NOTE

THE LEGAL EFFECTS OF PREGNANCY AS ILLNESS OR DISABILITY

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I. Preliminary

Pregnancy is the existence of the condition beginning at the moment of conception and terminating with delivery of the child.[1] The usual duration of pregnancy is about nine calendar months or ten lunar months. This period is subject to variation in different individuals, but this variation may be more apparent than real, as it is difficult to determine the exact date at which conception takes place.[2] During the interrugnum of pregnancy a legal transformation occurs. The pregnant woman is enveloped by a unique legal mantle. The woman enters a mysterious legal world for the next nine months or so. And yet the old world is not entirely gone; rather, it is modified by the exigencies of the new situation. As before, the woman can enter into contracts and is legally liable for crimes. Yet, unlike before, she may be excused from certain contracts, and immune for the duration from the death penalty. Her status as a pregnant woman is a complex status[3] because of her dual weakness and dual personality — the former because the first weakness of her sex has been coupled with the second weakness of her conception, and the latter because she is a vessel of a person within a person.[4] From the simple concept that a woman with a child in her womb is a pregnant woman flows the diverse legal reactions to pregnancy, protecting the woman, the child and the womb. One of the ways in which the law protects these three is to recognize pregnancy as a sort of "illness" or "disability" which can dispense the person from contractual obligations, shield her

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1 33 WORDS AND PHRASES 310-11.

2 220 AM. AND ENGLISH ENCY. OF LAW 536.

3 "Civil status in its broadest meaning has reference to diverse categories of circumstances which affect the legal situation, i.e., capacities and incapacities of a person." Caguioa, Civil Law, I, 63.

4 Articles 40 and 41 of our Civil Code warrant our saying this because thereunder a conceived child is a person subject to a suspensive condition.

added legal standards of diligence, and grant such other legal effue to confinement, indisposition and weakness resultant from preg-

The precise line and direction of this legal reaction is sought to be established by considering the pregnant woman in four situations; as a laborer, an insured in life or health insurance, a tort victim and a court witness.

II. The Pregnant Laborer

The Philippine Constitution provides: "The State shall afford protection to labor, especially to working women and minors..."[5] Protection to working mothers is both a fundamental obligation of the State and a constitutional recognition of the strong interest of the State in the health and well-being of mothers and their offspring.[6]

The constitutional mandate is implemented in regard pregnant women by laws providing for maternity leave and privileges.[7] Pregnant women in the government service are covered by Commonwealth Act No. 647 and those in the private enterprises are governed by Republic Act No. 679. These laws are alike in that they both grant maternity leaves with pay; but they differ as to the period of the leave, the amount of the pay, the sanctions involved, and the requisite of marriage. For purposes of this work the significant difference is the last mentioned.

Whereas Republic Act No. 679 grants maternity leave benefits to "*any* woman employed", Commonwealth Act No. 647 grants such benefits only to "*married* women... in the service of the government." (Underscoring ours.) In Opinion No. 174, series of 1954, the Secretary of Justice[8] sustained the Auditor-General in disallowing the claim for maternity leave benefits under Commonwealth Act No. 647 by an employee of the NADECO,[9] stating that "since Com. Act No. 647 speaks of 'married women' it would be extending the interpretation of the statute too far to include unmarried women", reasoning that "the term 'married women' in contemplation of the law must be one who is united to a man by the bonds of lawful matrimony and not by unlawful marital relationship."

On the other hand, there is unanimity to the effect that under Republic Act No. 679 no marriage is required for invoking the maternity benefits. This was the opinion of the Government Corporate Council.[10]

5 Article XIV, Sec. 6, PHIL. CONST.

6 Barrera, Jesus G., *Assistance to Motherhood and Childhood in Philippine Law*, 1.

7 Yet even without these express provisions such benefits were granted by the Court of Industrial Relations as implied in the power to regulate relations between labor and capital in industry and agriculture. *Phil. Educ. Co. v. CIR*, G.R. No. L-5679, Nov. 1953.

