

MERCURY DRUG CORPORATION AND AURMELA GANZON, PETITIONERS, VS. RAUL DE LEON, RESPONDENT.

G.R. No. 165622. October 17, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

IN REALITY, for the druggist, mistake is negligence and care is no defense.[1] Sa isang parmasyutika, ang pagkakamali ay kapabayaang at ang pagkalinga ay hindi angkop na dipensa.

This is a petition for review on certiorari[2] of two Resolutions[3] of the Court of Appeals (CA). The first Resolution granted respondent's motion to dismiss while the second denied petitioner's motion for reconsideration.

The Facts

Respondent Raul T. De Leon was the presiding judge of Branch 258, Regional Trial Court (RTC) in Parañaque.[4] On October 17, 1999, he noticed that his left eye was reddish. He also had difficulty reading.[5] On the same evening, he met a friend for dinner at the Foohyui Restaurant. The same friend happened to be a doctor, Dr. Charles Milla, and had just arrived from abroad.[6]

Aside from exchanging pleasantries, De Leon consulted Dr. Milla about his irritated left eye.[7] The latter prescribed the drugs "Cortisporin Ophthalmic" and "Ceftin" to relieve his eye problems.[8] Before heading to work the following morning, De Leon went to the Betterliving, Parañaque, branch of Mercury Drug Store Corporation to buy the prescribed medicines.[9] He showed his prescription to petitioner Aurmela Ganzon, a pharmacist assistant.[10] Subsequently, he paid for and took the medicine handed over by Ganzon.[11]

At his chambers, De Leon requested his sheriff to assist him in using the eye drops.[12] As instructed, the sheriff applied 2-3 drops on respondent's left eye.[13] Instead of relieving his irritation, respondent felt searing pain.[14] He immediately rinsed the affected eye with water, but the pain did not subside.[15] Only then did he discover that he was given the wrong medicine, "Cortisporin Otic Solution." [16]

De Leon returned to the same Mercury Drug branch, with his left eye still red and teary.[17] When he confronted Ganzon why he was given ear drops, instead of the prescribed eye drops,[18] she did not apologize and instead brazenly replied that she was unable to fully read the prescription.[19] In fact, it was her supervisor who apologized and informed De Leon that they do not have stock of the needed Cortisporin Ophthalmic.[20]

De Leon wrote Mercury Drug, through its president, Ms. Vivian K. Askuna, about the day's incident.[21] It did not merit any response.[22] Instead, two sales persons went to his office and informed him that their supervisor was busy with other matters.[23] Having been denied his simple desire for a written apology and explanation,[24] De Leon filed a complaint for damages against Mercury Drug.[25]

Mercury Drug denied that it was negligent and therefore liable for damages.[26] It pointed out that the proximate

cause of De Leon's unfortunate experience was his own negligence.[27] He should have first read and checked to see if he had the right eye solution before he used any on his eye.[28] He could have also requested his sheriff to do the same before the latter applied the medicine on such a delicate part of his body.[29]

Also, Mercury Drug explained that there is no available medicine known as "Cortisporin Ophthalmic" in the Philippine market.[30] Furthermore, what was written on the piece of paper De Leon presented to Ganzon was "Cortisporin Solution." [31] Accordingly, she gave him the only available "Cortisporin Solution" in the market.

Moreover, even the piece of paper De Leon presented upon buying the medicine can not be considered as proper prescription.[32] It lacked the required information concerning the attending doctor's name and license number.[33] According to Ganzon, she entertained De Leon's purchase request only because he was a regular customer of their branch.[34]RTC Disposition

On April 30, 2003, the RTC rendered judgment in favor of respondent, the dispositive portion of which reads:

WHEREFORE, the court finds for the plaintiff.

For pecuniary loss suffered, Mercury Drug Store is to pay ONE HUNDRED FIFTY-THREE PESOS AND TWENTY-FIVE CENTAVOS (Php 153.25), the value of the medicine.

As moral damages defendants is (sic) ordered to pay ONE HUNDRED THOUSAND PESOS (Php 100,000.00).

To serve as a warning to those in the field of dispensing medicinal drugs discretion of the highest degree is expected of them, Mercury Drug Store and defendant Aurmila (sic) Ganzon are ordered to pay plaintiff the amount of THREE HUNDRED THOUSAND PESOS (Php 300,000.00) as exemplary damages.

