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THE NEW BOUNCING CHECK LAW

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I. INTRODUCTION

With the promulgation of its decision in the consolidated cases of People vs. Sabio, G. R. No. L-45490, November 20, 1978; Tan Tao Liap vs. Court of Appeals, G. R. No. L-45711, November 20, 1978; and Lagua vs. Cusi, G. R. No. L-42911, November 20, 1978, 86 SCRA 568, the Supreme Court resolved once and for all that the amendment of Article 315 of the Revised Penal Code by Republic Act No. 4885 did not make the issuance of checks with no funds estafa if the check was issued in payment of a pre-existing obligation.

Even while these cases were pending, the Solicitor General had adopted the same stand. It was for this reason that Solicitor General Estelito Mendoza, as a member of the Interim Batasang Pambansa, sponsored Cabinet Bill No. 9. This bill, which was enacted into law as Batas Pambansa Blg. 22, punishes the issuance of a check without sufficient funds as a **malum prohibitum.**[1]

The purpose of Batas Pambansa Blg. 22 is to enhance the reliability which checks should enjoy as a medium of payment and to prevent the injury to trade, commerce and banking which the circulation of a worthless check inflicts.[2]

II. CONSTITUTIONAL QUESTIONS

A. Payment of a Pre-Existing Obligation with a Worthless Check

★ LL.B.

[1] Record of Batasan, August 8, 1978, pp. 489 and 491.
[2] State vs. Avery, 23 ALR 453, 456.

The constitutionality of penalizing the issuance of a worthless check in payment of a pre-existing obligation was challenged in the case of Tan Tao Liap vs. Court of Appeals, G. R. No. L-45711, November 20, 1978, 86 SCRA 568 for amounting to imprisonment for non-payment of a debt. However, with its ruling that Republic Act No. 4885 did not make the issuance of a worthless check in payment of a pre-existing debt **estafa**, the Supreme Court saw no necessity to decide this issue. Thus, this question remains to be resolved.

Section 1 of Batas Pambansa Blg. 22 reads in part:

> "Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.
>
> "The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank."

Section 13, Article IV of the Constitution states:

> "No person shall be imprisoned for debt or non-payment of a poll tax."

American decisions involving the constitutionality of similar statutes are split.

One line of decisions upholds such statutes as a valid exercise of police power to prevent the injury which the issuance of a worthless check inflicts upon trade, commerce and banking because of the important role which checks play in daily business.[3] These

[3] State vs. Taylor, 95 ALR 476, 478; State vs. Avery, 23 ALR 453, 456; Windle vs. Wire, 294 P2d 213, 215; State vs. Goodrich, 15 P2d 434, 435; Gunther vs. State, 276 P 239, 239; Gunther vs. State, 276 P 237, 238; State vs. Meeks, 247 P 1099, 1101; State vs. White, 53 SE2d 436, 437; State vs. Yarboro, 140 SE 216, 219; State vs. Berry, 358 So2d 545, 546; Ennis vs. State, 95 So2d 20, 23-25; Frazier vs. State, 135 So 409, 410; State vs. Brookshire, 325 SW2d 497, 500.

decisions distinguish between imprisonment for non-payment of a debt and imprisonment for the dishonor of a worthless check given in payment of a pre-existing obligation on the ground that the penalty is not being imposed for failure to pay a debt but for the issuance of a worthless check, a practice which injures business and which the state may punish in the exercise of its police power. Typical of the reasoning advanced to defend the constitutionality of such statutes is that given by the Supreme Court of Kansas:

> "The purpose of the statute was to discourage overdrafts and resulting bad banking (Saylors v. State Bank, 99 Kan. 515, 518, 163 Pac. 454), to stop the practice of 'check kiting,' and generally to avert the mischief to trade, commerce and banking which the circulation of worthless checks inflicts."[4]

Arrayed against this line of decisions is another series of decisions which struck down similar statutes for violating the constitutional prohibition against imprisonment for non-payment of a debt. These decisions base their conclusion on the fact that in reality such statutes involve the use of criminal processes to enforce a civil obligation. This is exemplified by a decision of the Supreme Court of Mississippi, which reasoned out:

