held in the landmark case of *International Shoe Co. v. State of Washington*[19] that it is not the "doing of business" that is the test whether the state has the power to render a personal judgment against a foreign corporation, but that the proper test is that the foreign corporation to have "certain minimum contracts with it (the forum) such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'; the demands of due process "may be met by contacts of the corporation with the state of the forum as make it reasonable, in the context of our . . . government, to require the foreign corporation to defend the particular suit which is brought there."

If the Supreme Court in *Facilities Management* wanted to take a step towards such direction, it could have done so, properly. There were enough facts on the record to support the *International Shoe doctrine.* The decision itself took cognizance of the fact that Facilities Management Corp. was regularly engaged in the hiring of persons in the Philippines, as revealed by the fact that three similar cases had previously been brought against the corporation. The periodic hiring of persons in the Philippines, even if not considered "engaging in business", can be considered as the 'minimum contacts' required by the *International Shoe doctrine* to make the foreign corporation suable under a personal action. The appointment of agent in the Philippines even if we considered it as not engaging in business, may serve as the 'minimum contact'.

If the Court wanted to adopt such doctrine in Philippine jurisprudence, then it should have clearly said so. All the cases it cited on this matter actually dealt with the doctrine of a *foreign corporation bringing a suit,* instead of suits *against foreign corporations.* We cannot conclude that *Facilities Management* meant to adop the *International Shoe doctrine;* to do so would be pure conjecture.

Therefore, when the Supreme Court concluded with the cryptic passage: "Indeed, if a foreign corporation, not engaged in business in the Philippines, is not barred ffrom seeking redress from courts in the Philippines, *a fortiori,* that same corporation cannot claim exemption from being sued in Philippine courts for acts done against a person or persons in the Philippines," it laid down a hollow doctrine; a logical emptiness. *Facilities Management* may have enriched our jurisprudence at a naught.

[19] 326 U.S. 310; 90 L. ed. 95; 66 Sup. Ct. 154.

CASE SURVEY
(From May, 1980 to January, 1981)

PEARL T. LIU, LI.B. '82
ALAN F. PAGUIA, LI.B. '83

POLITICAL LAW

Citizenship and Naturalization

A naturalized citizen who has lost his 1937 certificate of naturalization during the war, in order to have a new certificate of naturalization issued in his favor by way of a 'Petition for Restoration of Record' filed in April, 1951, need only prove that the naturalization case and the certificate of naturalization which granted to him Filipino citizenship in 1937 *in fact* existed in the docket book of the hearing court before the war. Thereafter, the trial court will issue an order of restoration of record and a new certificate of naturalization will be issued pursuant thereto. In the case at bar, a subsequent 'Motion To Set Aside Order dated May 9, 1951 and/or To Cancel Certificate of Naturalization' filed by the Government in September, 1972, was denied and the latter was not allowed to present evidence assailing the validity of petitioner's naturalization in 1937. Such evidence was considered irrelevant and immaterial to the Government's motion. According to the Supreme Court (Second Division), speaking thru Associate Vicente Abad Santos: "Had the Government intended to assail the validity of appellee's naturalization in 1937, it could have filed a petition for denaturalization, instead of the motion to set aside order of restoration of records, or it could have amended its motion after the trial court had ruled that said motion merely assailed the 1951 order of restoration of records and not the validity of appellee's naturalization in 1937. Assailing the fact of naturalization is different from assailing the validity of such naturalization. (WEE BIN v. REPUBLIC, G.R. No. 37100, September 19, 1980.)

Custodial Investigation

Simeon Dilao was one of the accused in an information for robbery with homicide. The case against him was established principally on his extrajudicial statement. He was not arrested in the act of committing an offense or immediately thereafter. He was aroused from his sleep in his residence at 4 o'clock in the morning and "invited" to the precinct for investigation. There was no warrant of arrest, the police officers having acted merely upon "information" supplied by an informant. He was interrogated in the precinct where he was said to have admitted, orally, his guilt. He was alone before the investigator in the precinct and was not turned

over to the police headquarters till two hours after his arrest. On top of it all, the police officers arrested him upon "information" indicating the absence of reasonable basis of belief that the accused was probably one of the culprits. It may be naturally expected that the accused was subjected to searching and extensive questioning, precisely aimed at obtaining incriminating evidence out of his own mouth.

The Supreme Court, through Justice Abad Santos, stated that this "state was critical because of the attendant circumstances that bring about an intimidating and threatening atmosphere peculiar to custodial police investigation. In such an atmosphere, a man of ordinary or average composure may yield to a skilled investigator or one who, though unskilled, is prone to brutal techniques."

The warning given in the subsequen investigation in the police headquarters did not subserve the purpose of the constitutional protection accorded to a person under investigation for an offense. Firstly, because, when the advice was given, the harm had been done. The accused had already been questioned, wherein he allegedly made a verbal admission of guilt. Secondly, assuming that there was no such previous investigation, the warning was so mechanically given that it could have have been meant to inform the accused of the constitutional rights he was alleged to have waived. (PEOPLE vs. SIMEON DILAO and ERNESTO ECHEVARRIA, GR NO. L-43259, October 23, 1980.)

