the bond filed for his temporary liberty may be declared forfeited and he may be ordered arrested. REYES *v.* FERNANDEZ, (CA) G.R. No. 14457-R, June 6, 1955.

REMEDIAL LAW — CRIMINAL PROCEDURE — PRIOR TO THE SALE OF THE PROPERTIES OF THE BONDSMAN OR THE PAYMENT OF THE VALUE OF THE BAIL, THE COURT HAS THE DISCRETIONARY POWER TO REDUCE THE SURETY'S LIABILITY FOR GOOD REASONS — It appears that Alto Surety posted a bail bond for the amount of ₱10,000 in favor of Jose Corpus who was charged with treason in the People's Court. With the abolition of the People's Court in 1948, however, the case was referred to the Court of First Instance of Ilocos Norte. When the case was called for trial on Oct. 5, 1950, the Defendant failed to appear, notwithstanding due notice previously served upon the surety. Thereupon, on the fiscal's petition, the court declared the bond confiscated and granted the surety 30 days within which to produce the body of the accused and to explain the cause of his non-appearance. On Nov. 17, 1950, and on Dec. 27, 1950, on the surety's petitions, the trial court granted the latter extension of thirty days within which to produce the body of the Defendant before the court. On Feb. 15, 1951, upon the surety's failure to comply with its undertaking within the last period granted it, and there having been no further motion for extension filed, the court, on petition of the fiscal, rendered judgment against the surety for the amount of the bond of ₱10,000 and a writ of execution of the bond was issued. On Oct. 5, 1951, the surety filed a petition for the cancellation of the bond based on the allegations that the Defendant had jumped bail pending hearing in the People's Court and joined the dissidents; that upon learning of his flight, the bonding company exerted diligent efforts, even spending ₱2,000, to apprehend the Defendant by enlisting the aid of the army; and that on Sept. 25, 1951, the Defendant was killed in the course of an army raid. The court denied the petition. On Dec. 18, 1951, the Surety filed a motion, this time, praying for partial execution of the bond from the amount of ₱10,000 to ₱2,000. Despite the fiscal's opposition, the court reduced the amount from ₱10,000 to ₱3,000. The fiscal appealed from the order on the ground that the court acted in excess of its jurisdiction by setting aside its previous order of confiscation and the writ of execution. *Held,* the principle that prior to the sale of the properties of the bondsman or the payment of the value of the bail bond, the court still retains the discretionary power to reduce the surety's liabilities for good and substantial reasons cannot be questioned. In the present case, considering the fact that the Defendant had paid with his life whatever he owed to society, coupled by the fact that the surety company had exerted effort and spent money to apprehend its principal, it is therefore in line with the rules of equity to grant the appellee surety company a reduction of its liability on the bail bond. PEOPLE *v.* CORPUS, (CA) G.R. No. 10586-R, June 27, 1955.

BOOK NOTE

CIVIL LAW REVIEWER. By Francisco R. Capistrano.* Manila: Dean Capistrano Publications, Inc., 1954. Two volumes, pp. x, 549; viii, 709. ₱40.00 per set; ₱20.00, $10.00 per volume.

"How to study" has been found by surveys abroad to rank high in the list of scholastic problems.[1] And why, declares Assistant Dean Kinyon of the University of Minnesota College of Law, why "far too many students get off on the wrong foot in law school" is "because they don't understand *the real object of their law study.*" He continues:

> They get the idea that all they are supposed to do is memorize a flock of rules and decisions just as they memorize the multiplication tables back in grade school. Such a notion is fatal. Even though you know by heart all the decisions and rules you have studied in a course you can still flunk the exam. After all, you learned the multiplication tables — not merely to be able to recite them like a poem — but to enable you to *solve problems* in arithmetic. Likewise, you are learning rules of law and studying the court decisions and legal proceedings in which they are applied, to enable you to *solve legal problems as they are solved by our legal system.*[2]

And such a frame of mind is not, by a long shot, *derigueur* merely in the law school. The more, and especially, will it be called into play after the Bar; to solve legal problems is the long and short of every lawyer, his only reason for being, if he is to earn his keep by his chosen *métier.* To paraphrase the words of the Great Dissenter, the reason why people will pay lawyers to argue for them or to advice them is because they want to know which, in the long run, would be the better course — to go to court, or to keep out of it — and to assure themselves of that course.[3] Accordingly, "to understand in order to apply" should be the aim and end of all legal study.

But how to study, that is, to study with effect, still is a mystery to a good many students.[4] Even the best of them have been found to have bad study habits. "Contrary to the opinion of many students," says an eminent psychologist, "the way to achieve effective study is not by more study or more determined concentration, but by changing the quality of study method . . . [A] student, even one with good grades, may be trying to do his

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[1] ROBINSON, EFFECTIVE STUDY 1 (1946).

