

EQUITY IN THE NEW CIVIL CODE

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One of the principal reforms in the new Civil Code is the emphasis laid upon equity and justice as against strict legalism or form. The project recognizes that more significant and more far-reaching than the formulation of legal rules, justice and equity should prevail in any legislation. In working out the rules to be embodied in the proposed Civil Code, the Code Commission drew principally from two sources: (1) the Anglo-American equity jurisprudence and (2) the general principles of natural justice.

Among the branches of Anglo-American equity jurisprudence which are incorporated into the new Civil Code are those relative to implied trusts, estoppel, quieting of title and reformation of instruments. And among the features taken from natural justice are those which relate to natural obligations, reduction of iniquitous penalty, recovery in case of substantial performance, willfully causing damage in a manner contrary to morals, the doctrine against unjust enrichment (which includes the additional quasi-contracts found in the new Code), the awarding of moral damages, and certain rules relative to illegal contracts.

These various topics will now be discussed briefly.

I. ANGLO-AMERICAN EQUITY.

1. *Implied Trusts.*—The subject of implied trusts is a very important one in Anglo-American jurisprudence. It is unknown in the present Civil Code. It is developed in articles 1461, 1462, and articles 1467 to 1477 of the proposed Civil Code. Implied trusts come into being by operation of law. Here are three examples of implied trusts found in articles 1470, 1472 and 1474, which read as follows:

"Art. 1470. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the persons to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him."

"Art. 1472. If two or more persons agree to purchase property and by whom consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each."

"Art. 1474. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him."

2. *Estoppel.*—There seems to be a general impression in the legal profession in the Philippines that estoppel is essentially a part

of remedial law. This is an error, because estoppel is a division of both substantive and adjective law in the Anglo-American legal system. The subject of estoppel in its substantive aspect is developed in articles 1451 to 1469 of the proposed Civil Code. Here is an example of estoppel as applied to substantive law:

"Art. 1454. When a person who is the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee."

3. *Quieting of Title.*—The quieting of title is a remedy which is resorted to in American law in order to remove a cloud on title to real property. Article 496 provides:

"Art. 496. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

"An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein."

4. *Reformation of Instruments.*—This is a very important remedy in order to carry out the real intention of the parties to a contract. This subject is dealt with in articles 1379 to 1389 of the draft of the Civil Code. Article 1379 explains the nature of this remedy as follows:

"Art. 1379.—When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct as accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

"If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract."

Article 1385 is of immediate practical value as a remedy against the oppressive practices of many lenders who impose upon borrowers the contract of sale with *pacto de retro*. Said article provides:

"Art. 1385. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper."

II. GENERAL PRINCIPLES OF JUSTICE.

The following subjects, among others, are treated of in the proposed Civil Code by way of carrying out general principles of natural justice as against legalism and technicality.

1. *Natural Obligations.*—The present Civil Code has practically abolished the old institution called "natural obligations." The drafters of the Civil Code in force believed that by a careful formulation of the provisions concerning illegal contracts, this problem of natural obligations would be solved. However, the present Civil Code fails to bring out the proper solution when certain cases arise that call for the ancient doctrine of natural obligations. The codes of France, Italy, Germany, Louisiana and Argentina, among others, deal with this subject. The project of Civil Code defines natural obligations as follows:

"Art. 1443. Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. Some natural obligations are set forth in the following articles."

Illustrations of natural obligations are found in articles 1444, 1448 and 1449.

"Art. 1444. When a right to sue upon a civil obligation has lapsed by extinctive prescription, the obligor who voluntarily performs the contract cannot recover what he has delivered or the value of the service he has rendered."

"Art. 1448. When, after an action to enforce a civil obligation has failed, the defendant voluntarily performs the obligation, he cannot demand the return of what he has delivered or the payment of the value of the service he has rendered."

"Art. 1449. When a testate or intestate heir voluntarily pays a debt of the decedent exceeding the value of the property which he received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer."

2. *Penalty.*—At the present time, the Civil Code provides for a reduction of the penalty only when there has been a partial or irregular performance of the contract (Art. 1154). However, under the new Code it is not necessary that there should have been a partial or irregular performance. A penalty may be reduced if it is found by the courts to be iniquitous or unconscionable (Art. 1249).

Moreover, article 2247 provides as follows:

"Art. 2247. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable."