Election

In this case, the Supreme Court, speaking through Chief Justice Fernando, held that after the holding of the January 30, 1980 elections, and a proclamation thereafter made, a petition to disqualify a candidate based on a change of political party affiliation within six months immediately preceding or following an election, filed in court on or after January 30, 1980 arising from a pre-proclamation controversy, should be dismissed without prejudice to such ground being passed upon in a proper election protest or quo warranto proceeding. Where, however, such constitutional provision had been seasonably involved prior to that date with the Commission on Elections having acted on it and the matter then elevated to this court before such election, the issue thus presented should be resolved. More succinctly, in the concurring opinion of Justice Teehankee: "(P)re-proclamation cases seeking to disqualify the winner on the ground of alleged turncoatism should be ordered dismissed *after* elections, subject to the filing of an appropriate quo-warranto action or election protest against the winner in the appropriate forum (the Comelec for provincial and city officials and the proper Court of First Instance for municipal officials)." As should be clear, the issue of turncoatism as disqualification has *not* been rendered moot and academic, only the remedy to be pursued is no longer the pre-proclamation controversy. (AGUINALDO vs. COMELEC. G.R. NO. 53, January 5, 1981.)

Public Officers

The action of the Commissioner of Civil Service invalidating petitioner Jose Ricamara's civil service eligibility as patrolman and terminating his services in the Manila Police Force on the ground that he had been previously convicted of a crime (the offense of anti-littering for which he paid a fine of ₱5.00), without conducting a prior investigation and giving the latter an opportunity to be heard before taking the action in question, is null and void. "The Civil Service Law (R.A. 2260, Sec. 32) requires, as the Court has time and again held, that a civil service employee may not be removed from office without due process and being previously afforded an opportunity to be heard." Having reach this conclusion, the Supreme Court, speaking thru Associate Justice Claudio Teehankee as Chairman of the First Division, found it unnecessary to pass upon the correctness of the trial court's ruling "that the offense of anti-littering which the petitioner-appellee admittedly committed for which he paid a fine of ₱5.00 and which fact he did not conceal, cannot be taken as an offense involving moral turpitude" (which under section 5(c), Rule II of the Civil Service Rules is the type of conviction that disqualifies one from the civil service), in connection with respondent commissioner's assignment of error that section 17 of Executive Order 175, series of 1938 disqualifies anyone with a "criminal record" even if it were one for violation of an anti-littering ordinance, as in the case at bar, on the basis of the commissioner's theory that the earlier Executive Order provision stands unrepealed by the later enactment of the Civil Service Law. (RICAMARA vs. SUBIDO, G.R. No. 28801, June 25, 1980.)

Public Officers

The respondent, Humberto Basco, the deputy sheriff of the office of the City Sheriff of Manila, was charged with inefficiency and incompetence in the performance of official duties and for gross misconduct. He failed to serve summons, as was his duty, and did not avail of substituted service in accordance with the Rules of Court. The trial court found the respondent "to have committed gross negligence in the performance of his official duties as deputy sheriff of Manila, which negligence not only has delayed the speedy administration of justice, but more importantly, has impaired public confidence in the administration of justice." It stated that the respondent's discretion in not availing of said rule on substituted service promulgated by the Supreme Court is a sign of disrespect and arrogance. What to him was his discretion is in truth and in fact an indiscretion. The respondent acted clearly not within the ambit of discretion allowed him by the Rules.

The Supreme Court, in admonishing him, stated, "Being one of those in the forefront of our judicial system, whose official duties involve as it does the orderly administration of justice, respondent deputy sheriff, in his future actuations, would do well with the reminder that it is a fundamental and a sacred mandate indispensable to the greatness of the State and of our society that public officers and employees serve with the highest sense of responsibility and the highest degree of integrity, loyalty and efficiency, and at all times remain accountable to the people and their conscience." (PHIL. TRIAL LAWYERS ASSOCIATION vs. HUMBERTO

BASCO, A.M. NO. P-2364, October 27, 1980.)

Public Officers

Respondent Oyao, a clerk personnel, borrowed money from complainant Garciano for which he signed a promissory note with special power of attorney authorizing complainant to collect his first quincena salary until his indebtedness is fully paid, but instead the respondent collected in advance his salary checks so complainant was unable to collect a single check by way of payment of the indebtedness. The Supreme Court admonished respondent Oyao to pay his debt. The Court said that respondent's willful failure to pay just debt for twelve years, employing all sorts of tactics and manipulations to evade payment, is unbecoming of a public official and is a ground for disciplinary action against him, including suspension or dismissal from the service (Sec. 19, Rule XVIII of the Civil Service Rules in relation to Sec. 36, Art. IX, P.D. No. 807 of October 6, 1975). Moreover, while it is meet and just for an individual to incur an indebtedness uncurtailed by the fact that he is a public officer or employee, caution should be taken to prevent the development of suspicious circumstances that might inevitably impair the image of the public officer.