> "It appears to us that the purpose of chapter 172, Laws 1924, sections 924, 925, Code 1930, is, and certainly its effect is, to use the criminal processes of the court to enforce the collection of debts, and therefore it violates section 30 of the Constitution of 1890 prohibiting the imprisonment for debt."[6]

This is especially true where the law gives the drawer of the worthless check the chance to extinguish his criminal liability by paying for the dishonored check within a certain grace period.[7] Such a provision makes it crystal-clear the drawer is not being penalized for the issuance of a worthless check, which is already an accomplished fact, but for his failure to pay for the check. By allowing the drawer to escape imprisonment by paying for the dishonored check within a certain grace period, the statute unmasks its true purpose, i.e., to terrorize debtors into paying for their debts

[4] State vs. Avery, 23 ALR 453, 456.

[5] State vs. Nelson, 76 ALR 1226, 1229; State vs. Portwood, 238 NW 879, 880; People vs. Vinnola, 494 P2d 826, 831; Blakeney vs. State 39 So2d 767, 768; Broadus vs. State, 38 So2d 692, 693; State vs. Johnson, 141 So 338, 342; Neidlinger vs. State, 88 So 687, 688; Ward vs. Commonwealth, 15 SW2d 276, 277; Burnam vs. Commonwealth, 15 SW2d 256, 258.

[6] State vs. Johnson, 141 So 338, 342.

[7] State vs. Nelson, 76 ALR 1226, 1229; State vs. Portwood, 238 NW 879, 880.

by threatening them with criminal prosecution.

While this has been applied to statutes which make failure to pay for the dishonored check within the grace period an element of the crime, it equally applies to statutes which do not make such failure an element of the crime but make it the basis of a presumption that shifts the burden of proof upon the drawer. Thus, in People vs. Vinnola, 494 P2d 826, the Supreme Court of Colorado explained:

> "Next, we find that the lack of any requirement in Section 40-14-20 that there be an intent to defraud coupled with a presumption of guilt provided in Subdivision (5) (a) (i) would, under certain circumstances, render Section 40-14-20 to be no more than a device to force payment of a debt. It is quite conceivable that a person could issue a check without 'knowing or having reasonable cause to know' that it will not be paid when presented as required in Subdivision 2 (b). Thereafter, if the check is for some reason not paid when presented, and if the maker is unable to redeem his check within fifteen days (see Subdivision (6) (b), a presumption arises which shifts the burden on to the defendant to disprove his guilt. Such a result strikes at the very foundation of our system of criminal justice as was recognized by this court in Moore v. People, **supra.** It is elementary that the burden of proving every element of a criminal charge is upon the prosecution. Under Section 40-14-20, the People need only introduce the check, show it was not paid, and rest. The defendant is then placed in a position of being required to prove his innocence to avoid imprisonment not for a criminal act, but for debt. This is so because without fraudulent intent as an element in this type of offense, there can be no crime. In this respect, Section 40-14-20 can be interpreted as nothing more than a collection statute which authorizes imprisonment for debt. As such, it is in contravention of Colo. Const. Art. II, Sec. 12."[8]

This is exactly the situation in Batas Pambansa Blg. 22. Under Section 1, to incur criminal liability the drawer must know at the time of the issuance of the check that he does not have sufficient funds in or credit with the bank. Section 2 creates a presumption that he knew of the insufficiency of his funds or credit if he fails to pay for the check within five (5) days after receiving notice of its dishonor. In theory, the Government can still prosecute the drawer even if he pays for the check within the grace period of five (5) days. In practice, the task of the Government will be very difficult, since it will have to prove the drawer knew of the insufficiency of his funds or credit.

[8] People vs. Vinnola, 494 P2d 826, 831.

The attempt of the decisions which uphold the validity of statutes which penalize the issuance of worthless checks to distinguish between penalizing the drawer for non-payment of a debt and punishing him for issuing a worthless check may be criticized as hair-splitting. The drawer is being punished because the check he issued in payment of a pre-existing obligation was dishonored. The end-result is that he is being imprisoned for failure to pay for his debt. A rule is tested by its result. [9]

Besides, the constitutional guarantee prohibiting imprisonment for non-payment of a debt should be liberally construed. Every doubt should be resolved in favor of upholding such liberty. [10]