[2] KINYON, HOW TO STUDY LAW AND WRITE LAW EXAMINATIONS 12-13 (1951).

[3] See HOLMES, *The Path of the Law in* THE MIND AND FAITH OF JUSTICE HOLMES 71-72 (Lerner ed. 1954).

[4] See ROBINSON, *op. cit. supra* note 1.

work the hard way, little realizing that there are better techniques,"[5] techniques that "permit students to learn more rapidly, with deeper understanding, and with no more effort than their present trial-and-error methods."[6] One way, and a very effective one, is to *place a question at the beginning of the section wherein the question is to be answered,* and so on with the rest of the assignment; recent researches in educational psychology show that this method improves not only *comprehension* but even *rate*, for it "gives an immediate questioning attitude and a core idea around which to organize the material which follows."[7]

To be sure, the question-and-answer technique just adverted to is not totally unknown to us, though, not infrequently, it is but grudgingly allowed. It is patent in what we call "quizzers" or "reviewers." And, though these "librettos" are by no means intended to supplant the prescribed diet of textbooks in our scholastic regimen, yet they are not to be underrated (at least, those by outstanding authorities), for they may prove to be the "vitamin pills" that will stabilize metabolism in the scholastically undernourished and thus enable us to hurdle the Bar with a safe margin of error. It is therefore, fortunate that Dean Capistrano, a civilist of no mean caliber, was gripped not so long ago by an "obsession" that can rightly be called "magnificient": "to see the big mortality in the Bar examinations in Civil Law greatly reduced."[8] For, result: his *Civil Law Reviewer,* a brilliant *tour de force* that bids fair to be a panacea for most of the student's sore spots the subject.

Unlike other works of this genre, Dean Capistrano's reviewer is not limited to questions that seem important simply because they have been asked in the Bar Exams with alarming frequency; it covers, within the confines of its two handy volumes, the whole length and breadth of Civil Law. The codal provisions are taken up, one by one, in the order in which they appear in the bare Civil Code released by the Bureau of Printing. Alongside the provisions are asked their explanations and illustrations, and oftentimes their history and philosophy. Judicial decisions interpretative of the codal provisions are, likewise, asked in question-and-answer form, the minimum of facts appearing in the questions. In the answers provided by Dean Capistrano, it is a pleasure to note that the explanations are clear, the examples felicitous, and the reasoning forcible; it is likewise a pleasure to see that even long enumerations have not been left dangling in the air, unexplained; and not to be ovedlooked are the definitions and distinctions without which a bar candidate would feel left-handed.

Some examples:

Q. *"Is a minor (who by appearance may pass for an adult) who in entering into a contract represented himself to be of age, bound by the contract?*

A. "Yes, on the ground of *estoppel* under the provisions of the *Partidas,* according to *Mercado and Mercado v. Espiritu* (37 Phil. 215). In the absence of such misrepresentation and if the minority was known to the purchaser, the minor can avoid the contract on the ground of minority, (*Bambalan v. Maramba,* 51 Phil. 417). However, as the *Partidas* are no longer in force and the American law of estoppel has been incorporated into the New Civil Code (Art. 1432), in accordance with the present law, *estoppel* does not apply to minors. For the principle of *estoppel* has its juridical source in the capacity of the person making the misrepresentation to bind himself. (*Young v. Tecson,* 39 O.G. No. 36, p. 953)."[9]

Q. *"State the law on survivorship.*

A. "If there is a doubt, as between two or more persons who are called to succeed each other, as to which of them died first, whoever alleges the death of one prior to the other shall prove the same; in the absence of proof, it is presumed that they died at the same time and there shall be no transmission of rights from one to the other. (Art. 43)."[10]

Q. *"Is section 69 (ii), Rule 123 of the Rules of Court establishing presumptions on survivorship still in force?*

A. "No. It has been impliedly repealed by the rule on survivorship established in Article 43 of the new Civil Code. Such implied repeal was intended by the Code Commission."[11]

Q. *"Article 43 of the new Civil Code was taken from Art. 33 of the old Code. Why did the Code Commission prefer this rule to that provided for in Section 69, (ii), Rule 123 of the Rules of Court?*

A. "Because the presumptions established in Section 69, (ii) Rule 123 of the Rules of Court, which originated from the Roman law, are based on mere guesswork and are partly contrary to navigation laws requiring women and children to be saved first in case of shipwreck. Similar presumptions established in the *Partidas* were not incorporated into the Civil Code of 1889 but instead, a more cautions and scientific rule was formulated in Article 33 of said Code."[12]

Q. *"Give a brief history of the marriage law.*

A. "During the Spanish regime, the only marriage recognized was the religious or canonical marriage because the provisions of the Civil Code effective December 8, 1889 on civil marriage (Arts. 42 to 107) were suspended. The Spanish marriage law of June 18, 1870 had been partly in force particularly with regard to the effects of marriage upon the persons of the spouses, but its provisions instituting the civil marrage were never extended to the Philippines.