The Court stressed the fact that a ground for apprehension is the possibility that cases might arise involving parties who are creditors of the respondent, who is clerk of Court of First Instance of Cebu, and he would be in a position to delay their cases. "Respondent, it is thus clear, occupies a sensitive position; and, if moved by sinister or ulterior motives, he could unduly impair the administration of justice. By simply failing to act or by tampering with the record books for a consideration with which to pay his debts, he can unilaterally imperil the orderly administration of justice." The penalty meted out by the Court on Oyao was admonition. (ISABELO GARCIANO vs. WILFREDO OYAO, Adm. Matter No. 208, January 27, 1981.)

LABOR LAW

Employees' Compensation

Cayaba, who was forced to retire because of ailment, filed a notice of injury and claim for compensation against his employer, Provincial Government of Isabela. He was able to prove that his ailments supervened during his employment. The respondent Province of Isabela did not present any evidence; hence, the evidence of the ailment was not controverted. The Supreme Court held that because of claimant's evidence, there is disputable presumption that the claim is compensable. The claimant was relieved of his duty to prove causation as it is then legally presumed that the illness arose out of the employment. To the employer is shifted the burden of proof to establish that the illness is not compensable.

The Supreme Court upheld the doctrine that an employée forced to ask for retirement ahead of schedule not because of old age but principally because of his weakened bodily condition due to illness contracted in the course of his employment should be given compensation for his inability to work during the remaining days before his scheduled compulsory retirement, aside from the retirement benefits received by him. (CAYABA vs. WORKMEN'S COMPENSATION COMMISSION, G.R. NO. L-4349, January 27, 1981.)

CIVIL LAW

Damages

Respondent Isidro Ongsip applied for serivce connection with the petitioner Manila Gas Corporation. Since no gas consumption was registered in the meter, Manila Gas had the gas meter changed. This was done while Ongsip was asleep. On the same day, the employees of Manila Gas returned with a photographer who took pictures of the premises. When asked why they were taking pictures, petitioner's employee simply gave Ongsip his calling card with instructions to go to his office. It was only there that he was informed about the existence of a by-pass valve or "jumper" in the gas connection and that unless Ongsip gave the amount of ₱3000, he would be deported. Since Ongsip refused, Manila Gas filed a complaint for qualified theft.

In awarding damages, both moral and exemplary, against Manila Gas for malicious prosecution, Justice Makasiar stated that because it failed to recover lost revenue caused by the gas meter's incorrect reading, Manila Gas sought to vindicate its financial loss by filing the complaint for qualified theft, knowing it to be false. It was actually intended to vex and humiliate private respondent and to blacken his reputation not only as a businessman but also as a person. He further admonished Manila Gas saying that it should have realized that what is believed to be a vindication of a proprietory right is no justification for subjecting one's name to indignity and dishonor.

In ruling on the propriety of the act of Manila Gas of disconnecting Ongsip's gas service without prior notice, the Supreme Court said that it constitutes a breach of contract amounting to an independent tort, and that the prematurity of the action is indicative of an intent to cause additional mental and moral suffering to private respondent.

Thus, Manila Gas was directed to pay respondent Isidro Ongsip ₱25,000 as moral damages and ₱5,000 as exemplary damages for malicious prosecution, ₱15,000 as moral damages and ₱5,000 as exemplary damages for breach of contract and ₱10,000 as attorney's fees. (MANILA GAS CORPORATION vs. COURT OF APPEALS and ISIDRO ONGSIP. G.R. NO. L-44190, October 30, 1980.)

Compromise agreement

In 1974, the Philippine Bank of Communications filed a complaint for the recovery, jointly and severally from ten of its employees, of over ₱25 million allegedly embezzled from it over a period of 16 years by its said employees. In March, 1975, the parties herein freely entered into a compromise agreement whereby defendants Paulino How and Yu Chiao Chin, both of whom admitted sole and exclusive liability for the misdeeds, and absolved the other defendants (all minor employees then under them) of any responsibility thereon, undertook to reimburse the bank the amounts of ₱600,000.00 and ₱6,610,000.00, respectively. How, Yu Chiao Chin and the other defendants further agreed "to voluntarily resign from the BANK and to execute the corresponding quitclaims waiving whatever rights they may have against the BANK arising from their employment and/or in connection with the case and criminal charge hereinabove mentioned. Said quitclaims shall include a waiver of all the benefits, interests, participation, contributions and any other right that they may have under both the Staff Provident Fund and the Retirement Plan of the (BANK)." In consideration of said undertakings, the bank discharged forever defendants from any and all obligations and liabilities arising from the aforementioned civil case. The compromise agreement was later submitted to the CFI of Manila as basis for rendition of judgment. In September, 1975, respondent judge Juan Echiverri rendered a decision which, in part, modifies and alters the compromise agreement by deleting the concessions made by respondent minor employees regarding the waiver and quitclaim provisions of the agreement on the ground that such concessions are "contrary to law, morals, good customs, public policy and public order" and "considered inexistent and void from the beginning." Hence, this appeal. The Supreme Court, speaking thru Associate Justice Claudio Teehankee as Chairman of the First Division, held that since the provisions of the compromise agreement – contrary to the conclusion reached by the respondent judge – are not prohibited by law nor condemned by judicial decision nor contrary to morals, good customs and public policy, the validity of said compromise agreement must be upheld *in toto.* The Court took note of the fact, *inter alia,* that not one of the respondents ever repudiated the compromise agreement nor moved to set aside or annul the same because of alleged fraud, violence, or vitiated consent – which is the remedy available in such cases under Art. 2038 of the Civil Code. "By virtue of the fundamental precept that compromise agreement is a contract between the parties and has upon them the effect and authority of *res judicata,* the courts cannot impose upon them a judgment different from their real agreement or against the very terms and conditions thereof." (PHILIPPINE BANK OF COMMUNICATIONS vs. ECHIVERRI, et al., G.R. No. 41795, August 29, 1980.)