3. *Substantial Performance.*—The new Code does not insist upon a strict fulfillment of the contract, it being sufficient that there has been a substantial performance in good faith, although damages suffered by the obligee are paid. Article 1254 reads as follows:

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THE JUDICIARY ACT OF 1948

(With Annotations)

[CONTINUED FROM LAST ISSUE]

SEC. 46. *Clerks and other subordinate employees of Courts of First Instance.*— Clerks, deputy clerks, assistants, and other subordinate employees of Courts of First Instance shall, for administrative purposes, belong to the Department of Justice; but in the performance of their duties they shall be subject to the supervision of the Judges of the courts to which they respectively pertain.

The clerks of Courts of First Instance shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. No person shall be appointed clerk of court unless he is duly authorized to practice law in the Philippines: *Provided, however,* That this requirement shall not affect persons who, at the date of the approval of this Act, are holding the position of clerk of court, nor those who have previously qualified in the Civil Service examination for said position;

The clerk of a Court of First Instance may, by special written deputization approved by the judge,

authorize any suitable person to act as his special deputy and in such capacity to perform such functions as may be specified in the authority granted.

NOTES

1. Appointment of subordinate employees.
2. Clerks of court departments.
3. Duties of clerk to judge.
4. Acts under direction.
5. Matters requiring judge's approval.
6. Function of judge performed by clerk.
7. Clerk of court has no authority to refuse admission of record on appeal.
8. Clerk of Court as commissioner to receive evidence.
9. Oath of Clerk of Court as commissioner.
10. Officer of Court may be punished for contempt.
11. Compensation.
12. Negligence of Court's personnel.
13. Liability.

I. APPOINTMENT OF SUBORDINATE EMPLOYEES.

Where a statute vests the appointive power in an official other than the judge, such enactment controls. However, under particular statutory regulations the court may have the power to recom-

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"Art. 1254. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee."

4. *Immoral Acts.*—Article 23 provides as follows:

"Art. 23. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

This provision has been taken from article 826 of the German Civil Code, with a certain modification, by adding "good customs" and "public policy."

An illustration of the scope of article 23 is the following: A man seduces a 19-year old girl who becomes pregnant. Under the Revised Penal Code there is no crime inasmuch as the girl is above 18 years of age. Therefore, no damages can be recovered by her. But by article 23 she can recover damages, because the defendant is guilty of a willful and immoral act, although positive law has not been violated.

The above article brings within the sphere of statutory law all immoral acts willfully committed which cause damage, but which are not denounced by any statute. This provision fills innumerable gaps in our codes and statutes, which of course cannot foresee every wrongful deed.

5. *Unjust Enrichment.*— The ancient doctrine against unjust enrichment is restated in article 24, which reads thus:

"Art. 24. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

Although the present Civil Code implements the above doctrine in some instances, still it does not formulate a principle on this point. Hence, the need of article 24. The maxim concerning unjust enrichment finds a manifestation (among other subjects) in the additional quasi-contracts under the new Code. Here are three examples of unjust enrichment, for which the new Civil Code offers solutions under the principle of quasi-contracts:

"Art. 2188. When during a fire, flood, storm, or other calamity, property is saved from destruction by another person without the knowledge of the owner, the latter is bound to pay the former just compensation."

Art. 2189. When the government, upon the failure of any person to comply with health or safety regulations concerning property, undertakes to do the necessary work, even over his objection, he shall be liable to pay the expenses."

Art. 2195. Any person who is constrained to pay the taxes of another shall be entitled to reimbursement from the latter."

6. *Damages.*—The new Civil Code awards moral damages. The usual objection to the giving of moral damages is that they cannot be pecuniarily estimated. This is

purely a technical argument. Justice should be done by adjudicating some amount of damage, which should be left to the discretion of the court.

7. *Illegal Contracts.*—Finally, there is a general principle that when both parties are to blame neither may enforce the same. However, the new Civil Code makes certain exceptions: For example, articles 1434 to 1436 provide:

"Art. 1434. When money is paid or property delivered for an illegal purpose, the contract may be repudiated by one of the parties before the purpose has been accomplished, or before any damage has been caused to a third person. In such case, the courts may, if the public interest will thus be subserved, allow the party repudiating the contract to recover the money or property."

"Art. 1435. Where one of the parties to an illegal contract is incapable of giving consent, the courts may, if the interest of justice so demands, allow recovery of money or property delivered by the incapacitated person."

"Art. 1436. When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered."

CONCLUSION

The foregoing brief exposition, I hope, will give an idea of how the new Civil Code strives to temper the rigor of legalism in order that justice may triumph. After all, the paramount aim of the courts is to do justice, which should not be defeated by any technicality, or by the letter of the law.