[5] *Ibid.*
[6] ROBINSON, *op. cit. supra* note 1, at vii-viii.
[7] *Id.* at 18-19.
[8] At iii.

[9] 1 at 25.
[10] 1 at 27.
[11] *Ibid.*
[12] 1 at 27-28.

"On December 18, 1899, a marriage law, General Orders No. 68, was promulgated by the Military Governor, providing for the civil marriage, without prejudice, however, to the validity of the religious marriage which fulfilled the requisites laid down for a valid marriage. On April 1, 1928, a new marriage law, Act No. 3412, took effect, increasing the requisites of marriage and the age of consent to 16 for males and 14 for females. On December 4, 1929, a revised marriage law, Act No. 3613 was passed, effective six months later, again increasing the requisites of marriage."[13]

Q. "What is the paraphernal law?

A. "Act 3922, known as the Paraphernal law, was incorporated as Art. 140 of the new Code and provides as follows: 'A married woman of age may mortgage, encumber, alienate or otherwise dispose of her paraphernal property without the permission of the husband, and appear alone in court to litigate with regard to the same.' "[14]

Q. "The wife sues to recover possession of her paraphernal property and fruits thereof and damages thereto from wrongful use of the same by the possessor. Must the husband be joined as party plaintiff?

A. "Yes, because the husband has a direct interest in the fruits and damages which are considered conjugal property. (*Bismorte v. Aldecoa & Co.*, 17 Phil. 480; *Quison v. Salud*, 12 Phil. 109)."[15]

Q. "The defendant wrote a note to the priest who was to christen the baby, as follows:

'Feb. 14, 1941

'Rev. Father,

'The baby due in June is mine. I should like for my name to be given to it.

'Cesar Syquia.'

Was this writing sufficient proof of acknowledgment of paternity?

A. "Yes. Under Art. 135 of the old Code an indubitable writing is sufficient proof of paternity for purposes of compulsory acknowledgment of a natural child. A conceived child may be acknowledged. (*De Jesus v. Syquia*, 58 Phil. 866)."[16]

Q. "Distinguish patria potestas under the Roman Law from patria potestas in the Modern Civil Law.

A. "In the Roman Law, *patria potestas* gave the father the absolute power of life and death over the child's property, on the theory that *patria potestas* was for the interest of the *paterfamilias*. This rule has been

[13] 1 at 31.
[14] 1 at 79.
[15] *Ibid.*
[16] 1 at 143.

tempered by Christianity and enlightened civilization such that in modern civil law *patria potestas* exists for the interest of the child."[17]

Q. "Shall the heir suffer the consequences of the wrongful possession of the decedent?

A. "One who succeeds by hereditary title shall not suffer the consequences of the wrongful possession of the decedent, if it is not shown that he was aware of the flaws affecting it; but the effects of possession in good faith shall not benefit him except from the date of death of the decedent. (Art. 534."[18]

Q. "What is the reason for the law?

A. "Bad faith is personal to the decedent and cannot be deemed transmitted to the heir."[19]

Q. "How shall heirs instituted without designation of shares inherit?

A. "Heirs instituted without designation of shares shall inherit in equal parts. (Art. 846)."[20]

Q. "Explain the article.

A. "This article seeks to express what is deemed to be the presumed will of the testator. For it is but reasonable to assume that if the testator had desired to grant unequal or different portions to his heirs, he would have so expressed in his last will. The rule stated in this article is not, however, absolute. It is limited to those cases where the heirs are of the same class and in the same juridical condition, and where the property involved is comprised within the portion which is subject to the testator's power of free disposal. For as between two heirs, one of them a compulsory heir and the other a voluntary heir, the legitime of the compulsory heir must be respected. And when they are instituted without any express designation of shares the legitime and other dispositions of the testator must first be set aside and the remainder shall then be equally divided between the said heirs. (See 6 Manresa, 99.)."[21]

Q. "State the law on 'reserva troncal.'

A. "The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came. (Art. 891)."[22]

[17] 1 at 159-160.
[18] 1 at 259.
[19] *Ibid.*
[20] 1 at 412.
[21] 1 at 412-413.
[22] 1 at 441.