CRIMINAL LAW

Conspiracy

For collective responsibility to be established, it is not necessatry that conspiracy be proved by direct evidence of a prior agreement to commit the crime.

The Court of First Instance of Lanao del Norte, Branch IV, Iligan City, convicted Eulalio Bohos of the complex crime of Forcible Abduction with Rape and sentenced him to die for each of the thirteen (13) separate acts of rape comitted on the person of the complainant, Myrna de la Vega.

On September 17, 1966, a Saturday, at about 8 o'clock in the evening. Myrna de la Vega left the movie house to go home. As she was walking along the highway, four men approached her and then caught her. A passing cargo truck bound for Iligan City was stopped and she was dragged aboard it. Inside, one of the men abused her sexually. The cargo truck was made to stop at a certain barrio where Myrna was taken to a small house along the highway. Inside the house, the four men took turns in ravishing her three times each. The following morning, September 18, 1966, the four men again took turns in having carnal knowledge of her.

Because three of the four abductors escaped from the provincial jail, only Eulalio Bohos was tried and convicted as aforesaid.

In a *per curiam* decision, it was held by the Supreme Court that at the time of the commission of the offense, it is sufficient that all the accused acted in concert showing that they had the same purpose or common design and were united in its execution.

The judgment appealed from was modified in that Eulalio Bohos was sentenced to suffer not thirteen (13) but seventeen (17) death penalties; it was affirmed in all other respects.(PEOPLE vs. BOHOS, et al., G.R. NO. L-40995, June 25, 1980.)

Forcible Abduction and Rape

The fact that the girl filed her complaint 51 days after her rescue evinced a passive attitude which is indicative of the lack of merit of the complaint.

The Court of First Insantce of Pasig, Rizal, Branch XXVI convicted Adriano Arciaga (principal) and Crispin Custodio (accomplice) of forcible abduction and rape.

It appears that on September 5, 1968, in the Municipality of Muntinlupa, Province of Rizal, Adoracion Hernandez, complainant, was forcibly taken and carried away from a tricycle she was riding. Thereafter, she was brought to Morong, Rizal and later to Sta. Maria, Laguna where the accused Adriano Arciaga had carnal knowledge of said complainant. The Supreme Court, speaking through Mr. Justice Guerrero rendered judgment acquitting both the accused-appellants Adriano Arciaga and Crispin Custodio.

Reasons for the reversal are the following:

1. There was disparity in the versions of the prosecution witnesses as to how th alleged abduction was carried out.

2. Complainant was made to ride in an open owner type jeepney that passed through different busy towns of Rizal in broad daylight. Despite knowledge that she was going to be raped, she did nothing to protect her honor. The fact that she did not not try to escape although she had all the opportunity to do so is an indication that she stayed voluntarily with the accused and voluntariiy fornicated with him.

3. The complainant's proclivity in giving false testimony. She claimed in court that her uniform and dress were torn and bloodstained. However, when presented as evidence, they were clean and untorn.

4. Complainant was in the most normal condition and in good physical shape when she was "rescued". In fact, she was seen with the accused conversing inside the bedroom.

5. Complainant executed a sworn statement only on September 25, 1968, or after ten (10) days from her rescue and filed her complaint only on November 21, 1968 or after 51 days from her rescue.

Thus, the constitutional presumption of innocence should be allowed to prevail. (PEOPLE v. ARCIAGA, G.R. NO. L-38179, June 16, 1980.)

Principal By Indispensable Cooperation

A tricycle driver's pretension that he had no complicity in the rape and that he was merely a spectator is unbelievable especially considering that his tricycle was used for more than three hours and was paid only thirty centavos.

The Court of First Instance of Albay convicted Edmundo Babasa of Forcible Abduction with Rape, sentenced him to death and ordered him to pay Magdalena Bermas moral damages amounting to three thousand pesos.

