33, and 34 (this should include Art. 29 actually), and quasi-delict with the criminal action.
>
> ....
>
> As to the independent civil actions, he said that these actions are made expressly independent of the criminal action, precisely to permit the injured party to prosecute his claim purely as a private right; that this is spelled out in the report of the Code Commission.
>
> As to quasi delict, he said that it is entirely foreign to punishable acts or omissions as sources of civil obligation.
>
> He objected to the three civil actions being deemed instituted with the criminal action upon its institution.
>
> ....
>
> Commenting on Judge Sangco's observations ... Justice Paras said that there is nothing also in the Civil Code that would prevent a waiver of the right; in other words, with the amendment-proviso, they recognize that the right exists, however, the moment they take it back then they waive the right to file the civil action.
>
> As to ... the insertion of the quasi-delict, Justice Paras said that this is debatable...
>
> ....
>
> Justice Feria also observed that the right is not taken away in the draft because they can always file it ahead or have it reserved and, therefore, they are exercising that right.
>
> Judge Sangco replied that that is what he was objecting [to]: the precondition of the prior reservation in the exercise of a substantive right has been ruled out in many cases by the Supreme Court as an impairment of that right, and it was considered as of doubtful constitutionality by the Supreme Court on that basis.[50]

The conclusion reached by the Revision Committee with respect to

[49] *Id.*

[50] Minutes of Meeting of the Rules of Court Revision Committee, March 25, 1987 at 4-5.

the nature of the right given an offended party by the Civil Code provisions on independent civil actions may be accepted without much contention by the members of the bench, on the basis of decisions rendered by the Supreme Court under the 1964 Rules of Court. What, however, may meet resistance is the manner by which the New Rule 111 forces a choice of remedy. The New Rule 111 implies a choice of remedy through omission, i.e., through failure of an offended party to reserve his right to file a separate civil case in the criminal action. On the other hand, the Supreme Court, under the 1964 Rules of Court, would take as indication of choice only a positive action from the offended party like intervention in the criminal case.

The Revision Committee was not entirely lacking in options as regards the manner by which it may force a choice of remedy. In a proposed amendatory draft, Judge Sangco advocated the elimination of the more basic rule on implied institution of the civil action with the criminal case and of the consequent requirement of reservation.[51] Judge Sangco would not, however, deprive the offended party the right to have his civil claim litigated in the criminal action itself. But he would require the offended party who so desires to make known his choice expressly or impliedly through payment of filing fees corresponding to the amount of damages claimed and alleged.[52]

The rule on implied institution has traditionally been based upon Article 100 of the Revised Penal Code which states that "[e]very person criminally liable is also civilly liable". Hence, while Judge Sangco's proposal may be consistent with the Civil Code provisions on independent civil actions, it may still be considered a piece of judicial legislation in view of the above-quoted provision of the Revised Penal Code. Questions may be asked: Is the rule on implied institution of the civil action with the criminal case a right granted by Article 100 of the Revised Penal Code? If it is, may it be considered to have been effectively amended by the Civil Code provisions on independent civil actions since the latter provisions were transported from the American legal system in which the private prosecution of criminal breaches is entirely alien?

The New Rule 111 may be even more difficult to reconcile with the provisions of the Civil Code on quasi- delict. As already adverted to in the preceding section, the Supreme Court has expressed the view that an act or omission may give rise to two causes of action - one based on crime and the other on quasi-delict. And there being two causes of actions, two separate suits may be brought for the purpose of claiming damages without violating the principles of *lis pendens* and *res judicata*. An acceptance of this view may

[51] *See* Sangco - Paras Report to the Rules of Court Revision Committee.

[52] Sangco - Paras Report, Sec. 2.

render useless the New Rule 111 if read in connection with the view that quasi-delict comprehends both intentional and unintentional acts.[53]

The practical significance of the New Rule 111 is, to say the least, minimal. Justice Vasquez, whose proposed amendatory draft was made the basis of the new rule, admitted that he contemplated only civil actions which may be brought against the accused alone, and not against persons who may be held subsidiarily or vicariously liable for said accused's act or omission. Hence, the failure of the offended party to reserve the civil action in the criminal case, where subsidiary liability of a third person may be enforced; will not preclude the offended party from filing a separate civil action for the determination of the third person's primary liability based on Article 2180 of the New Civil Code. The objective of the Committee of preventing multiplicity of suits may thus be defeated. In real life, the offended party would reach for the coffers of the persons against whom subsidiary or vicarious liability for the offender's act may be fixed, since they are naturally more solvent than the latter.

VI. CONCLUSION

The success of the New Rule 111 will depend much on the proper appreciation by the courts of the substantive provisions it seeks to implement, i.e. Article 100 of the Revised Penal Code and Articles 32, 33, 34 and 2177 of the New Civil Code. The Revision Committee has undoubtedly well-reasoned bases for the amendments it introduced in the system of enforcement of civil liability for criminal conduct. Its discussions on the subject should not be taken lightly. Instead, the courts, in deciding the validity of the new rule should endeavor to address the basic issues raised in said discussions. Hopefully, in dealing with the new rule, the courts will be able to evolve doctrines which will serve as effective guides in the drafting of procedural rules on the subject, should the present ones be found legally untenable and practically unsatisfactory.

[53] Gupit, *Supra* note 4 at 7.

TAXATION OF FOREIGN CORPORATIONS A COMMENTARY ON MARUBENI v. COMMISSIONER OF INTERNAL REVENUE*

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I. INTRODUCTION

The past ten years saw the Bureau of Internal Revenue adopting a strict attitude towards foreign investors. During this period, well-reasoned rulings regarding taxation of foreign corporations were set aside to give way to new positions which allow the Government to collect more taxes from this class of taxpayers. In this pursuit, the Bureau of Internal Revenue found in the judiciary a veritable ally. In a line of cases, the Supreme Court sanctioned the interpretations of tax laws adopted by the Bureau of Internal Revenue that allow it to "catch", for taxation, the incomes of foreign corporations,[1] or to impose upon them the highest rate of tax legally possible.[2] This commentary singles out one of such cases - *Marubeni v. Commissioner of Internal Revenue*[3] - to illustrate the extreme to which this judicial policy may be carried. As will be shown later, the argument of the Government in the case, that received judicial approval, has no basis either in law or in jurisprudence.

* 177 SCRA 500 (1989).

** J.D. Candidates, 1992.

[1] British Overseas Airways Co. v. Comm'r of Internal Revenue, 149 SCRA 395 (1987).

[2] Comm'r of Internal Revenue v. Procter and Gamble PMC, 160 SCRA 560 (1988).

[3] 177 SCRA 500.