To bolster its stand that a statute penalizing the issuance of a worthless check in payment of a pre-existing obligation is unconstitutional, the Court of Appeals of Kentucky argued that concededly to punish someone for not paying a negotiable promissory note would be unconstitutional and checks were not materially different from a negotiable promissory note. [11]

The fallacy in this argument lies in its wrong premise that checks are not materially different from negotiable promissory notes. First of all, the overwhelming majority of business transactions are paid with checks and not with promissory notes. Secondly, in the usual course of business, when a check is received, it is intended and expected to serve as payment. The payee expects to realize cash when he presents the check to the bank. This is not so in the case of promissory notes. In the ordinary course of business, when a negotiable promissory note is issued, it is not intended to serve as payment. Rather, the payee is extending credit to the maker.

Which line of decisions the Supreme Court will follow lies in the realm of the uncertain.

B. Failure to Maintain Deposit for Ninety (90) Days

While the first paragraph of Section 1 of Batas Pambansa Blg. 22 penalizes the issuance of a check without sufficient funds or credit at the time of its issuance, the second paragraph punishes the issuance of a check even if the drawer had sufficient funds or credit at the time of its issuance if he fails to maintain such funds or credit to pay for the check if it is presented within ninety (90) days.

[9] Ocampo vs. Secretary of Justice, 51 O.G. 147, 174.

[10] People vs. La Mothe, 60 ALR 316, 320; Store vs. Stidham, 393 P2d 923, 925; People vs. Power, 324 P2d 113, 115.

[11] Ward vs. Commonwealth, 15 SW2d 276, 277; Burnam vs. Commonwealth, 15 SW2d 256, 258.

The title of Batas Pambansa Blg. 22 reads as follows:

> An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes."

The title indicates that Batas Pambansa Blg. 22 seeks to penalize issuing checks without sufficient funds or credit. On the other hand, the second paragraph of Section 1 of Batas Pambansa Blg. 22 punishes issuing checks with sufficient funds or credit if the drawer fails to keep sufficient funds or credit to pay for the check if it is presented within ninety (90) days from its date.

Section 19 (1), Article VIII of the Constitution requires:

> "Every bill shall embrace only one subject which shall be expressed in the title thereof."

It was for this reason that Assemblyman Arturo Tolentino objected that the second paragraph of Section 1 of Batas Pambansa Blg. 22 is unconstitutional, for it is not reflected in the title. [12]

If the second paragraph of Section 1 of Batas Pambansa Blg. 22 is not reflected in its title, the inclusion in the title of the phrase "and for Other Purposes" will not save it from the taint of unconstitutionality. This phrase expresses nothing and does not comply with the requirement of the Constitution. Such phrase cannot cover any subject matter which is not reflected in the title of the bill.[13]

Even if the second paragraph of Section 1 of Batas Pambansa Blg. 22 were to be declared unconstitutional, the rest of the law can stand independently as a complete statute and will not be affected Section 6 of Batas Pambansa Blg. 22 provides:

> "If any separable provision of this Act be declared unconstitutional, the remaining provisions shall continue to be in force."

C. Double Jeopardy

Even if the drawer of a check has been prosecuted under Batas Pambansa Blg. 22, he may still be chaged with **estafa** under Article 315 of the Revised Penal Code. Section 6 of Batas Pambansa Blg. 22 states:

[12] Record of Batasan, March 22, 1979. p. 1899.

[13] Government of the Philippine Islands vs. El Hogar Filipino, 50 Phil. 399, 418-419.

> "Prosecution under this Act shall be without prejudice to any liability for violation of any provision of the Revised Penal Code."

The view has been advanced that this will constitute double jeopardy. [14]

It does not seem that another prosecution for **estafa** under the Revised Penal Code will constitute double jeopardy. Section 22, Article IV of the Constitution provides:

> "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

Under the first sentence of this provision, the prohibition is against being placed in double jeopardy for the same offense and not for the same act. If a single act violates two (2) different laws, prior jeopardy under one law will not bar prosecution under the other law if one offense requires an element which the other offense does not require. [15]

Damage to another is one of the essential elements of **estafa.** [16] This is not an essential element for violation of Batas Pambansa Blg. 22. [17] Prosecution for **estafa** under the Revised Penal Code will not place the drawer in double jeopardy even if he has been previously prosecuted under Batas Pambansa Blg. 22. This is also the rule in the United States. [18]

[14] Padilla, "Batas Pambansa Blg. 22 and Penal Code Provision on 'Rubber' Checks," Philippine Law Gazette, Vol. V, No. 4, September, 1979, p. 8.