At about five o'clock in the afternoon of October 4, 1970, Magdalena Bermas, 18, after watching a movie in the Plaza Theater, in Daraga, Albay, boarded the tricycle of Edmundo Babasa, 30. After the tricycle had traversed a short distance, two men boarded it. Magdalena was brought to the spillway at Barrio Binitayan, Daraga where the two men tried to get her out. Babasa drove the tricycle on the road leading to the airport. Then, he took the tricycle to Sampaguita Street, Albay where he stopped the tricycle to fix its tire. After the tire was fixed, Babasa retraced his route and returned to the spillway in Binitayan. There, Magdalena was forced to get out of the tricycle. They forced her to lie down on the grass, near

the bank of the Yawa River and then took turns in having sexual intercourse with her.

At the time of the rendition of judgment, the two other rapists were at large.

In a *per curiam* decision, the Supreme Court affirmed the trial court's judgment with the modification that the indemnity of three thousand pesos was increased to twelve thousand pesos.

The High Court further held that Babasa's guilt as co-principal in the complex crime of forcible abduction with rape was established beyond reasonable doubt because:

1. Magdalena revealed at once to her employer the outrage which she had suffered.

2. She testified in a frank and straightforward manner.

3. She identified Babasa as one of the rapists on the day following the incident when she gave her statement.

4. The conduct of Babasa and the two male passengers, who were at large, reveals that there was a conspiracy or community of design among them to perpetuate the crimes charged.

5. The roundabout route followed by the tricycle was an indication that Babasa and his co-conspirators were waiting for the mantle of darkness to facilitate the consummation of the rape. (PEOPLE v. BABASA, G.R. NO. L-38072, May 17, 1980.)

Probation

A resolution was passed by the Sandiganbayan denying the application of Alicia V. Cabatingan (government employee convicted of malversation) for probation. In issuing such resolution, the Sandiganbayan did not grant Cabatingan hearing before denying the application. Also, the court based its denial solely on the probation report.

The Supreme Court, speaking through Justice Abad Santos, held that the Sandiganbayan acted with grave abuse of discretion in denying the application without affording applicant adequate hearing. It was observed that there was ample evidence showing that the petitioner is entitled to the benefits of probation. She did not appear to be a hardened criminal who is beyond correction or redemption. She has shown repentance for the one offense she had committed in more ways than one. First, she immediately instituted upon demand the amount malversed. Second, she had expressed a desire to reform herself if given the opportunity to

do so. Third, she promised to comply with any condition that may be imposed on her if granted probation.

The Court further held that it was wrong for the respondent court to have wholly relied on the probation report and did not make its own determination as to whether or not probation would serve the ends of justice and the best interest of the public and the applicant. (CABATINGAN vs. SANDIGANBAYAN, G.R. NO. 55333, January 22, 1981.)

Rape

At 7 o'clock in the evening of December 14, 1965 while Marcelina Cuizon, a 14-year-old beautician was then eating supper, Adelino Bardaje (accused) whom she knew when they were "still small", accompanied by five (5) young men (Lucio Malate, Pedro Odal, Adriano Odal, Silvino Odal and Fidel Ansuas) allegedly entered the house and began drinking "sho hoc tong". After the liquor had been fully consumed, Silvino Odal broke the kerosene lamp causing complete darkness. Marcelina ran to the room where her mother was. Adelino with the five others followed her and applying physical force, forced the young lady downstairs and brought her to the mountain about two kilometers from Barrio Crossing.

She regained consciousness in a hut, with Adelino already starting the criminal conversation. She struggled but Adelino succeeded in having sexual intercourse with her while his other companions stayed outside on guard.

At about 8 o'clock the following morning, December 15, Marcelina was brought to another mountain, 6 kilometers farther, arriving at the house of one Cipriano who lived there with his family. In the evening, Adelino had another sexual intercourse with her even though she bit and kicked him.

In the morning of December 17, two soldiers with her father, Alejo Cuizon, arrived. The soldiers apprehended Adelino while the five others jumped down the window and fled.

The court a quo convicted Adelino Bardaje of Forcible Abduction with Rape, and sentenced him to death.

On automatic review, the Supreme Court, in a decision penned by Mme. Justice Ameurfina A. Melencio-Herrera and concurred in by Mr. Chief Justice Enrique M. Fernando and eight (8) others with Justice Aquino dissenting, reversed the judgment imposing the death penalty and acquitted Adelino Bardaje of the crime which he was charged.

Justice Melencio-Herrera found that the guilt of Adelino has not been established beyond reasonable doubt and that Marcelina's charge that she was forcibly abducted and afterwards raped by Adelino in conspiracy with five others were

highly dubious and inherently improbable.

The following reasons are given as justifications:

1. According to medical findings, "no evidence of external injuries were found around the vulva or any part of the body" of Marcelina. It is possible that Marcelina and Adelino had previous amorous relations.

2. The first hut she was taken to was a small one-room occupied by a woman and two small children. Her charge that she was ravished in that same room is highly improbable and contrary to human experience.

