REFERENCE DIGEST

CIVIL LAW: COMMENTS ON CERTAIN ASPECTS ON THE LAW ON SALES UNDER THE NEW CIVIL CODE:—The law on sales under the New Civil Code is taken from provisions of the Old Civil Code and the Uniform Sales Law of the United States and repeals entirely the provisions of the Code of Commerce on the matter. As such, two divergent philosophies underlie the present law on sales: the civil law concept under which ownership is transferred only upon the delivery of the thing or subject matter of the contract and the common law concept under which ownership is transferred upon the agreement of the parties. This mixture has been the source of much confusion. It is the purpose of this article to clarify the conflicts thus engendered.

Sale is defined as a contract wherein one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other party to pay therefor a price certain in money or its equivalent. The subject matter may be existing or non-existing things.

A contract to make is a contract of sale if the article is already in substantial existence at the time of the order. And the sale of manufactured goods destined for the general market is governed by the Statute of Frauds.

The contract of Sale is a consensual contract. It is perfected upon the meeting of the minds of the parties, whereupon reciprocal performance may be demanded. Delivery is essential only to its consummation and the acquisition of a real right over the thing. However under the principle of freedom of contract an agreement to transfer ownership upon full payment of the purchase price is valid and legal.

Among the agreements that produce the same juridical effects as a contract of sale are a bilateral promise to buy and sell, an accepted unilateral promise to buy or sell and an option. An option is in reality an accepted unilateral promise but with a period fixed either by the parties or the court within which the promissor is bound.

This article also enumerates the different modes of delivery with respect to movable and immovable properties provided for in articles 1497-1501 of the Code. Incorporeal things are delivered in the following ways: (1) the execution of a public document; (2) placing of the titles of ownership in the possession of the vendee in other cases; and (3) the exercise of the rights by the vendee with the consent of the vendor. (Arturo A. Alafriz, *Comments On Certain Aspects on the Law on Sales Under the New Civil Code,* XII UST Law Review No. 1, at 13-22 (1961). ₱3.00 at University of Santo Tomas. College of Law, Manila.)

CIVIL LAW — THE DOCTRINE OF UNJUST ENRICHMENT — The doctrine of unjust enrichment is a principle of justice and means that everyone who has, without just grounds enriched himself at the expense of another must restore the amount of his enrichment to the latter. The doctrine has been applied in many instances: to quasi-liabilities; in contracts which have been cancelled and nullified; to a liability arising from an unlawful act when a person may recover only what is his due and no more.

In the different countries of the world there is no hard and fast rule on the subject of unjust enrichment, but it is presently accepted and generally applied, even in the absence of a specific law. The difficulty arises in fixing the limits of its application.

Benefit denotes any form of advantage. And although it is ordinarily referred to pecuniary advantage it is not necessarily so limited. But the liability to pay, even when a person has received a benefit from another exists only if the circumstances are such that, as between two persons, it is unjust for one to retain it.

Ordinarily the benefit to one and the loss to another are co-extensive. The remedy is to compel the surrender of the benefit received and the restitution for the loss suffered. There are situations however in which a remedy is given where the benefit received by one is less than the amount of the loss which the other has suffered. The amount of recovery is not invariably determined by the value of what has been received.

A comparative analysis of the application of this doctrine in the Philippines and in Soviet Russia, two civil law countries, and in the United States, a common law country; or in short, between capitalist democracy and communist society reveals that the doctrine is not a monopoly of a single country and is maintained under both systems inspite of the differences in ideologies. The basis of its universal application is the natural law which commands man to act in accordance with the postulates of justice.

However, in Soviet Russia the doctrine is not made applicable to individuals and the state alike, a situation which negatives the purpose of the doctrine, which is, to achieve justice. On the other hand the Philippine provisions on the matter although unsystematic as to form are *substantially* satisfactory.

This article cites provisions in the legal systems compared into which the doctrine of unjust enrichment has been incorporated. (Rosalinda C. Dikitanan, *The Doctrine of Unjust Enrichment: A Brief Study in Applied Comparative Law.* XXXVI Phil. Law Journal No. 4 at 452-467 (1961). ₱3.00 at the University of the Philippines, College of Law, Quezon City. This issue also contains Troadio T. Quiazon, Jr., *Merger and Consolidation of Expiring Corporations.*)

CORPORATION LAW — ARE RESTRICTIONS ON TRANSFER OF CORPORATE SHARES VALID UNDER PHILIPPINE LAW? — In view of the Supreme Court's decisions in Fleischer v. Botica Nolasco (47 Phil 583) and Padget v. Babcock & Templeton, Inc. (50 Phil 232), are restrictions imposed by corporations on the transfer of shares of their stock null and void per se? Is this rule absolute? If it is, is it consistent with the spirit of the Corporation Law? Is it in consonance with the weight of authority in other jurisdictions?