8 Hon. Pedro Tuason.

9 A quasi-public corporation, hence under the scope of government service.

10 Op. No. 18, s. 1953.

admitted by the Secretary of Justice[11] and strongly upheld by a noteworthy decision of a judge of first instance[12] and impliedly approved by the Court of Appeals.[13]

The question arises as to the reason of the disparate treatment. Are there substantial grounds for the distinction sufficient to withstand the constitutional guarantee of equal protection under the law?[14] Is not the purpose and spirit of both laws the same and if so is not that purpose and spirit violated by the present disparity? Is the condition of pregnancy so favored by the law, as "illness" or "disability," as to transcend the inquiries as to legality or morality of such pregnancy?

The purpose of Republic Act No. 679 was stated in the aforementioned decision of a court of first instance in very enlightening terms:

> The purpose of the law in granting maternity protection is to give due protection to a woman who by nature of her physical condition for giving birth to a child, is not in a position to work without risking her life or endangering her health . . . The legislature, in making this provision, has for its object the protection of women irrespective of whether they became mothers lawfully or unlawfully . . . In this same trend of thought and policy, our legislature approved and introduced amendments to our Civil Code granting to illegitimate children the protection and right to inherit to which they were not entitled under the old Civil Code . . . The object of the law is to protect her during the period of her maternity when by reason of her physical condition she is not in a position to work without risking her life or endangering her health.[15]

It is submitted that there is no valid reason why these words should not be applied to Commonwealth Act No. 647. The government service, it may be argued, should be more directly protected from anything that can soil its integrity, not only because the government officers and employees should be the first to obey the law but also because of the power of supervision and the responsibility which the government has over those covered by Commonwealth Act No. 647. However, considering that there is a constitutional mandate to protect working women without distinctions, and considering that due to the complex status of a pregnant woman the protection is not hers alone but also that of the child and ultimately that of society, the distinction under the law should be eliminated.

III. The Pregnant Insured

Besides the contract of lease of services, the pregnant woman usually finds herself under a contract of life or health insurance. The particular question of importance for us is the consideration of a pregnant woman under a contract of insurance for purposes of insurability as well as the more poignant query of whether the state of pregnancy is a state of good health or of "illness" for insurance purposes.

[11] Op. No. 174, s. 1954.
[12] A declaratory relief decision by the Hon. Bienvenido A. Tan on Nov. 22, 1954.
[13] Bautista v. Ong, CA-G.R. No. 18310-R, Feb. 13, 1958.
[14] Art. III, Sec. 1(1) PHIL. CONST.
[15] See *supra* note 12.

Our Court of Appeals had occasion to tackle these problems in the case of *Banas vs. Occidental Life Insurance Co.*[16] The problem presented in this case was the effect of pregnancy on insurability for purposes of reinstatement of a lapsed policy, or specifically, whether the insurer could demand in such a case "pregnancy extra premiums" as a prerequisite to reinstatement.[17] The appellate court, ruled that: (1) "insurability" as used in the reinstatement provision of a life, health and accident policy, is not more comprehensive than the term "good health"; (2) pregnancy is not a personal ailment or condition of bad or unsound health; (3) the company assumed as a calculated risk the insured's subsequent pregnancy knowing her to be married and with children, thereby charging her in the original policy a rate of premium higher than that ordinarily chargeable to males under equal conditions in order to cover the risk of death attendant to a woman's giving birth and to the possible deterioration of health which baby-care and up-bringing consequently brings to the mother. The second part of the ruling concerns us more squarely and this was lifted from a foreign case, that of *National K. L. S. vs. Glenn*, a Florida Supreme Court case.[18]

The *Glenn* case clarifies the "good health" angle by treating it as as a "question of fact" and proceeding to dissect the same with the help of the expert testimonies of two doctors given in the court *a quo*. The first observation is: "A physiological condition with reference to a human being is a normal condition. A pathological condition is a diseased condition. It is not possible for a physiological and a pathological condition to exist at one and the same time with reference to the same subject-matter in one person. Th condition of a woman who is pregnant, in a state of normal pregnancy, is physiological. A person who is in a physiological condition of health is in good health." The second observation is: "However, a physiological condition may become pathological; for instance, the normal vomiting of pregnancy may become so pronounced as to endanger the life of a woman, in which case it would undoubtedly be classed as a pathological condition." Thus, although Mrs. Glenn died five days after her reinstatement, inasmuch as the two doctors agreed that at the crucial moment of reinstatement her condition was still pure-

[16] CA-G.R. No. 15036-R, May 30, 1956.
[17] Sec. 184 (j) of the Insurance Act requires reinstatement clauses in life and health insurance subject to requirements of insurability.
[18] 2 A.L.R. 1503. The proviso for reinstatement here stated "good health at the time of making payment... with a view to reinstatement."

ly physiological, the court ruled that she was in "good health" at the moment required.