3. The second hut where she was taken, that of Cipriano Armada, consisted of a small room separated from the sala by a wall of split bamboos. It is unbelievable that the five others could have stood guard outside, armed with bolos and drinking while Adelino allegedly took advantage of her; and with people around, it would have been an easy matter for marcelina to have shouted and cried for help.

4. Marcelina admits that she even curled the hair of Narita, one of Cipriano's daughters, a fact inconsistent with her allegation of "captivity". It could be that Marcelina was not forcibly abducted but that she and Adelino had, in fact, eloped. (PEOPLE v. BARDAJE, G.R. NO. L-29271, August 29, 1980.)

COMMERCIAL LAW

Insurance

The Insurance Commission dismissed petitioner's complaint for recovery of the total loss of her vehicle while it was wrongfully taken by the employees of the car service and repair shop to whom it had been entrusted for repair, contending that it did not fall within the provision of the insurance policy either for the Own Damage or Theft coverage, invoking the "Authorized Driver" clause.

Justice Teehankee, in his opinion, succinctly stated that the main purpose of the "Authorized Driver" clause is that a person other than the insured owner, who drives the car on the insured's order, such as his regular driver, or with his permission, such as a friend or member of the family or the employees of a car repair shop must be duly licensed drivers and have no disqualification to drive a motor vehicle. A car owner who entrusts his car to an established car repair shop necessarily entrusts his car key to the shop owner and employees who are presumed to have the insured's permission to drive the car for legitimate purposes of checking or road-testing the car. The mere happenstance that the said employees use the car to their own illicit or unauthorized purpose does not mean that the "Authorized Driver" clause has been violated such as to bar recovery, provided that such employee is duly qualified to drive under a valid driver's license.

With respect to the "Theft Clause", where the car is unlawfully taken without the owner's consent or knowledge, such taking partakes of the nature of theft. When a person takes possession of the vehicle of another without the consent of its owner, he is guilty of theft because by taking possession of the personal property belonging to another and using it, his intent to gain is evident since he derives therefrom utility, satisfaction, enjoyment and pleasure. (JEWEL VILLACORTA v. INSURANCE COMMISSION and EMPIRE INSURANCE CO., GR NO. 54171, October 28, 1980)

REMEDIAL LAW

Appeals

Appellant Meridian Assurance Corporation's appeal from the City Court to the Court of First Instance was dismissed for failure to prosecute. The Supreme Court stated that Sec. 9, Rule 40 of the Rules of Court clearly implies that an appeal to the Court of First Instance from the inferior court's judgment may be dismissed for appellant's failure to prosecute it. In a case appealed *to* the Court of First Instance, it is the duty of the appellants (whether plaintiff or defendant) to prosecute his appeal with due diligence and to comply with any order of the court. Failure to do so warrants the dismissal of the appeal. The *appellant* stands in the same position as the *plaintiff* in the case originally filed in the Court of First Instance, whose case may be dismissed for failure to prosecute for an unreasonable length of time. (CAPITOL RURAL BANK OF QUEZON CITY, INC. v. MERIDIAN ASSURANCE CORPORATION, G.R. NO. 54416, October 17, 1980)

Contempt

On March 13, 1973, municipal judge Leonidas Llamas of Magsaysay, Occidental Mindoro, issued an order from the "Office of the Municipal Judge," citing for contempt Engracia Olivares and Erlinda Tan for allegedly spreading the rumor that the judge who was already married, was having amorous relations with one Evelyn Pilar, a casual employee in the office of the election registrar. Without the participation of Engracia Olivares, a verified complaint dated November 2, 1975, was filed – charging respondent judge with gross ignorance of the law. The Supreme Court (Second Division), speaking thru Associate Justice Ramon C. Aquino, held that the respondent judge erred in holding Mrs. Olivares and Mrs. Tan in contempt court. "They were defamers, not contemnors. . . A criminal action for defamation could have been brought against them but not a contempt proceeding. . . Of course, a court has the inherent power to punish contempt but the fact that a judge, as distinguished from the court to which he is assigned, is exposed to public ridicule, discredit or dishonor by reason of his private conduct does not mean that the libeler has committed contempt of court." A fine equivalent to his salary for one month and a severe censure were imposed on the respondent judge. (BARRIOS V. LLAMAS, G.R. Adm. Matter No. 1149-MJ, June 30, 1980.)

A petition was filed by private respondents to cite Mrs. Carmen B. Pacquing, as representative of petitioner Southern Broadcasting Network, for contempt of court. It appears that she wrote a letter, dated February 28, 1976, and addressed to President Ferdinand E. Marcos asking the President to intervene in her case so that her motion for reconsideration of the resolution of the Supreme Court dated January 26, 1976 denying for lack of merit her petition for review on certiorari, may favorably be granted. After due investigation, the Court stated *inter alia* that: "As a law graduate, petitoner's representative ought to know that the Judiciary is an independent and a co-equal branch of the government and not subordinate to or may not be directed by the President as to what its decision should be in a given case." The Court held that Mrs. Pacquing committed an "improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice" (section 3, par. d, Rule 71, Rules of Court) and impair the respect due to the courts of justice in general, and the Supreme Court, in particular. The Court (First Division), speaking thru Associate Justice Felix V. Makasiar, found Mrs. Carmen B. Pacquing, as petitioner's representative, guilty of contempt of court and imposed upon her a severe reprimand with a warning that a repetition of the same or analogous act will be dealt with greater severity. (SOUTHERN BROADCASTING NETWORK v. DAVAO LIGHT and POWER CO., INC., G.R. No. 41355, July 25, 1980.)