[15] People vs. Liwanag, G. R. No. L-27683, October 19, 1976, 73 SCRA 473, 480-481; People vs. Doriguez, G. R. Nos. L-24444-45, July 29, 1968, 24 SCRA 163, 171; People vs. Anito, 95 Phil. 865, 867; People vs. Tinamisan, G. R. No. L-4081, January 29, 1952; U.S. vs. Alvarez, 45 Phil. 472, 478, U.S. vs. Capurro, 7 Phil. 24, 36.

[16] People vs. Abana, 76 Phil. 1, 4; Castillo vs. People, 73 Phil. 489, 490; People vs. Yusay, 50 Phil. 598, 609; U.S. vs. Quinajon, 31 Phil. 188, 189; U.S. vs. Rivera, 23 Phil. 383, 390; U.S. vs. Leano, 6 Phil. 368, 371, U.S. vs. Berry, 5 Phil. 370, 372; U.S. vs. Mendezona, 2 Phil. 353, 372.

[17] Record of Batasan, December 5, 1978, p. 1035.

[18] Lyman vs. State, 9 ALR 401, 406.

III. THE QUESTION OF **MALA PROHIBITA**

The offenses which Batas Pambansa Blg. 22 penalizes are not **mala in se** but **mala prohibita.** To be convicted, the drawer need not harbor any criminal intent. It is enough that he voluntarily performed any of the prohibited acts. It is not necessary that he intend to commit any of the offenses penalized. It suffices that he intended to perpetrate any of the prohibited acts. [19]

Thus, if the drawer was forced to draw and issue the check, he incurs no criminal liability under Batas Pambansa Blg. 22, because his act was not voluntary. [20]

The provisions of the Revised Penal Code apply in a suppletory manner to offenses punished by special laws like Batas Pambansa Blg. 22. Article 10 of the Revised Penal Code provides in part:

> "Offenses which are or in the future may be punished by special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws."

Article 12 of the Revised Penal Code reads in part:

> "The following are exempt from criminal liability:
>
> x x x x x x x x x x x x
>
> "5. Any person who acts under the compulsion of an irresistible force.
>
> "6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury."

[19] People vs. Lubo, 101, Phil. 177, 183; People vs. Fuentes, 61 Phil. 186, 188; People vs. Bayona, 61 Phil. 181, 185; U.S. vs. Siy Cong Bieng, 30 Phil. 577, 580; U.S. vs. Go Chico, 14 Phil. 177, 183; People vs. Zamora, CA—G.R. No. 04144-Cr, June 4, 1968; People vs. Quebral, (CA) 58 O.G. 7399, 7401; People vs. Toledo, (CA) 58 O.G. 6487, 6490; People vs. Malibago, (CA) 56 O.G. 6223, 6229; People vs. Badilla, (CA) 55 O.G. 2918, 2922; People vs. Villanueva, (CA) 49 O.G. 4922, 4924; People vs. Piosang, (CA) 47 O.G. 5149, 5150; People vs. Basa, (CA) 47 O.G. 2149, 2151; People vs. Paras, (CA) 45 O.G. 3936, 3937.

The exempting circumstances enumerated in the Revised Penal Code are applicable to special laws. [21] Thus, if as a result of force or intimidation exerted upon him the drawer issued a check which was later on dishonored for lack of sufficient funds or credit, he incurs no criminal liability. Of course, the intimidation should not consist in a threat to enforce a right. [22]

IV. ANALYSIS OF THE LAW

A. Scope

Batas Pambansa Blg. 22 applies to checks only. It does not apply to other bills of exchange. It applies even to postdated checks. [23] In the first place, the law does not distinguish between postdated checks and ordinary checks. Secondly, the law does not exempt postdated checks from its scope. Thirdly, the same evil which the law seeks to remedy exists in the case of postdated checks. Fourthly, postdating a check does not affect its validity. Section 12 of the Negotiable Instruments Law reads in part:

> "The instrument is not invalid for the reason only that it is antedated or postdated provided this is not done for an illegal or fraudulent purpose."