Due to defendants callous reaction to the mistake done by their employee which forced plaintiff to litigate, Defendant (sic) Mercury Drug Store is to pay plaintiff attorney's fees of P50,000.00 plus litigation expenses.

SO ORDERED.[35]

In ruling in favor of De Leon, the RTC ratiocinated:

The proximate cause of the ill fate of plaintiff was defendant Aurmila (sic) Ganzon's negligent exercise of said discretion. She gave a prescription drug to a customer who did not have the proper form of prescription, she did not take a good look at said prescription, she merely presumed plaintiff was looking for Cortisporin Otic Solution because it was the only one available in the market and she further presumed that by merely putting the drug by the counter wherein plaintiff looked at it, paid and took the drug without any objection meant he understood what he was buying.[36]

The RTC ruled that although De Leon may have been negligent by failing to read the medicine's label or to instruct his sheriff to do so, Mercury Drug was first to be negligent.[37] Ganzon dispensed a drug without the requisite prescription.[38] Moreover, she did so without fully reading what medicine was exactly being bought.[39] In fact, she presumed that since what was available was the drug Cortisporin Otic Solution, it was what De Leon was attempting to buy.[40] Said the court:

When the injury is caused by the negligence of a servant or employee, there instantly arises a presumption of law that there was negligence on the part of the employer or employer either in the selection of the servant or employee, or in the supervision over him after the selection or both.

x x x x

The theory bases the responsibility of the master ultimately on his own negligence and not on that of his

servant.[41]

Dissatisfied with the RTC ruling, Mercury Drug and Ganzon elevated the matter to the CA. Accordingly, they filed their respective briefs. Raising technical grounds, De Leon moved for the appeal's dismissal.

CA Disposition

On July 4, 2008, the CA issued a resolution which granted De Leon's motion and dismissed the appeal. Said the appellate court:

As pointed out by the plaintiff-appellee, the Statement of Facts, Statement of the Case, Assignment of Errors/issues, Arguments/ Discussions in the Brief make no references to the pages of the records. We find this procedural lapse justify the dismissal of the appeal, pursuant to Section 1(f), Rule 50 of the 1997 Rules of Civil Procedure x x x.[42]

x x x x

"The premise that underlies all appeals is that they are merely rights which arise from a statute; therefore, they must be exercised in the manner prescribed by law. It is to this end that rules governing pleadings and practice before the appellate court were imposed. These rules were designed to assist the appellate court in the accomplishment of its tasks, and overall, to enhance the orderly administration of justice."

x x x x

x x x If the statement of fact is unaccompanied by a page reference to the record, it may be stricken or disregarded all together.[43]

On October 5, 2004, the CA denied Mercury Drug's and Ganzon's joint motion for reconsideration. Although mindful that litigation is not a game of technicalities,[44] the CA found no persuasive reasons to relax procedural rules in favor of Mercury Drug and Ganzon.[45] The CA opined:

In the case under consideration, We find no faithful compliance on the part of the movants that will call for the liberal application of the Rules. Section 1(f) of Rule 50 of the 1997 Rules of Civil Procedure explicitly provides that an appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, for want of page references to the records as required in Section 13 of Rule 44 of the same rules[46]

Issues

Petitioner has resorted to the present recourse and assigns to the CA the following errors:

I

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING PETITIONER'S APPEAL BASED ON THE CASES OF DE LIANA VS. CA (370 SCRA 349) AND HEIRS OF PALOMINIQUE VS. CA (134 SCRA 331).

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING PETITIONER'S APPEAL DESPITE SUBSTANTIAL COMPLIANCE WITH SECTION 1(F), RULE 60 AND SECTION 13, RULE 44 OF THE RULES OF COURT.

III

THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAVORED MERE TECHNICALITY OVER SUBSTANTIAL JUSTICE WHICH WILL CERTAINLY CAUSE GRAVE INJUSTICE AND GREAT PREJUDICE TO PETITIONER CONSIDERING THAT THE ASSAILED DECISION ON APPEAL

IS CLUSTERED WITH ERRORS AND IN CONTRAST WITH THE DECISIONS OF THIS HONORABLE SUPREME COURT.[47] (UNDERSCORING SUPPLIED)

Our Ruling

The appeal succeeds in part.

Dismissal of an appeal under Rule 50 is discretionary.