Ejectment

Respondent city judge dismissed the five ejectment cases filed by the petitioner against the private respondent on the ground of lack of jurisdiction because the cases involve "more the issue of ownership than possession and should have been filed" in the Court of First Instance.

Justice Aquino, in his decision, stated that RA 5967 enlarged the jurisdiction of city courts by providing that city courts shall have concurrent jurisdiction with the CFI "in ejection cases where the question of ownerhsip is brought in issue in the pleadings" and that in such a case "the issue of ownership shall therein be resolved in conjunction with the issue of possession." The issue of ownership was raised in defendant's answer in the city court. (JASMIN NOGOY v. CITY JUDGE VILEMON MENDOZA, JR., G.R. NO. 54324-28, November 19, 1980.)

Evidence

Since the cross-examination made by the counsel of private respondent of the deceased witness was extensive and already covered the subject matter of his direct testimony as state witness relating to the essential elements of the crime of parricide, and what remained for further cross-examination is the matter of price or reward allgedly paid by private respondent for the commission of the crime, which is merely an aggravating circumstance and does not affect the existence of the offense charged, the respondent judge gravely abused his discretion in declaring as entirely inadmissible the testimony of the state witness who died through no

fault of any of the parties before his cross-examination could be finished. Wherefore, respondent judge is hereby ordered to admit and consider in deciding the case the testimony of the deceased witness, excluding only the portion thereof concerning the aggravating circumstance of price or reward which was not covered by the cross-examination. (PEOPLE v. SENERA, G.R. No. 4888, August 6, 1980.)

Execution

In a collection suit filed by the First National City Bank of New York against Windsor Steel Mfg. Co. and Francisco Ventura, judgment was rendered by the trial court based on the compromise agreement entered into by the parties wherein defendants undertook to pay the debt in eleven monthly installments, with a clause to the effect that, should defendants default in the payment of one or more installments on due dates, the bank shall immediately automatically be entitled to the issuance of a writ of execution to enforce payment of the entire unpaid amount then outstanding. After paying two installments, defendants defaulted. A writ of execution was thus issued, but instead of for the remaining balance, it was issued on the original amount of the obligation. On this point, the Supreme Court held, on appeal by certiorari that Section 8, Rule 39, of the Rules of Court explicitly provides that the writ of execution must state the amount *actually* due thereon.

It said that a writ issued for the original amount of the judgment, notwithstanding an admission that partial payments had been made, runs counter to said rule. An execution has been regarded as void when issued for a greater sum than is warranted by the judgment. It is a general principle of law that an execution should recite the amount of the judgment and the amount due thereon with a reasonable degree of accuracy. In this respect, it has been declared that if the amount specified in the writ for the reason that it is likely to result in the sale of more of the judgment debtor's property than said judgment would dictate, and that it prevents the judgment debtor from protecting his property by payment of the correct amount for redemption of this is allowed. (WINDSOR STEEL MFG. CO v. COURT OF APPEALS, G.R. NO. L-34332, January 27, 1981.)

Judgement

The judgment which was sought to be executed ordered the payment of simple "legal interest" only. It said nothing about the payment of compound interest. Accordingly, when the respondent judge ordered the payment of compound interest, he went beyond the confines of his own judgment which had been affirmed by the Court of Appeals and which had become final. Fundamental is the rule that execution must conform to that ordained or decreed in the dispositive part of the decision. Likewise, a court cannot, except for clerical errors or omissions, amend a judgment that has become final. (PHILIPPINE AMERICAN ACCIDENT INSURANCE CO., INC., v. FLORES and NAVALTA, G.R. No. 47180, May 19, 1980.)