In the Fleischer case, the Supreme Court declared the disputed by-law bearing the mark of restriction as null and void in the light of Section 13, paragraph 7, and Section 35 of the Corporation Law. In the Padget case, the Supreme Court quoted its decision in the Fleischer case and ruled against the validity of a restriction printed on a certificate of stock, without passing upon or discussing the amendments embodied in Sections 5 and 18 of the Corporation Law which give corporations the power to "restrict" shares of stock.

The rule against restriction on transfers of shares of stock, as applied in the Fleischer and Padget cases, does not seem to be an absolute rule. In the concluding portion of its decision in the Fleischer case, the Supreme Court itself stated — "... a corporation has no power to prevent or to restrain transfers of its shares, *unless* such power is expressly conferred in its charter or governing statute." Furthermore, the spirit and intention of Sections 5 and 8 of our Corporation Law now sanction the imposition of restrictions on the transfer of shares of stock.

One indispensable requirement for the validity of the restrictions on the transfer of shares of stocks, is that such restrictions must be founded on a definite charter or general law provision. In the United States, the authorities hold that a corporate by-law prohibiting the sale or transfer of a corporation's stock to an outsider without first giving the corporation or other stockholders an option and opportunity to purchase it, is valid and binding upon the stockholders. Such prohibitions are not considered contrary to public policy, but rather called for by common sense and practical business. This rule is also recognized in England and in Canada where restrictions are upheld if properly authorized and fairly reasonable.

The problem is in the probable interpretation which may be given by our Supreme Court in future litigations. The provisions of our Corporation Law regarding restrictions on transfer of shares of stock, and those relating to the manner and effect of transfering shares, can still adequately meet the needs. They correspond to similar statutes in other countries. This article discusses the possible and logical courses of conduct which may guide our Supreme Court in its decisions. (Isaac S. Puno, Jr., *Are Restrictions on Transfer of Corporate Shares Valid under Philippine Law?* IX Far Eastern Law Review No. I at 1-39 (1961). ₱——— at the Institute of Law, Far Eastern University.)

CORPORATION LAW — SOME ASPECTS OF STOCKHOLDERS' DERIVATIVE SUITS. — This article deals with the right of stockholders to sue for injuries

done to the corporation, in order to prevent the failure of justice. When a corporation refuses or is unable to sue, a derivative suit may enable the defrauded shareholders to call the directors, officers, promoters and controlling shareholders to account for mismanagement, diversion of assets and fraudulent manipulation of corporate affairs.

A derivative suit is distinguished from a class or representative suit in which the plaintiff sues on behalf of himself and all the other shareholders who are in the same class because they all have similar causes of action. In a derivative suit, the cause of action is the wrong or injury inflicted primarily upon the corporation and only secondarily upon the shareholder. Thus a derivative suit is also distinguished from an individual suit in which the cause of action is the wrong directly perpetrated upon the contractual or proprietary right of the shareholder.

Being an extra-ordinary remedy, a derivative suit is unavailing until it is certain that the ordinary means of relief have failed. In the absence of sufficient excuse, the plaintiff must first apply to the directors and shareholders before proceeding with a derivative suit. Hence the alleged cause of action must first be made known to the directors with a demand for the directors to take action in the name of the corporation. If the directors refuse to do so, the shareholders must be informed of such refusal before a derivative action is availed of.

Demand on the directors is not required when a majority of the directors are the alleged wrongdoers or are under the control of the defendants. It has also been held that demand need not be made before suing usurping officers for waste because if there are officers acquiescing to the usurpation, demand would be useless, and if there are no officers, it would be impossible. However, the mere difficulty of making a demand on the directors is not a justification for failure to make it.

Failing to make the directors prosecute a cause of action, demand must be made on the other shareholders before a derivative suit may prosper. Such a demand however is excused under the following conditions: (1) that there would be delay in making a demand and awaiting a response to it; (2) that a majority of the shareholders are, or are controlled by, the alleged wrongdoer; (3) that the stock is diversely held; (4) that the alleged wrong is not ratifiable; (5) that there has been a purported ratification; and (6) that the demand is prohibitively expensive.