Batas Pambansa Blg. 22 also applies to checks drawn against current accounts in foreign currency. [24]

The law applies even if the name of the payee was left blank when the check was issued. [25] It is presumed that the person in possession of such a check has authority to complete it by writing the name of payee. Section 14 of the Negotiable Instruments Law reads in part:

[20] Record of Batasan, December 4, 1978, p. 1048.

[21] People vs. Navarro, (CA) 51 O.G. 4062, 4065.

[22] Berg vs. National City Bank of New York, 102 Phil. 309, 316; Lamadrid vs. Vergo, (CA) 47 O.G. 5170, 5175.

[23] State vs. Taylor, 95 ALR 476, 481; State vs. Avery, 23 ALR 453, 457; White vs. State, 280 NW 433, 436; People vs. Bercovitz, 126 P 479, 480; Record of Batasan, December 4, 1978, p. 1038 and February 6, 1979, p. 1368.

[24] Record of Batasan, February 7, 1979, p. 1376.

[25] State vs. Donaldson, 385 P2d 151, 152; State vs. Campbell, 219 P2d 956, 960; People vs. Gorham, 99 P 391, 392; State vs. Grothe, 540 SW2d 221, 225.

"When the instrument is wanting in any material particular, the persons in possession thereof has **prima facie** authority to complete it by filling up the blanks therein."

Even if the amount of the check was written in figures only and not in letters, the check will still fall within the scope of the law. [26]

Even if the parties actually agreed to treat the check as a promissory note, the check will be covered by the law. [27]

B. Offenses Penalized

Section 1 of Batas Pambansa Blg. 22 penalizes a person who commits any of the following two (2) offenses:

1. Drawing and issuing a check to apply on account or for value while knowing at the time of issue that the drawer does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the drawee bank to stop payment; and

2. Having sufficient funds in or credit with the drawee bank when the drawer drew and issued the check but failing to keep sufficient funds or to maintain credit to cover the full amount of the check if presented within ninety (90) days from the date appearing in the check.

In the first offense, the drawer had no sufficient funds in or credit with the bank when he issued the check and he knew it. In the second offense, he had sufficient funds in or credit with the bank when he issued the check but he failed to maintain such funds or credit to pay for the check if presented within ninety (90) days.

C. Elements of the First Offense

The elements of the first offense are the following:

1. A person draws and issues a check;

[26] State vs. Haynes, 426 P2d 851, 852.

[27] State vs. Doyle, 199 P2d 164, 165; State vs. Marshall, 106 P2d 688, 689.

2. The check is applied on account or for value;

3. The person issuing the check knows at the time of its issue that he does not have sufficient funds in or credit with the bank for the full payment of the check upon its presentment; and

4. The check is dishonored by the bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.

D. Elements of the Second Offense

The elements of the second offense are the following:

1. A person draws and issues a check at a time when he had sufficient funds in or credit with the bank;

2. He fails to keep sufficient funds or to maintain credit to cover the full amount of the check if presented within ninety (90) days from the date appearing in it; and

3. For such reason the check is dishonored by the bank.

E. Persons Liable

Only the person drawing the check is liable under Batas Pambansa Blg. 22. Indorsers are not liable. [28]

In the case of corporations, partnerships, companies and entities, the person or persons who actually signed the check are the ones liable. Section 1 of Batas Pambansa Blg. 22 reads in part:

"Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer under this Act."

[28] Record of Batasan, August 9, 1978, p. 511.

F. Discussion of the Offenses

Unlike in the case of **estafa,** a person may be convicted for violating Batas Pambansa Blg. 22 even if he issued the check in payment of a pre-existing obligation.[29] In defining the first offense, the law requires that the check be issued "on account or for value." The word "account" refers to a pre-existing obligation, while the phrase "for value" refers to an obligation incurred simultaneously with the issuance of the check.[30] If the check was given as a donation and it is dishonored, the drawer is not criminally liable, as the check was not issued on account or for value.

The check need not have been issued by the drawer as payment for his own obligation. It might have been issued as payment for the obligation of another whom the drawer accommodated.[31]

Even if the drawer had no funds in or credit with the bank at the time of the issuance of the check, if he deposited sufficient funds to cover the value of the check and the check was encashed upon presentment, he commits no crime.[32]

Although the drawer does not have sufficient funds, if he has sufficient credit with the bank to pay for the check, he does not violate the law. Section 4 of Batas Pambansa Blg. 22 defines the word "credit" as follows:

> "The word 'credit' as used herein shall be construed to mean an arrangement or understanding with the bank for the payment of such check."