It is to be noted that our Court of Appeals in the *Banas* case impliedly sanctioned pregnancy extra premiums in the original policy This was premised on the obvious fact that notwithstanding normalcy or good health the risk of death are greater than usual. This premise would not apply in the reinstatement policy because, as understood by the court in the *Banas* case, the sole consideration in such cases is good health. This point may be clarified once again by resorting to American jurisprudence.

In *Rasicot vs. Royal Neighbors,*[19] it was held that a provision in a contract of insurance that the policy should not go into effect unless it was delivered to the insured "while in sound health" was not violated by reason of her being pregnant at the time the policy was delivered. Likewise, in *Merriman vs. Grand Lodge,*[20] it was held not a false representation for a married woman to sign a certificate stating that she was in sound health although she was pregnant at the time.

However, in the case of *Gallop vs. Royal Neighbors,*[21] where the condition agreed upon was that liability should not begin until, in the case of a married woman, actual delivery of a certificate when she was not pregnant, it was held that no contract was ever consummated where it appeared that a married woman was pregnant at the time of the delivery of the certificate even if not pregnant at the time of her application. Likewise, in *Supreme Lodge K. L. H. vs. Payne,*[22] an answer warranted by the insured to the effect that she was not pregnant, which was untrue, was held to avoid the risk.

From this line of foreign decisions we can conclude that: (1) pregnancy, not being a disease or ailment, does not negative good health and consequently warranties and conditions regarding good health stand unviolated;; (2) pregnancy, being an extra risk affects initial insurability and consequently justifies extra premums in the original policy and violates warranties and conditions, not of good health, but of non-pregnancy.

IV. The Pregnant Tort Victim

Pregnancy as illness or disability renders the pregnant woman a special subject of tort or quasi-delict. Physical weakness and nervous sensitivity, two qualities of a pregnant woman, call for a greater degree

[19] 18 Idaho 85, 29 L.R.A. (NS) 433.
[20] 77 Neb. 544, 8 L.R.A. (NS) 983.
[21] 117 Mo. App. 85, 150 S.W. 1118.
[22] 101 Tex. 449, 15 L.R.A. (NS) 1277.

of diligence in regard to her and violations of such diligence should be correspondingly treated with more severity.

The provisions of our new Civil Code which are pertinent here are articles 20, 21, 1173, 2176, 2202, 2217 and 2219. Inasmuch as the degree of diligence required by law corresponds to the circumstances of *persons,* time and place[23] and the standard ordinarily followed is that of a "good father of a family"[24] a pregnant woman must indeed be entitled to very special diligence.

Weakness and sensitivity are the two factors which modify and qualify the various kinds of torts on a pregnant woman. This can be seen from a sample of Anglo-American jurisprudence.

In the case of *Opal Lamb vs. F. N. Woodry*[25] involving an assault upon a pregnant woman in repossessing a store held under a conditional sales contract, the court held that the act was "more reprehensible" and unquestionably entitles award of "greater compensation" than would be the case if the victim was not pregnant. This was premised on the resulting "physical and mental suffering" regardless of defendant's "notice or knowledge of plaintiff's delicate condition."

On the other hand, where there is no direct physical violence, but physical injury is caused through nervous excitement, it seems knowledge of the victim's delicate situation is required. Thus, in *Engle vs. Simmons,*[26] where the defendant entered the dwelling of the plaintiff, refussing to leave when requested and persisting in interrogating her and taking an inventory of the household effects, when she was "far advanced in pregnancy," it was held that the consequent state of nervous excitement, bringing on labor pains attended with unusual severity and resulting in the premature birth of a child was actionable even if no physical violence was done to the person. Again, in *Rogers vs. Williard,*[27] where the defendant, "knowing that the plaintiff was about 8 months advanced in pregnancy," unlawfully came upon her premises and there willfully and wantonly engaged in a quarrel with a third person, drawing and flourishing a pistol, frightening and shocking the plantiff so as to cause her faint and bring on a miscarriage, the court held there was a cause of action. Lastly, in *Bouillon vs. Laclede Gaslight Co.,*[28] the same principle was applied where the defendant's agent came to the door and violently demanded admittance in order to read a gas meter and although told of plaintiff's illness due to pregnancy, shouted and cursed, frightening the plaintiff and aggravating her illness.

