# REFERENCE DIGEST

CONSTITUTIONAL LAW: BLOOD TRANSFUSIONS: POLICE POWER VS. PARENTAL RIGHTS.—Blood transfusion is defined as the transferring of blood from the veins and arteries of one person to another. Modern trends in constitutional law appearing in rulings in the United States, Canada and in Australia uphold the power of the state under the exercise of its police power to punish or deny the parents of their parental authority for the refusal to submit their children to a blood transfusion. It is the opinion of the author that these decisions have been influenced by public opinion and prejudices against the Jewish parents in these cases, disregarding the merits thereof.

The author seeks to maintain the superior rights of the parents to the police power of the state on the ground that the police power can only be legitimately applied for the welfare of the state. The parents' refusal is a matter of private interest. It is a personal right. In cases of conflict between the police power and the rights of the citizen the rule in favor of the citizen's rights is more in consonance with the principle of limited government. He goes further to show that actual cases and opinions of medical experts prove the dangerous effects of blood transfusion. Among other consequences the administration of blood instead of contributing to the saving of human life may cause death or mental torment leading to mental retardation. Major operations have and can be successful even without the use of blood.

The refusal of the Jewish parents cannot be subject to punishment for the constitution provides that no law should be made respecting the establishment of religion or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship shall forever be allowed without discrimination or preference.

On the other hand under the New Civil Code such a refusal is not one of the grounds for the deprivation of parental authority. It does not constitute an abandonment of the child since abandonment presupposes a willful and unlawful act. In this jurisdiction parents may lawfully refuse medical treatment offered to the child. Hence the act of refusal is not unlawful.

This article also contains: (1) a discussion of the morality of blood transfusion from the Jewish point of view, (2) a criticism of a decision by an Australian court sanctioning the punishment of the parents under the police power of the state. Citations include foreign and domestic decisions, biblical passages and foreign magazines. (Ricardo M. Perez, Blood Transfusion: Police Power Vs. Parental Rights. III UE Law Journal No. 2 at 243-260. ₱3.00 at the Law Building, University of the East. This issue also contains Manases G. Reyes, Preliminary Investigation at the Fiscal's Office Should Interrupt the Period of Prescription.)





CRIMINAL LAW: PRELIMINARY INVESTIGATION AT THE FISCAL'S OFFICE SHOULD INTERRUPT THE PERIOD OF PRESCRIPTION.—Under article 91 of the Revised Penal Code the period of prescription of a criminal offense is interrupted by the filing of the complaint or information and commences to run again when the proceedings are unjustifiably stopped for any reason not imputable to the defendant. Contrary to a decision of the Supreme Court the Chief of the Investigation Division, Office of the City Fiscal of Manila maintains that the preliminary investigation conducted in the Fiscal's office should interrupt the period of prescription because it forms part of the judicial proceedings in the prosecution of criminal offenses. A preliminary investigation is a judicial function. The filing of the complaint referred to in article 91 must be construed to mean the denunciation or accusation filed with the Fiscal's Office and from which arises the duty to conduct a preliminary investigation.

There are three steps in every judicial proceedings: (1) the investigation of the commission of the crime, and the author thereof, (2) the preliminary investigation, and (3) the final trial. The preliminary investigation proper is not conducted by the courts, but by the Fiscal's office. The performance of this duty and not just the mere filing of the complaint interrupts the period. Thus, while pending investigation the period cannot lapse. This conclusion is arrived at by examining the modifications introduced in article 91 on article 131 of the Old Penal Code, treating on the same subject. Philippine and Spanish decisions are cited. (Manases G. Reyes, Preliminary Investigation at the Fiscal's Office Should Interrupt the Period of Prescription. III UE Law Journal No. 2 at 261-264. ₱3.00 at the Law Building, University of the East. This issue also contains Ricardo M. Perez, Blood Transfusion: Police Power Vs. Parental Rights.)

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PATENT LAWS OF THE PHILIPPINES (First Installment)—Patent started in the Middle Ages as monopolies and privileges bestowed by the Crown upon a favored few. The patent laws of the Philippines, patterned after the American Patent System, are designed to implement the Constitutional mandate of promoting the progress of science and arts. Specifically, the Philippine patent laws aim at the promotion of scientific research by rewarding inventors with exclusive rights for a period of time. In exchange for the patent protection, inventors are called upon to disclose their discoveries and inventions for the benefit of the general society

Before the passage of Republic Act No. 165, the only existing laws on patents in the Philippines were Acts No. 2235 and 2793 which recognized all issued and subsisting United States patent rights if they were duly registered here in the Bureau of Commerce. Republic Act No. 165 then became the basic patent law of the Philippines. It provided for the creation of the Philippines Patent Office to administer the patent law.

The subject matter of patents are (1) inventions, (2) utility models, and (3) designs. An invention may be a machine, or a manufactured product, or a process, or an improvement of a machine, manufactured product or a process

itself. The terms "machine", "manufacture", "process" and "improvement" are explained by the author, who also proceeds to explain what are considered utility models and designs. While utility models do not possess the quality of invention, the principal requirement for them to be entitled to a patent is that of novelty. A design, on the other hand, may be that characteristic of physical substances which, by means of lines, images, configuration and the like, taken as a whole makes an impression, through the eye, upon the mind of the observer.

The following are unpatentable: (1) a mere discovery of a law of nature without bringing it into practical action; (2) operation consisting entirely of mechanical transactions and being only peculiar functions of respective machines which are constructed to perform them; (3) the effect or result of a process alone; and (4) the mere intellectual notion that a thing can be done, mere mental theories and plans.

As a general rule, the requirements of patentability are inventiveness, novelty and utility or operability. All these three requirements are necessary in patents for inventions. For utility models, only novelty and utility or operability are required. In the case of design patents, the requirements are inventiveness or originality and novelty. Thus novelty is common to all three patentable subject matters. The author explains each of these requirements. (Sulpicio Olimpio, Jr., *Patent Laws of the Philippines*, X M.L.Q. Law Quarterly No. 2 at 186-199 (1960) ₱..... at the M.L.Q. University, Manila. This issue also contains: Sempio, *The Law of Conditional Sales in the Philippines—A Comparative Study*, last installment.)

# LEGISLATION

CRIMINAL LAW. — According to its author, the purposes of this act, amending Article Three Hundred and Thirty Five of the Revised Penal Code are:

1. To make rape an ordinary public crime,
2. To prescribe death penalty for rape when the offended party is below twelve years of age,
3. To provide that pardon by the offended party or the parents, grandparents or guardian shall not extinguish the criminal action or remit the penalty already imposed upon the offender.

In its support, he made the following reasons:

The commission of rape, according to the author, is an indication of the various perversities of the mind of the culprit. He has reduced himself to the lowest type of animal in the satisfaction of his sexual desires. This is highly condemned by society. Moreover, the offended woman loses her honor and reputation and feels that she is ostracized by society. Since rape is inimical to the best interest of society, public policy demands that the crime be classified as an ordinary public crime.

Under the existing law, rape is classified as a private crime. The state cannot properly institute the accusation unless it is filed by the offended party on her parents or guardian. The law also provides that pardon by the offended party or her parents, grandparents, or guardian is a bar to the prosecution of the offense and the marriage between the offender and the offended party extinguishes the criminal action or remits the penalty already imposed.

In view of the gravity of the offense, coupled with the fact that it is an offense against society, private individuals should not be given the power to compromise the same. It is believed that in order to protect the interests of society and the offended woman, the crime of rape should be classified as an ordinary public crime and that the penalty therefor should be death, in case the offended woman is under 12 years of age.

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