Jurisdiction

Spouses Cesar Magsaysay and Carmen Roa-Magsaysay have a son, Michael Marc, who is less than two years old. Due to marital differences affecting their domestic relations, each spouse filed a complaint against the other in two different courts on two different dates. Respondent husband filed his complaint with the CFI of Zambales on January 13, 1978, while the petitioner wife filed her complaint with or six days later. The latter action was one asking for "custody of minor and support." One aspect of the controversy – that with reference to the custody of the minor child – was finally resolved by the Supreme Court in favor of petitioner wife. Thus, the only question that respondent husband would consider as still hanging and undetermined is whether or not the other aspects of the controversy between the parties should be tried and decided by the Zambales court or that of Quezon City. The Supreme Court, speaking thru Associate Justice Antonio P. Barredo as Chairman of the Second Division, held that preference should be given to the JDRC of Quezon City which was precisely created in order to give specialized attention to family problems. The Court further stated: ". . .it is pertinent to state that what the Court is doing here is in the exercise of its power now expressly conferred upon it by the Constitution of the Philippines of 1973 'to order a change of venue or place of trial to avoid a miscarriage of justice' (Section 5(4), Art. X). In other words, the general rule of exclusive jurisdiction based on prior acquisition of jurisdiction, even as already qualified in Alimajen v. Valera, et al., 107 Phil. 244, must yield to the constitutional authority of this Court to take the measure indicated in the cited provision of the fundamental law of the land." (ROA-MAGSAYSAY vs. MAGSAYSAY, G.R. No. 49847, July 17, 1980.)

Jurisdiction

Tanodbayan Vicente G. Ericta, in a letter dated September 20, 1979, reversed the resolution of the City Fiscal of Davao City finding a *prima facie* case for perjury on three counts against Angelina Salcedo, and sustained another resolution of the same City Fiscal dismissing respondent Salcedo's complaint against petitioner Enrique Inting for alleged violations of the Anti-Graft and Corrupt Practices Act and estafa thru falsification of public documents. In the same letter, Tanodbayan Ericta directed the City Fiscal to immediately move for the dismissal of the three criminal cases for perjury against Salcedo. It appears that Salcedo, an Assistant Docket Clerk, was charged with perjury on the ground that in her sworn Personal Data Sheet (Civil Service forms), she indicated that she completed the one-year Secretarial Science course at the University of San Carlos in Cebu City, although she was never enrolled in, and neither did she complete such course from said university. Petitioner Inting contends that respondent Tanodbayan was without jurisdiction to enterfere with the aforementioned proceedings. The Supreme Court (En Banc), speaking thru Associate Justice Felix Q. Antonio, decided in favor of the Tanodbayan and held that Sec. 6, Art. XII of the Constitution and P.D. 1630, creating and conferring upon the Tanodbayan investigative authority over certain

offenses are broad enough as to include the power now in question. (INTING v. TANODBAYAN, et al., G.R. Nos. 52446-48, May 15, 1980.)

Is it the regular Courts of Justice or the Labor Arbiters of the National Labor Relations Commission that have exclusive jurisdiction over a case for unpaid salaries, allowances, other reimbursable expenses, and damages? Justice Melencio-Herrera, in her opinion, correctly appreciated the fact that petitioner did not seek reinstatement, but merely claimed that the manner in which his salaries and allowances, and other expenses were refused to be paid was "oppressive, wilful, fraudulent and in bad faith." Petitioner claimed that if proven, it would constitute an act that is anti-social or "oppressive" in violation of Arts. 1701 and 21 of the Civil Code. Thus, the real nature of the underlying obligation sought to be enforced is civil in character. In truth, there is only one delict or wrong committed and that is the fraudulent refusal of the company to pay. Thus, the actual and moral damages resulting therefrom are but part of a single cause of action. Therefore, it is the regular courts of justice that have jurisdiction over cases of this nature. (CALDERON v. COURT OF APPEALS and ANTONIO AMOR,G.R. No. L-52235, October 28, 1980

Prejudicial Question

The petitioner Alejandro Ras claims in his answer to the complaint in Civil Case No. 73 that he had never sold the property in litigation to plaintiff Luis Pichel and that his signatures in the alleged deed of sale and that of his wife were forged by the plaintiff. It is therefore, necessary that the truth or falsity of such claim be first determined because if his claim is true, then he did not sell his property twice and no estaga was committed. The question of nullity of the sale is distinct and separate from the crime of estafa (alleged double sale) but so intimately connected with it that it determines the guilt or innocence of herein petitioner in the criminal action. Wherefore, the criminal proceedings for estafa must be suspended due to the existence of a prejudicial question in Civil Case No. 73 of the same court. (RAS v. RASUL, G.R. No. 50441-42, September 18, 1980.)

Unlawful Detainer

Sergia del Rosario, the vendor a retro, failed to repurchase the property and after the consolidation of title in favor of the vendee a retro had been confirmed, she refused to vacate the property upon demand and after her right to possess it had ceased to be lawful. The demand to vacate and the action to eject were made within the one-year period. The trial court dismissed the case for failure of the plaintiff to allege prior possession or the land in his complaint. It stated that since the complaint alleged that the defendant is in possession of the land and not the plaintiff, the complaint should be for recovery of the rightto possess land and filed in the Court of First Instance.

The Supreme Court, through Justice Abad Santos, stated that where the cause of action is unlawful detainer, prior possession is not always a condition *sine qua non.* This is especially so where a vendee seeks to obtain possession of the thing sold to him from the vendor. Thus, the respondent judge was ordered to take cognizance of the case. (PHARMA INDUSTRIES, INC. vs. HONORABLE MELITON PAJARILLAG OF THE CITY COURT OF CABANATUAN,G.R. NO. 53788, October 17. 1980)