In several cases,[48] this Court stressed that the grounds for dismissal of an appeal under Section 1 of Rule 50[49] are discretionary upon the appellate court. The very wording of the rule uses the word "may" instead of "shall." This indicates that it is only directory and not mandatory.[50] Sound discretion must be exercised in consonance with the tenets of justice and fair play, keeping in mind the circumstances obtaining in each case.[51]

The importance of an appellant's brief cannot be gainsaid. Its purpose is two-fold: (1) to present to the court in coherent and concise form the point and questions in controversy; and (2) to assist the court in arriving at a just and proper conclusion.[52] It is considered a vehicle of counsel to convey to the court the essential facts of a client's case, a statement of the questions of law involved, the law to be applied, and the application one desires of it by the court.[53]

The absence of page reference to the record is a ground for dismissal. It is a requirement intended to ultimately aid the appellate court in arriving at a just and proper conclusion of the case.[54] However, as earlier discussed, such dismissal is not mandatory, but discretionary on the part of the appellate court.

This Court has held that the failure to properly cite reference to the original records is not a fatal procedural lapse.[55] When citations found in the appellant's brief enable the court to expeditiously locate the portions of the record referred to, there is substantial compliance with the requirements of Section 13(c), (d), and (f) of Rule 44.[56]

In *De Leon v. CA*,[57] this Court ruled that the citations contained in the appellant's brief sufficiently enabled the appellate court to expeditiously locate the portions of the record referred to. They were in substantial compliance with the rules. The Court said:

Nothing in the records indicate that it was exercised capriciously, whimsically, or with a view of permitting injury upon a party litigant. For the same reasons, we hold that the respondent Court of Appeals did not err when it did not dismiss the appeal based on the allegation that appellant's brief failed to comply with the internal rules of said court.[58]

Similar to the instant case, the appellant's brief in *Yuchengco v. Court of Appeals*[59] contained references to Exhibits and Transcript of Stenographic Notes and attachments. These were found to have substantially complied with the requirements of Section 13(c) and (d) of Rule 44.

x x x The Appellant's brief may not have referred to the exact pages of the records, however, the same is not fatal to their cause since the references they made enabled the appellate court to expeditiously locate the portions referred to. x x x[60]

It is true that in *De Liano v. Court of Appeals*,[61] this Court held that a statement of facts unaccompanied by a page reference to the record may be presumed to be without support in the record and may be stricken or disregarded altogether. However, the instant case is not on all fours with *De Liano*.

In *De Liano*, the appellant's brief lacked a Subject Index and a Table of Cases and Authorities.[62] Moreover, the Statement of the Case, Statements of Facts, and Statements of Arguments had no page references to the record.[63] When notified of such defects, defendants-appellants failed to amend their brief to conform to the

rules.[64] Instead, they continued to argue that their errors were harmless.[65] All these omissions and non-compliance justified the dismissal of the appeal by the CA.[66]

In the case under review, although there were no page references to the records, Mercury Drug and Ganzon referred to the exhibits, TSN, and attachments of the case. Despite its deficiencies, the brief is sufficient in form and substance as to apprise the appellate court of the essential facts, nature of the case, the issues raised, and the laws necessary for the disposition of the same.

Reliance on *Heirs of Palomique v. Court of Appeals*[67] is likewise misplaced. In *Heirs of Palomique*, the appellant's brief did not at all contain a separate statement of facts.[68] This critical omission, together with the failure to make page references to the record to support the factual allegations, justified the dismissal of the appeal.[69]

Rules of procedure are intended to promote, not to defeat, substantial justice. They should not be applied in a very rigid and technical sense.[70] For reasons of justice and equity, this Court has allowed exceptions to the stringent rules governing appeals.[71] It has, in the past, refused to sacrifice justice for technicality.[72]

However, brushing aside technicalities, petitioners are still liable. Mercury Drug and Ganzon failed to exercise the highest degree of diligence expected of them.

Denying that they were negligent, Mercury Drug and Ganzon pointed out that De Leon's own negligence was the proximate cause of his injury. They argued that any injury would have been averted had De Leon exercised due diligence before applying the medicine on his eye. Had he cautiously read the medicine bottle label, he would have known that he had the wrong medicine.