A shareholder cannot sue under a derivative suit unless he is a shareholder in fact at the time the suit is brought. Even a single stockholder, if in fact a stockholder, may sue. Preferred stockholders seem to be precluded from bringing a suit except on the theory of a creditor's suit. Watered stockholders may maintain a derivative suit when the stock is valid between them and the corporation. Equitable owners of stocks such as holders of voting trust certificates may bring derivative suits since these are actions in equity. A stockholder of a parent or holding company may not bring a derivative suit for the subsidiary company.

The Philippine Corporation Law contains no provisions on derivative actions. In most instances our courts rely on case law, on the common-law doctrines laid down by the courts of the United States because of the inadequacy of our own jurisprudence on the matter. Our courts find authoritative guides from the rules, principles and doctrines of the common law. It is unfortunate that we do not have our pattern and set of rules on derivative causes of action. (Filomeno de la Cruz, *Some Aspects of Stockholders' Derivative Suits.* IX Far Eastern Law Review No. 1 at 40 — 90 (1961). ₱———— at the Institute of Law, Far Eastern University.)

CORPORATION LAW — MERGER AND CONSOLIDATION OF EXPIRING CORPORATIONS — The purpose of this article is to show that Rep. Act No. 191 which amended Sec. 35 of the National Internal Revenue Code does not authorize the merger and consolidation of corporations nor the acquisition by one corporation of all or substantially all of the properties of another corporation in pursuance of a plan of merger or consolidation. These forms of reorganizations are tax-exempt transactions under the Act and are patterned after the reorganization provisions of the Federal Internal Revenue Code of the United States.

The following reasons are given by the author to prove his contention: (1) These corporate matters can be only provided by corporation laws or charters of corporations because corporations, having no natural rights or powers, have the power to consolidate or merge only by the consent of the Legislature and the grant of authority must be express and not merely implied. The Act, being merely amendatory to the Internal Revenue Code, is a regulatory measure providing for the assessment and collection of a tax and the enforcement of all forfeitures, penalties and fines connected therewith; (2) Unlike the latest enacted statutes of several states in the United States on the same subject the Act does not provide for methods of procedure, a distinguishing feature of a merger and consolidation statute; (3) In the United States the authority to merge or consolidate is granted by explicit provisions of corporation laws.

Under existing legislation only two statutes expressly authorize the merger and consolidation of corporations, namely, Act No. 2772 and Act No. 146. And the express authorization under these laws are not available to other corporations on the principle that a statute authorizing consolidations of particular corporations only or of corporations of a particular class, does not apply to different corporations or corporations of a different class.

Our corporation law does not provide for this express authority. Sec. 17-1/2 is not broad enough to include subscription for stocks in the incorporation of another corporation. Sec. 18 does not allow the amendment of the articles of incorporation extending the corporate life beyond that fixed in the articles of incorporation. Sec. 28-1/2 covers only simple dispositions as distinguished from mergers and consolidations. It does not constitute a source of authority to continue the corporate existince through the instrumentality of another corporation. Neither does this section constitute a source of authority for the acquisition of substantial properties of another corporation because: (1) the same must be done pursuant to a plan of merger or consolidation and there is lack of authority to merge or consolidate; (2) the section contemplates the winding up of the business while the very object of these transactions is the continuation of the business; (3) the authority to lease, sell, exchange or dispose does not include the authority to reincorporate or reorganize.

Similarly Sec. 6 of the Securities Act is not a source of authority the terms of which merely exempt such transactions from the operation of the Act.

Our Supreme Court has declared that the american concepts of merger and consolidation which implies necessarily the termination of the merged corporation is not applicable in our jurisdiction and that the merger or consolidation recognized here is that of the corporate assets and properties.

This article cites extensively from american jurisprudence. It also contains distinctions between the merger and consolidation of corporations and that of corporate assets and properties; and a discussion on two bills submitted to Congress which favor the observations of the author. Troadio T. Quiaon, Jr., *Merger and Consolidation of Expiring Corporations.* — XXXVI Philippine Law Journal No. 4 at 426-451 (1961). ₱3.00 at the University of the Phil., College of Law, Quezon City. This issue also contains: Rosalinda C. Dikitanan, *The Doctrine of Unjust Enrichment: A Brief Study in Applied Comparative Law.*)

TAXATION — INCOME TAX PROBLEMS IN CORPORATE DISTRIBUTION.— This article analyzes the income tax problems involved in corporate distribution. Intricate tax problems regarding the declaration of dividends by the board of directors of a corporation and the receipt of the same by the individual stockholder, are clarified. Suggestions are offered in order to simplify tax problems on corporate distributions, particularly Sections 25 and 83 of the National Internal Revenue Code and the corresponding finance regulations.