[23] See Art. 1173 CIVIL CODE.
[24] *Id.*
[25] (Or.) 58 P2d 1257, 105 A.L.R. 914.
[26] 148 Ala. 92, 41 So. 1023, 7. L.R.A. (NS) 96.
[27] 144 Ark. 587. 223 S.W. 15, 11 A.L.R. 1115.
[28] 148 Mo. App. 462, 129 S.W. 401.

The third type is a sort of middle class, where there is injury caused by nervous excitement arising from immediate fear of physical injury. This happened in an English case[29] where the defendant's servant negligently drove a van into the plaintiff's house, frightening and shocking her, causing her premature delivery; in an American case[30] where blasting operations cast a large rock through the plaintiff's house, frightening a pregnant woman and shocking her nervous system; and in another case[31] where the defendant's train backed off the track into the plaintiff's adjacent house, carrying away the porch and frightening the pregnant plaintiff, causing sickness and miscarriage. In these cases no actual knowledge of pregnancy was required although constructive knowledge seemed present.[32]

Therefore, the requisite of knowledge of victim's pregnancy diminishes in proportion as the degree of violence increases and the pregnant woman's weakness is more broadly protected than her sensitiveness. Under our Civil Code, however, moral damages may be recovered for mental suffering.[33] The demarcation line between physical and mental injury seems hazy at times to the extent that one court held that "the nerves are as much a part of the physical system as the limbs.[34] But for purposes of recovering actual damages the rule seems established that there can be physical injury even if one of the links in the chain of proximate causation is purely mental.

V. The Pregnant Witness

As a witness in court the pregnant woman may either be excused from answering a subpoena or her deposition may be admitted in evidence. The criterion for dispensing with the duty to appear in court is "danger to life or health." Thus, Dean Wigmore writes: "When the attester is so ill or so infirm from age, that it is impracticable, without danger to his life or health, to compel his attendance in court, his production should be dispensed with."[35] The learned master adds elsewhere: "Any physical incapacity preventing attendance in court, except at the risk of serious pain or danger to the witness should be sufficient cause of unavailability; and this has been almost universally recognized by courts."[36]

[29] Dulieu v. White & Sons, 2 K.B. 669.
[30] Kimberly v. Howland, 143 N.C. 398, 55 SE 778, 7 L.R.A. (NS) 545.
[31] Chicago and N.W.R. Co. v. Hunerberg, 16 Ill. App. 387. See A.L.R. 2d 1086.
[32] The reasoning in the Kimberly case pinned knowledge through a scrities: populous neighborhood to dwelling houses to well-regulated families to pregnant woman.
[33] Art. 2217, CIVIL CODE.
[34] Kimberly v. Howland, supra note 30.
[35] 4 WIGMORE, EVIDENCE 627.
[36] *Id.*, at 158.

Although the witness cannot come in court her testimony may still be admitted through the use of depositions. The criterion in such cases is the necessity of the testimony and its importance in relation to the trial.[37] This in turn depends on the nature of the proceedings, whether civil or criminal. In civil cases depositions may be used when, among other cases, "the witness is unable to testify because of age, sickness, infirmity or imprisonment."[38] In criminal cases, however, where the witness is for the prosecution, the deposition is admissible only upon "satisfactory proof to the court that he is dead, incapacitated to testify, or cannot with due diligence be found in the Philippines."[39] Doubtless, pregnancy could be embraced within the "sickness" or "infirmity" mentioned in the civil rule. Is the same true for "incapacitated to testify" in criminal cases?

In the case of *Elago vs. People*[40] the Supreme Court seemed to answer this in the negative, quoting a standard treatise thus:

> Though the authorities sustain the rule by which in civil suits the testimony of an absent witness is received not only in case of death, but where he is incompetent by insanity or illness, or mere absence, the criminal courts always hesitate, in the absence of a permissive or mandatory statute, to submit such evidence where it is not shown that the witness is dead, incapacitated or cannot be found. The mere fact that the witness is sick, or out of the jurisdiction, or that his whereabouts are unknown so that he cannot be reached by subpoena, is not enough. A temporary absence from the state does not render such testimony advisable. Only when it is necessary to prevent the miscarriage of justice is the former testimony of a witness admissible in a subsequent criminal trial. (Underhill's Criminal Evidence, 4th Ed. pp. 958 - 959).