Mercury Drug and Ganzon can not exculpate themselves from any liability. As active players in the field of dispensing medicines to the public, the highest degree of care and diligence is expected of them.[73] Likewise, numerous decisions, both here and abroad, have laid salutary rules for the protection of human life and human health.[74] In the United States case of *Tombari v. Connors*,[75] it was ruled that the profession of pharmacy demands care and skill, and druggists must exercise care of a specially high degree, the highest degree of care known to practical men. In other words, druggists must exercise the highest practicable degree of prudence and vigilance, and the most exact and reliable safeguards consistent with the reasonable conduct of the business, so that human life may not constantly be exposed to the danger flowing from the substitution of deadly poisons for harmless medicines.[76]

In *Fleet v. Hollenkemp*,[77] the US Supreme Court ruled that a druggist that sells to a purchaser or sends to a patient one drug for another or even one innocent drug, calculated to produce a certain effect, in place of another sent for and designed to produce a different effect, cannot escape responsibility, upon the alleged pretext that it was an accidental or innocent mistake. His mistake, under the most favorable aspect for himself, is negligence. And such mistake cannot be countenanced or tolerated, as it is a mistake of the gravest kind and of the most disastrous effect.[78]

Smith's Admr v. Middleton[79] teaches Us that one holding himself out as competent to handle drugs, having rightful access to them, and relied upon by those dealing with him to exercise that high degree of caution and care called for by the peculiarly dangerous nature of the business, cannot be heard to say that his mistake by which he furnishes a customer the most deadly of drugs for those comparatively harmless, is not in itself gross negligence.[80]

In our own jurisdiction, *United States v. Pineda*[81] and *Mercury Drug Corporation v. Baking* are illustrative.[82] In *Pineda*, the potassium chlorate demanded by complainant had been intended for his race horses. When

complainant mixed with water what he thought and believed was potassium chlorate, but which turned out to be the potentially deadly barium chlorate, his race horses died of poisoning only a few hours after.

The wisdom of such a decision is unquestionable. If the victims had been human beings instead of horses, the damage and loss would have been irreparable.[83]

In the more recent Mercury Drug, involving no less than the same petitioner corporation, Sebastian Baking went to the Alabang branch of Mercury Drug[84] and presented his prescription for Diamicron, which the pharmacist misread as Dormicum.[85] Baking was given a potent sleeping tablet, instead of medicines to stabilize his blood sugar.[86] On the third day of taking the wrong medicine, Baking figured in a vehicular accident.[87] He fell asleep while driving.[88]

This Court held that the proximate cause of the accident was the gross negligence of the pharmacist who gave the wrong medicine to Baking. The Court said:

x x x Considering that a fatal mistake could be a matter of life and death for a buying patient, the said employee should have been very cautious in dispensing medicines. She should have verified whether the medicine she gave respondent was indeed the one prescribed by his physician. The care required must be commensurate with the danger involved, and the skill employed must correspond with the superior knowledge of the business which the law demands.[89]

This Court once more reiterated that the profession of pharmacy demands great care and skill. It reminded druggists to exercise the highest degree of care known to practical men.

In cases where an injury is caused by the negligence of an employee, there instantly arises a presumption of law that there has been negligence on the part of the employer, either in the selection or supervision of one's employees. This presumption may be rebutted by a clear showing that the employer has exercised the care and diligence of a good father of the family.[90] Mercury Drug failed to overcome such presumption.[91]

Petitioners Mercury Drug and Ganzon have similarly failed to live up to high standard of diligence expected of them as pharmacy professionals. They were grossly negligent in dispensing ear drops instead of the prescribed eye drops to De Leon. Worse, they have once again attempted to shift the blame to their victim by underscoring his own failure to read the label.

As a buyer, De Leon relied on the expertise and experience of Mercury Drug and its employees in dispensing to him the right medicine.[92] This Court has ruled that in the purchase and sale of drugs, the buyer and seller do not stand at arms length.[93] There exists an imperative duty on the seller or the druggist to take precaution to prevent death or injury to any person who relies on one's absolute honesty and peculiar learning.[94] The Court emphasized:

x x x The nature of drugs is such that examination would not avail the purchaser anything. It would be idle mockery for the customer to make an examination of a compound of which he can know nothing. Consequently, it must be that the druggist warrants that he will deliver the drug called for.[95]

Mercury Drug and Ganzon's defense that the latter gave the only available Cortisporin solution in the market deserves scant consideration. Ganzon could have easily verified whether the medicine she gave De Leon was, indeed, the prescribed one or, at the very least, consulted her supervisor. Absent the required certainty in the dispensation of the medicine, she could have refused De Leon's purchase of the drug.