For instance, the drawer might have an overdraft line with the bank. He might have an arrangement with the bank that the deposit in his savings account will be applied to pay for any check he issues in case the balance in his current account is insufficient.[33]

[29] Clarke vs. U.S., 140 A2d 181, 182; State vs. Weeks, 247 P 1099, 1100; Record of Batasan, August 8, 1978. p. 494, December 4, 1978, p. 1041 and December 8, 1978, p. 1123.

[30] Record of Batasan, August 8, 1978, p. 494, December 4, 1978, p. 1041 and December 8, 1978, p. 1123.

[31] Record of Batasan, August 9, 1978, p. 511.

[32] Record of Batasan, February 6, 1979, p.. 1363.

[33] Record of Batasan, December 4, 1978, p. 1043.

If the drawer made the latter arrangement and the bank dishonored the check because it overlooked that there was such an arrangement, he incurs no criminal liability.[34] On the other hand, if despite such arrangement the bank dishonored the check because at that time the drawer had assigned his savings account as collateral for a loan, the drawer violated the law, for his savings account actually was not available to pay for the check.[35]

Even if the drawer had sufficient funds in or credit with the bank at the time of the issuance of the check, if he withdrew the funds or cancelled the credit before the check could be cashed, he will be liable for the second offense if the check was presented within ninety (90) days from the date appearing in the check. The ninety-day-period is reckoned from the date of the check. The date of the actual issuance of the check is of no moment. If the check was antedated or postdated, such date will still be used as the starting point for computing the ninety-day period.

The law fixes a time limit of ninety (90) days to protect the drawer from oppression. Otherwise, the payee can retain the check for months or years before cashing it and then file a criminal case against the drawer.[36]

Thus, if the drawer had sufficient funds or credit at the time of the issuance of the check, the check was presented for payment beyond the ninety-day period, and the check was dishonored for lack of funds or credit, the drawer is not criminally liable.

G. Defenses

If the check was dishonored because of the occurrence of a fortuitous event after its issuance, the drawer commits no crime.[37] Thus, if the check was dishonored because the current account of the drawer was garnished after its issuance, the drawer is not criminally liable.[38] The same is true if after the issuance of the

[34] Record of Batasan, August 9, 1978, p. 507.

[35] Record of Batasan, August 9, 1978, p. 508.

[36] Dunaway vs. State, 561 P2d 103, 107-108.

[37] Record of Batasan, December 4, 1978, p. 1038.

[38] Record of Batasan, August 9, 1978, p. 508.

check, the drawer was thrown into involuntary insolvency, the assignee appointed to take charge of his assets took over his account, and for this reason the check was dishonored. The funds the drawer had deposited in his current account could not be applied to pay for the check, because the law has seized them.[39] Likewise, if on account of the quarrel between a married couple with a joint current account the wife withdrew all the funds from their account without the consent of the husband and as a result a check previously issued by the husband was dishonored, the husband cannot be convicted.[40]

The fact that the consideration for the check is illegal is not a defense.[41] Thus, usury is not a defense.[42] Neither is it a defense that the check was issued in payment for a gambling debt.[43]

If the check was postdated and before its maturity the drawer informed the payee he would not be able to deposit sufficient funds to cover the face value of the check, he will still be criminally liable.[44]

The fact that after the dishonor of the check the drawer and the drawee entered into a compromise under which the drawer agreed to pay for the face value of the check in installments will not extinguish his criminal liability.[45] A crime has already been committed. The criminal liability arising from its commission cannot be extinguished by such a compromise.

American decisions are split as to the effect of the discharge of the drawer in insolvency. Early decisions held that he is released from criminal liability, as the discharge in insolvency has the effect of payment.[46] A contrary ruling countered that the discharge in insolvency only serves to unveil the fraudulent intent of the drawer, as he should be aware of his financial condition.[47] The latest decisions hold that the drawer is not released from criminal liability, as the discharge in insolvency refers solely to his civil liability while the penal statute requires payment of the check and refers to criminal liability.[48]

[39] Oetgen vs. State, 107 SE 885, 886.