The provisions of Sections 25 and 83 of our National Internal Revenue Code were copied from the United States Revenue Code of 1939, now the U.S. Revenue Code of 1954. Philippine jurisprudence and precedents on these two provisions are lacking and so the tendency is for our courts to follow American jurisprudence and precedents on the matter.

Because of the criticisms against the penalty provision on unreasonable accumulation of surplus, the provisions of the U.S. Revenue Code, corresponding to those of Section 25 of our Revenue Code, were revised in 1954. The question of whether we also have to revise these provisions of our tax laws to conform with our present tax policies, the mentality of our people, and the existing economic trend in the Philippines, is discussed.

There is no record in the Bureau of Internal Revenue to show that the penalty provision of our tax code on unreasonable accumulation of surplus has been implemented. But suppose it is implemented, is this section of our tax code fair and equitable? If and when the Bureau of Internal Revenue decides to enforce Section 25, it is anticipated that in all probability the same complaints as in the United States would be raised here. Then perhaps the amendments made on the corresponding U.S. tax provision would be just and fitting here.

The regulations implementing Section 83 of the National Internal Revenue Code seems to have gone too far in not only implementing the law but also legislating because they have created certain rules of law. Section 83 (b), for instance, states without qualification that "a stock dividend representing the transfer of surplus to capital account shall not be subject to tax." Yet the regulations made certain types of stock dividends taxable while others are not, by the so-called "change in proportionate interest" and the "creation of different rights or interests" tests.

From the context of Section 3 (b), NIRC, and following the rules on statutory construction, it appears that any stock dividend representing the transfer of surplus to capital account is exempt from tax. If the legislature had intended to establish the two tests created by the regulations, it could have easily stated them.

The regulations, however, seem to be more in keeping with our economic stride as well as with precedents obtaining in the United States and in our jurisdiction. Therefore there is a necessity of revising the provisions of Section 83 of our tax code to embody the tests created by the regulations and thus make our tax code more up-to-date and abreast with our economic development.

The reasons behind the application of the "change in proportionate interest" and "creation of different rights or interests" tests are discussed. Aside from these reasons, it has been frequently urged in the United States, as one possible course of revision of their tax code, that all stock dividends be made taxable. It has been said that where the stock dividend is an annual affair replacing *pro tanto* a regular cash dividend, the argument for taxability is even stronger. (Crispino M. de Castro, *Income Tax Problems in Corporate Distribution.* IX Far Eastern Law Review No. 1 at 91 — 166 (1961). ₱—— at the Institute of Law, Far Eastern University.)

LEGISLATION

INTRODUCTORY NOTES

1. Criminal Law. — Republic Act No. 3047 amended the Anti-Graft Law to exempt from the duty of filing statements of assets and liabilities classroom teachers, laborers, temporary and casual employees and barrio officials. This was prompted by the resulting inconvenience imposed on these public officers against whom the intended safeguard is deemed unnecessary.

2. Political Law. — Republic Act No. 3036, amending Sec. 37 of the Revised Election Code (Republic Act No. 180), grants to the Commission On Elections the power to refuse receipt of a certificate of candidacy upon showing of lack of *bona fide* intention to run. Thus, it is no longer ministerial for the Commission to give due course to certificates of candidacy of the so-called "nuisance candidates."

Furthermore, a proviso is added to the 16th rule of interpretation of ballots to favor the re-electionist in identical surnames cases.

3. Political Law. — Republic Act No. 3046, defining the baselines of the terirtorial sea of the Philippines, clarifies and specifies in 64 imaginary lines the metes and bounds of our inland or internal waters. This is the legislative answer to controversial attempts to measure the extent of our territorial limits by the coastline method and in the process converting some of our inland waters into open sea. In defining with precision the baselines of our territorial sea Congress has affirmed our adherence to the baseline method of measurement.

4. Political Law. — Republic Act No. 3083, the Nuclear Damage Act, defines the responsibility of the Government for nuclear activities in the country and provides indemnity for damages arising out of or resulting from nuclear activities.

With the grant to the Philippines of a nuclear research reactor by the United States in 1955 the problems of insurance and indemnity in relation to nuclear risks from nuclear activities naturally arose. Since no American or European designer, manufacturer or supplier of nuclear industry is willing to furnish or construct a nuclear research reactor for a country without a concrete insurance of governmental assumption of liabilities, this Act became an indispensable measure to carry out effectively the Philippine atomic research program.

The Act also creates a Nuclear Indemnity Board for the reception and adjudication of claims for personal or property damages. Provisions limiting and excepting from government liability are likewise included.