The award of damages is proper and shall only be reduced considering the peculiar facts of the case. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral

damages may be recovered if they are the proximate result of defendant's wrongful act or omission.[96]

Moral damages are not intended to impose a penalty to the wrongdoer or to enrich the claimant at the expense of defendant.[97] There is no hard and fast rule in determining what would be a fair and reasonable amount of moral damages since each case must be governed by its peculiar circumstances.[98] However, the award of damages must be commensurate to the loss or injury suffered.[99]

Taking into consideration the attending facts of the case under review, We find the amount awarded by the trial court to be excessive. Following the precedent case of Mercury Drug, We reduce the amount from P100,000.00 to P50,000.00 only.[100] In addition, We also deem it necessary to reduce the award of exemplary damages from the exorbitant amount of P300,000.00 to P25,000.00 only.

This Court explained the propriety of awarding exemplary damages in the earlier Mercury Drug case:

x x x Article 2229 allows the grant of exemplary damages by way of example or correction for the public good. As mentioned earlier, the drugstore business is affected by public interest. Petitioner should have exerted utmost diligence in the selection and supervision of its employees. On the part of the employee concerned, she should have been extremely cautious in dispensing pharmaceutical products. Due to the sensitive nature of its business, petitioner must at all times maintain a high level of meticulousness. Therefore, an award of exemplary damages in the amount of P25,000.00 is in order.[101] (Emphasis supplied)

It is generally recognized that the drugstore business is imbued with public interest. This can not be more real for Mercury Drug, the country's biggest drugstore chain. This Court can not tolerate any form of negligence which can jeopardize the health and safety of its loyal patrons. Moreover, this Court will not countenance the cavalier manner it treated De Leon. Not only does a pharmacy owe a customer the duty of reasonable care, but it is also duty-bound to accord one with respect.

WHEREFORE, the petition is PARTIALLY GRANTED. The Decisions of the CA and the RTC in Parañaque City are AFFIRMED WITH MODIFICATION, in that the award of moral and exemplary damages is reduced to P50,000.00 and P25,000.00, respectively.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] United States v. Pineda, 37 Phil. 456, 465 (1918).

[2] Treated here as petition for certiorari.

[3] Rollo, pp. 128-130 & 141-143. Dated July 8, 2004 and October 4, 2004, respectively. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Mariano C. Del Castillo and Noel S. Tijam, concurring.

[4] Id. at 31.

[5] Id.

[6] Id.

[7] Id.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id. at 32.

[13] Id.

[14] Id.

[15] Id.

[16] Id.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Id.

[23] Id.

[24] Id.

[25] Id. at 31.

[26] Id. at 32.

[27] Id.

[28] Id.

[29] Id.

[30] Id. at 32-33.

[31] Id. at 32.

[32] Id.

[33] Id.

[34] Id.

[35] Id. at 35-36.

[36] Id. at 34.

[37] Id.

[38] Id.

[39] Id.

[40] Id.

[41] Id.

[42] Id. at 44.

[43] Id.

[44] Id. at 142.

[45] Id.

[46] Id. at 142-143.

[47] Id. at 16-17.

[48] Yuchengco v. Court of Appeals, G.R. No. 165793, October 27, 2006, 505 SCRA 716; De Leon v. Court of Appeals, 432 Phil. 775 (2002); Philippine National Bank v. Philippine Milling Co., Inc., 136 Phil. 212 (1969).

[49] Rule 50, Sec. 1 provides:

Sec. 1. Grounds for dismissal of appeal. - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

(a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules;

(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;

(c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5 of Rule 40 and Section 4 of Rule 41;

(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in Section 4 of Rule 44;

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;

(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars, or directives of the court without justifiable cause; and

(i) The fact that the order or judgment appealed from is not appealable.

[50] Philippine National Bank v. Philippine Milling Co., Inc., *supra* note 48, at 215.

[51] Maqui v. Court of Appeals, G.R. No. L-41609, February 24, 1976, 69 SCRA 368.

[52] Philippine Coconut Authority v. Corona International, Inc., G.R. No. 139910, September 29, 2000, 341 SCRA 519.

[53] Casilan v. Chavez, G.R. No. L-17334, February 28, 1962, 4 SCRA 599.

[54] Id.