[40] State vs. Haremza, 515 P2d 1217, 1223.

[41] State vs. Doyle, 199 P2d 164, 165.

[42] State vs. Schifani, 584 P2d 174, 177; Record of Batasan, August 8, 1978, p. 492.

[43] Record of Batasan, August 8, 1978, 492.

[44] Record of Batasan, August 9, 1978, p. 503.

[45] Cook vs. Commonwealth, 16 SE2d 635, 638.

[46] Ex Parte Myers, 237 P 1026, 1028; Oetgen vs. State, 107 SE 885, 886.

[47] State vs. Price, 5 ALR 1247, 1251.

H. Requirement of Knowledge

To be liable for the first offense penalized by Batas Pambansa Blg. 22, the drawer must know at the time of the issuance of the check that he does not have sufficient funds or credit with the bank. Thus, if the bank statement he received mistakenly stated that he had a bigger balance in his current account and relying on it, he erroneously issued a check for that amount, he is not criminally liable.

Since knowledge refers to an internal state of the mind, it cannot be perceived with the senses. It is difficult to prove knowledge. To facilitate the task of the prosecution, the law created a presumption. Section 2 of Batas Pambansa Blg. 22 provides:

> "The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds or credit with such bank, when presented within ninety (90) days from the date of the check, shall be **prima facie** evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangement for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check had not been paid by the drawee."

This presumption does not violate the constitutional presumption of innocence.[49] Justifying the creation of such a presumption, the Supreme Court of Kansas pointed out:

> "One of the well-recognized presumptions of law is that a person intends all the natural and probable consequences of his voluntary act. Where a person has written an insufficient funds check, and receives property or other consideration therefor from the payee of the check, and further, where the maker of the check has been notified that the check has not been paid and fails to make payment within seven day after such notice, we find nothing unreasonable or arbitrary in making such fact **prima facie** evidence of fraudulent intent or guilty knowledge. It appears to us that in the usual course of things when one person gives another a check,

[48] State vs. Bontz, 386 P2d 205, 205; State vs. Bontz, 386 P2d 201, 204; State vs. Breitenbach, 373 P2d 601, 604.

[49] State vs. Avery, 23 ALR 453, 458.

he intends to induce such person to give up some property right in reliance that the check will be paid on presentation. The notice provision gives to the drawer of the check final opportunity in which to make the check good and is peculiarly for his benefit. In a worthless check case it is obviously the defendant who has the more convenient access to evidence relating to his intent and knowledge. These are matters within his own head and usually are not within the knowledge of the prosecution." [50]

The failure of the drawer to pay the check or to arrange for its full payment by the bank within five (5) days after his receipt of notice of dishonor is not an element of any of the offenses defined in Batas Pambansa Blg. 22. It is merely evidentiary. It merely creates a presumption. [51] The drawer may rebut this presumption.

Since Section 2 of Batas Pambansa Blg. 22 merely creates a presumption, even if the drawer paid the check within five (5) days after he received notice of dishonor, he may still be prosecuted. However, the prosecution will not have the benefit of the presumption of knowledge. It will be saddled with the task of proving the drawer knew of the insufficiency of his funds in or credit with the bank at the time of the issuance of the check. [52]

The presumption created by Section 2 of Batas Pambansa Blg. 22 will not arise in any of the following instances:

1. If the check was presented after ninety (90) days from the date appearing in the check; and

2. If the drawer paid the amount of the check or arranged for its full payment by the bank within five (5) days from his receipt of notice of dishonor.

As a matter of banking practice, checks become stale after six (6) months from the date appearing in them. Section 2 of Batas Pambansa Blg. 22 has not abolished this practice, as it is not inconsistent with this practice. The check may be presented even after ninety (90) days from the date appearing in it. However, even if it is dishonored and the drawer does not pay it, he will not

[50] State vs. Haremza, 515 P2d 1217, 1223.

[51] State vs. Coburn, 244 NW2d 560, 562; Merkel vs. State, 167 NW 802, 802; Cook vs. Commonwealth, 16 SE2d 635, 638; McBride vs. State, 104 So 454, 455; State vs. Puckett, 90 So 113, 115.