Q. "Give the important rulings laid down by the Supreme Court on reserva troncal.

A. "The *ascendiente reservista* is an absolute owner, but his right is subject to a resolutory condition (*Edroso v. Sablan*, 25 Phil. 295, *Director of Lands v. Aguas*, 63 Phil. 279). He may alienate the reservable property, subject to the reservation (*Lunsod v. Ortega*, 46 Phil. 664). The *reserva* is in favor only of the legitimate relatives (*Nieva and Alcala vs. Alcala and De Ocampo*, 41 Phil. 915, *Director of Lands v. Aguas*, F3 Phil. 279). The *reserva troncal* cannot go beyond the third degree (*Florentino vs. Florentino*, 40 Phil. 480). The third degree is counted from the *propositus* or descendant who acquired the property by lucrative title and then died without issue, thus transmitting the same, by operation of law, to another ascendant by lucrative title, as by donation or testate and intestate succession (*Cabardo v. Villanueva*, 44 Phil. 1896). Upon the death of the *reservor*, the reservable property does not pertain to his estate (*Cabardo v. Villanueva*, 44 Phil. 186). The reservable character of the property may be annotated on the Torrens certificate of title; if not annotated, an innocent purchaser for value is not bound by the reservation (De los Reyes v. Paterno, 34 Phil. 420). But as against the *reservor*, the reservable character of the property is not lost by the registration of the property under the Torrens System in the *reservor's* name."[23]

Q. "Is a just title presumed?

A. "For the purposes of prescription, just title must be proved; it is never presumed. (Art. 1131)."[24]

Q. "Explain the article.

A. "In Art. 541, just title is presumed in favor of a possessor in the concept of owner. The difference between Art. 541 and Art. 1131 lies in the fact that the former is for defensive, while the latter is for offensive ends. In Art. 541, there is a possessor in the concept of owner, and another person comes along claiming to be the owner. In such case, the possessor is presumed to have a just title, and to defeat him, the latter must established his ownership by positive evidence; he cannot rely on the weakness of the possessor's title or lack of title. In Art. 1131, it is assumed that there was a previous owner, and the possessor relies upon acquisitive prescription to defeat the former's right. In this case, there is no presumption of just title, the possessor must prove the same."[25]

Q. "The vendor promised to repurchase the thing sold 'when he has the means.' Is the obligation a pure one?

A. "No, it is one with a period. (*Alojado v. Siongco*, 51 Phil. 339)."[26]

[23] 1 at 445.
[24] 1 at 544.
[25] Ibid.
[26] 2 at 27.

Q. "The debtor promised to pay the sum of ₱4,876.01 'little by little.' Is the obligation a pure one?

A. "No, it is an obligation with a period, subject to Art. 1197 under which the courts may fix the duration of the period in an action brought for that purpose. (*Seoane vs. Franco*, 24 Phil. 309)."[27]

Q. "What is the presumption as to the cause of contracts?

A. "Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary. (Art. 1354)."[28]

Q. "Give examples applying the presumption.

A. "(1) A promissory note mentioning no consideration (*Sparrevohn vs. Bachrach*, et al., 7 Phil. 194).

"(2) The endorsement of a promissory note or instrument of credit in favor of plaintiff which mentioned no consideration (*Azarraga v. Rodriguez*, 9 Phil. 637; *Eliot v. Montemayor*, 9 Phil. 693).

"(3) A contract to answer for the debt or default of another under the Statute of Frauds which does not mention the consideration (*Behn Meyer & Co. vs. Davis and Gonzales*, 37 Phil. 431).

"(4) A contract of option to buy which does not state any consideration (*Zayco v. Serra*, 44 Phil. 326.)

"(5) A transfer of certain vessels, where no consideration was stated (*Lim v. Chu Kao*, 51 Phil. 476)."[29]

Now that you have had a preview, so to speak, of the *Civil Law Reviewer*, there is nothing more to add except an all-too-familiar but oft-unheeded admonition:

> "When reading a textbook always remember that you are dealing with condensed, concentrated material. The holdings in dozens of cases will frequently be distilled into a single sentence or paragraph. Conflicting lines of decisions and extensive legal controversies will often be summarized in a page or less. The reasons for the rules and the arguments pro and con will usually be stated very briefly or else will be packed into a short footnote. You can't absorb that sort of mental food in haste. Every sentence and every paragraph must be read carefully and thoroughly together with the footnotes appended to it. If you don't understand it the first time, go back and re-read it. A text is not a novel or narrative. It's concentrated exposition of difficult legal concepts and arguments, and your object in reading it is to *understand* them thoroughly so you'll be able to apply them in solving your own legal problems. Don't try to skim through . . . !"

[27] *Ibid.*
[28] 2 at 184.
[29] 2 at 185.
[30] KINYON, *op. cit. supra* note 2, at 65-66.

Your reviewer has been fit to insert these words because they fit the *Civil Law Reviewer*. To apply the Baconian dictum, this work is not merely to be "tasted," nor merely to be "swallowed," but a book to be "chewed and digested."[31]

[31] See Bacon, *Of Studies* in READING FOR LIBERAL EDUCATION 88 (Locke, Gibson and Arms ed. 1952).

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