[55] Yuchengco v. Court of Appeals, *supra* note 48; People v. Dela Concha, G.R. No. 140205, September 3, 2002,

388 SCRA 280; *De Leon v. Court of Appeals*, supra note 48.

[56] *Id.*

[57] *De Leon v. Court of Appeals*, supra note 48, at 790.

[58] *Id.*

[59] *Yuchengco v. Court of Appeals*, supra note 48.

[60] *Id.* at 722.

[61] G.R. No. 142316, November 22, 2001, 370 SCRA 349.

[62] *De Liano v. Court of Appeals*, *id.* at 358.

[63] *Id.*

[64] *Id.* at 359.

[65] *Id.*

[66] *Id.*

[67] G.R. Nos. L-39288-89, January 31, 1985, 134 SCRA 331.

[68] *Heirs of Palomique v. Court of Appeals*, *id.* at 333.

[69] *Id.* at 334.

[70] *Buenaflores v. Court of Appeals*, G.R. No. 142021, November 29, 2000, 346 SCRA 563.

[71] *Siguenza v. Court of Appeals*, G.R. No. L-44050, July 16, 1985, 137 SCRA 570.

[72] *Gerales v. Court of Appeals*, G.R. No. 85909, February 9, 1993, 218 SCRA 638; *Teodoro v. Carague*, G.R. No. 96004, February 21, 1992, 206 SCRA 429; *Cabutin v. Amacio*, G.R. No. 55228, February 28, 1989, 170 SCRA 750; *American Express International, Inc. v. Intermediate Appellate Court*, G.R. No. L-70766, November 9, 1988, 167 SCRA 209; *Fonseca v. Court of Appeals*, G.R. No. L-36035, August 30, 1988, 165 SCRA 40; *Calasiao Farmers Cooperative Marketing Association, Inc. v. Court of Appeals*, G.R. No. L-50633, August 17, 1981, 106 SCRA 630; *A-One Feeds, Inc. v. Court of Appeals*, G.R. No. L-35560, October 30, 1980, 100 SCRA 590; *Gregorio v. Court of Appeals*, G.R. No. L-43511, July 28, 1976, 72 SCRA 120; *Alonso v. Villamor*, 16 Phil. 315 (1910).

[73] *Mercury Drug Corporation v. Baking*, G.R. No. 156037, May 25, 2007, 523 SCRA 184; *U.S. v. Pineda*, supra note 1, at 462.

[74] *People v. Castillo*, C.A. No. 227, February 1, 1946.

[75] 85 Conn. 231 (1912).

[76] *Tombari v. Conners*, *id.*

[77] 56 Am. Dec. 563 (1852).

[78] *Fleet v. Hollenkemp*, *id.*

[79] 56 L.R.A. 484 (1902).

[80] Smith's Adm'x. v. Middleton, id.

[81] Supra note 1.

[82] Supra note 73.

[83] People v. Castillo, supra note 74.

[84] Mercury Drug Corporation v. Baking, supra note 73, at 186-187.

[85] Id. at 187.

[86] Id.

[87] Id.

[88] Id.

[89] Id. at 189.

[90] Civil Code, Art. 2180 provides:

Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

The father and, in case of his death or incapacity, the mother, are responsible for the damages caused by the minor children who live in their company.

Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.

The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

[91] Mercury Drug Corporation v. Baking, supra note 73, at 190-191.

[92] Hooks SuperX v. McLaughlin, (ind) 642 NE 2d 514 (1994).

[93] United States v. Pineda, supra note 1, at 464.

[94] Id.

[95] Id.

[96] Civil Code, Art. 2217 provides:

Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recorded if they are the proximate result of the defendant's wrongful act or omission.

[97] *Kierulf v. Court of Appeals*, G.R. No. 99301, March 13, 1997, 269 SCRA 433; *Lamis v. Ong*, G.R. No. 148923, August 11, 2005, 466 SCRA 510.

[98] *Mercury Drug Corporation v. Baking*, *supra* note 73, at 191.

[99] *Lamis v. Ong*, *supra*; *Samson, Jr. v. Bank of the Philippine Islands*, G.R. No. 150487, July 10, 2003, 405 SCRA 607; *Filinvest Credit Corporation v. Intermediate Appellate Court*, G.R. No. L-65935, September 30, 1988, 166 SCRA 155.

[100] *Mercury Drug Corporation v. Baking*, *supra* note 73, at 192.

[101] *Id.*

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