This may be because of the defendant's constitutional and statutory right to confrontation, which may be violated even if he exercises his right to cross-examine during the deposition, not only because of the danger of cross-examining a pregnant woman but also because of the element of the judge's ability to notice the demeanor and behaviour of witnesses, which is not available in deposition taking.

VI. Conclusion

The crux of the legal protective umbrella for pregnancy is bottomed on the nature of pregnancy as delicate and fragile normalcy. The exposition of the physiological but changeable-to-pathological condition of a pregnant woman given in the *Glenn* case seems to be the strongest reason for the legal *aegis* for pregnant women. Although actual weak-

[37] *Id.*, at 148 and 158.
[38] Rule 18 Sec. 4(c) (3).
[39] Rule 111, Sec. 1(e).
[40] G.R. No. L-1799, Sept. 30, 1949.

ness and indisposition resultant to pregnancy may be the reason for classifying it as an illness or disability, yet it would not do to limit the legal reaction to such reasons. Rather a more complete understanding of the precise line and direction of the protection afforded by the law is provided by portraying the law as guarding that delicate fulcrum of pregnancy to prevent its swing from physiology to pathology. The law seemingly advances the privileges incidental to a pathological condition on someone really in a physiological condition in order to prevent the evil of the latter deteriorating into the former. This, one might say, is therefore a protective-preventive legal fiction, not an actual medical fact, the fiction of illness and infirmity, which is maintained so long as it achieves the purpose of its creation. This explains the fact that good health requirements in insurance are treated as not covered by the fiction of law. The protective stance of the law is dictated not only by its desire to protect the weak and its duty to shelter the sacred, but also by the realistic fact that the protected weakness and the sheltered sanctity provides the source of a replenishing strength necessary for the life and motion of the State.

REFERENCE DIGEST

CIVIL LAW: A NATURAL CHILD SHOULD BE ENTITLED TO RIGHTS.— A natural child is defined by the New Civil Code as a child born outside wedlock of parents who at the time of its conception were not disqualified by any impediment to marry each other. A natural child has no rights except to compel recognition or acknowledgement. It is the act of recognition that confers upon it the right to bear the surname of the parent, to receive support and to successional rights. There is unanimity of opinion on this legal point among local civilists and it has been so held in the case of *Crisologo vs. Macadaeg*, G.R. No. L-7017. This conclusion is based on a clear provision of the Civil Code.

The author argues that the codal provision is repugnant because it is illogical and against a principle of natural justice. A natural child is born under less immoral circumstances than an illegitimate child who is given certain rights under the code. The true concept of filiation is independent of the act of recognition by the parent. Natural justice demands that the natural parents should assume responsibility for the birth of their natural child. Hence, if a contrary judicial interpretation cannot be given to the provision in question, an amendment of the law is in order to do justice to the natural child. The change will not lend to the perpetuation of fraud, because the duty to prove filiation is not dispensed with. (Justice Ramon R. San Jose, *A Natural Child Should Be Entitled to Rights,* XII THE LAW REVIEW NO. 4, at 340-42 (1962). ₱2.00 at the University of Santo Tomas, Espana, Manila.)

POLITICAL LAW: THE TRIPARTITE ROLE OF THE CHURCH, THE STATE AND FAMILY IN EDUCATION. — This article defines the traditional view of the Catholic Church on the education of the child, limiting, however, the scope of the discussion to democratic countries.

There are two schools of thought on the question as to whom the child belongs: Statism and Catholic. Under the first, the child belongs to the State; under the second, the child belongs to the family because parents acquire prior rights coupled with the sacred duty to care for him. But the child is associated with three societies: the family, the Church and the State. The Church has rights over the child because of her spiritual progeny after baptism and the biblical command to teach all nations; the State, because of its duty to foster the common good. Among these societies there must be cooperation and harmony in the exercise of their respective rights. But it is the parents who have control of the education of the child because the child belongs to the family. The role of the State, as in other fields of