[52] Kravets vs. State, 360 So2d 486, 488.

be presumed to know of the insufficiency of his funds or credit with the bank at the time of the issuance of the check. On the other hand, even if he paid the check, if he did so after five (5) days from receipt of notice of its dishonor, the drawer will still be presumed to have known of the insufficiency of his funds in or credit with the bank.

Should the drawer pay for the check in kind within five (5) days from his receipt of notice of dishonor, such as by assigning property, this should have the same effect as payment if the payee is willing to accept payment in kind. This is dation in payment, which the Civil Code recognizes as a species of payment. Article 1225 of the Civil Code reads in part:

"The debtor may cede or assign his property to his creditors in payment of his debts."

Thus, if a check was issued as payment under a contract of sale, the drawer returned the property he purchased and the payee accepted it, this should have the effect of payment. [53]

I. Dishonor on Other Grounds

If the drawer does not have sufficient funds in or credit with the bank, he cannot evade prosecution under Batas Pambansa Blg. 22 by maneuvering to have his check dishonored on some other ground. That is why Section 3 of Batas Pambansa Blg. 22 requires the drawee to state always in the notice of dishonor if there are no sufficient funds or credit to pay for the check, even if the check is being dishonored for some other reason. Section 3 of Batas Pambansa Blg. 22 provides:

"It shall be the duty of the drawee of any check, when refusing to pay the same to the holder thereof upon presentment, to cause to be written, printed, or stamped in plain language thereon, or attached thereto, the reason for drawee's dishonor or refusal to pay the same; Provided, That where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal. In all prosecutions under this Act, the introduction in evidence of any unpaid and dishonored check, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid, shall be **prima facie** evidence of the making or issuance of said check, and the due presentment to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reason written, stamped or attached by the drawee on such dishonored check.

[53] State vs. Cunningham, 111 SE 835, 837; State vs. Mullins, 237 SW 502, 504. **Vide contra:** Commonwealth vs. McCall, 217 SW 109, 111.

"Notwithstanding receipt of an order to stop payment, the drawee shall state the notice there were no sufficient funds in or credit with such bank for the payment in full of such checks, if such be the fact."

This provision should be correlated with Section 1. Thus, if the drawer had no sufficient funds in or credit with the bank, he cannot escape prosecution by stopping the payment of the check. If the check would have been dishonored for lack of funds or credit, he will still be criminally liable if he stopped the payment of the check and the check was dishonored for this reason. However, the order to stop payment must be without any valid reason. Even if the drawer had no sufficient funds or credit, if the check was dishonored because he stopped its payment and there was a valid reason for doing so, he commits no crime. Thus, if the drawer issued a check as payment for an article he bought, he returned the article and the sale was cancelled with the consent of the payee, the drawer has a valid reason for stopping the payment of the check.

If the drawer adopted a different signature in signing the check and the check was dishonored for this reason, he will still be criminally liable if he actually did not have sufficient funds or credit with the bank to pay for the check.[54] Of course, if actually the drawer keeps no current account with the drawee bank, he will be criminally liable under Batas Pambansa Blg. 22.[55]

V. DATE OF EFFECTIVITY

Batas Pambansa Blg. 22 took effect fifteen (15) days after its publication in the Official Gazette. Section 7 of Batas Pambansa Blg. 22 provides:

"This Act shall take effect fifteen days after publication in the Official Gazette."

Batas Pambansa Blg. 22 was published in the Official Gazette on April 9, 1979.[56] Hence, it took effect on April 24, 1979.

[54] Record of Batasan, August 9, 1978, p. 507.

[55] Record of Batasan, December 6, 1978, p. 1079.

[56] 75 O.G. 3291-3293.

VI. CONCLUSION

Bankers, brokers and businessmen have hailed Batas Pambansa Blg. 22 as the solution to the bane of issuing worthless checks. While this law may minimize the incidence of the issuance of worthless checks, to expect it to eradicate this practice entirely is to entertain illusions. Some loopholes beset the law. At the same time, the law may have armed usurers with a truncheon which they can use to club their victims to submission. Experience in the implementation of the law will show the areas where amendments should be introduced. Batas Pambansa Blg. 22 was enacted after protracted discussions and repeated revisions. For the moment, business circles will have to try out first the present text of the law—the version that squeezed through the legislative mill.