THE OTHER SIDE OF EQUITY:
REVISITING EQUITY AND ANALYZING ITS NEGATIVE EFFECTS AND IMPROPER RELIANCE

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OUTLINE:

The doctrine of "equity follows the law" is a mere complement for the attainment of justice, and not a legislative power that can supersede a

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> *statute, despite the equitable maxim that "equity will not suffer a wrong to be without a remedy".*
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> - *Estrellado v. Martinez*, 48 Phil. 256 (1925).

I. INTRODUCTION

In Anglo-American jurisprudence, equity, has been the creation of the courts. M. Dessens, a Frenchman, who devoted his doctoral thesis to the subject, admits that "the mental representation of what is equitable depends, at least in part, on the social evolution, the environment and the time," which accounts for the flexibility of the concepts of "the just" or of "the aequum."[2] The rule on equity is intended to prevent possible injustice in the strict, restrictive and limited application of positive law,

However, such rule must not be used erratically. Courts may have good intentions in applying the rules to uphold justice and fairness; however, irregular or inconsistent use of the rule on equity would lead to confusion, uncertainty in jurisprudence and possible concoction of judicial legislation especially when a clear provision of law has already laid down a rule but ignored or disregarded by the courts to uphold their own sense of justice. According to Justice Jose B.L. Reyes, manifestly and excessive reliance on equity in solving legal problems possesses certain disadvantages. For one, legal principles become eroded and uncertain in their operation, for another, the application of equity depends on the individual sense of justice of the courts which mainly depends on the membership in the bench.

Especially in cases decided by the Philippine Supreme Court (hereinafter Court), inconsistent decisions dilute its essential mission of settling uncertainties of the law through its collegial body, and add difficulty in foreseeing the direction of future awards. Usually a judgment based on equity becomes an ad hoc adjudication, unusable for other cases. Such entails that previous awards do not serve as a guide, a variability that adversely affects the people's quest for justice. In short, cases basically similar in nature can lead to different adjudications. Hence, equity, as a legal tool, demands circumspection

[2] Dessens, Essai sur la Notion d'Equite, pp. 5-6, (1934).

and realization of the fact that, unless carefully controlled, its tendency is to make the judiciary the master of the law rather than its servant.[3]

Easy, reflexive resort to the equity all too often leads to a result that may be morally correct, but legally wrong.[4] D'Aguesseau, for instance, spoke of "this arbitrary equity which devises different scales and weights of its own for every case; examines the intention of the legislator as a captious enemy and not as a faithful servant; fights the spirit with the letter and the letter with the spirit and, in the midst of the apparent contradiction, the truth escapes, the rule disappears and the judge remains the master."[5]

In their Manuel de Droit Civil Suisse, Virgile Rossel and F. H. Mentha insist that the references of the Napoleon Code to the rules of law and equity should in no case be interpreted as an authority to the judge to pronounce arbitrary decisions. The judge will find the rule of law in the legal order as the statutes have established it and in the general spirit of the statutory law. As to the rule of equity, which should never be considered as something opposed to the law, the judge will find them in his sense of justice and his own human experience, while considering the evidence brought before the court.[6]

A dilemma arises in realizing what is equitable. Courts are sourcing their decisions on a principle which is indefinite in nature or a rule which is universal in application. Although equity is a form of justice, it remains differentiated from the rule of strict law to the extent that, in general terms, the latter is consistently more defined in determining what is just in a definite situation according to a well-defined rule of law.[7] Equity or the equitable is not superior to justice in general, but merely, in some respects, styled as just in a definite situation, as against the justice fixed by certain absolute rules.[8]

[3] Justice Jose B.L. Reyes, The trend towards equity vs positive law in Philippine Jurisprudence, 58 Philippine Law Journal 1 (1983).
[4] Mijares v. Ranada, 455 SCRA 397, April 12, 2005.
[5] D'Aguesseau, 14 Mercuriale I 127.
[6] See Gimur and Hafter, Kommentar zum Schweizerischen Zivilgesetzbuch 64-66 (1919); and Muntzer, Schweitzerischen Privatrechts 59-76 (1932).
[7] Compare 1137 b 29 f.
[8] 1137 b 24.

This article seeks to point out those circumstances in which a discord is capable of being resolved through the application of a well-defined and established statutes or legal principles but are permitted to be settled by applying equity.

We must first analyze the Philippine laws that relates to equity. Article 10 of the New Civil Code of the Philippines provides that: "In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."[9] The doubt mentioned should not be construed to include every ambiguity that may arise upon the perusal of the provisions of the law. It must be noted that equity properly comes into play only when the uncertainty persists after a thorough deliberation and exhaustion of all the legal principles, rules, legislative policy and precepts of statutory construction applicable to the provision under scrutiny.[10] In other words, the courts should rule based on equity if and only if the law fails to provide a remedy for the given circumstance.

Article 9 of the same code provides that: "No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws".[11] The article was not intended to give judges unlimited discretion in applying their own sense of justice when the law is insufficient especially when the law or laws related to such provide a clear rule.

One case that exemplifies the improper use of the equity rule can be seen in *Carbonell v. Court of Appeals*.[12] In this case, Carbonell bought a parcel of land from Poncio as evidenced by a private document. Later on, respondent Infante offered to buy the same lot for a higher price in which a notarized deed of sale was executed by Poncio in her favor. With the knowledge that the lot was already being fenced by Infante, Carbonell recorded with the Register of Deeds an adverse claim two days before Infante's title was registered in her favor. Notwithstanding such fact, Infante proceeded to build a house on the disputed lot. The Court, as a matter of equity, ruled that Infante is a buyer in bad faith and was allowed to remove the improvements she built on the lot applying, by analogy, Article 549 of the Civil Code which provides that improvements of mere luxury may be removed by a buyer in bad faith. This decision, however, disregarded the express statutory provisions provided in Article 449 of the same code which states that he who builds, plants or sows in bad faith on the land

[9] CIVIL CODE.
[10] Reyes, supra note 2.
[11] Id.
[12] Carbonell v. C.A., G.R. No. 29972, January 26, 1976.

of another, loses what is built, planted or sown without right to indemnity. Resort to equity in this case is unjustified since it is contrary to the law which provides that a builder in bad faith loses whatever he builds.

Various authors noted that the evolution of remedies sourced beyond statutory provisions entails negative consequences since the trend from strictly abiding to the provisions of law to a liberal or discretionary grant of relief according to benevolence rather than fairness is detrimental to the legal system for it causes uncertainty in the application of legal principles.

Injustice may arise in the over reliance in the rule of equity specially when a party litigant who has relied on what the law provides and has faithfully complied with its provisions loses his case for the simple reason that the members of the tribunal do not see that justice would be served in applying the law.

In the Philippine atmosphere, courts, according to early jurisprudence, are designated not only as courts of law, but also courts of equity.[13] The rule that "equity follows the law" is well entrenched in Philippine jurisprudence especially in cases when moral law and justice warrants a remedy wherein positive law would not be violated.

The great professor, Henri Capitant might ask, for instance, "Is there anything more subjective than this, notion of equity and should we recall all the abuses to which equity has led in our judicial history? Under the color of equity, will not the litigants be left to the opinions and personal inclinations that judges might have on social justice?"[14]

II. NATURE OF EQUITY

Just like in life, as in law, there is no clear certitude. Men must resort to subterfuge in order to make the reality of uncertainty bearable. Equity has been, as Maine called it, a kind of "supplementary or residuary jurisdiction" without which law would have been fatally stunted.[15]

[13] U.S. v. Tamparong 31 Phil. 321 (1915); Rustia v. Franco; 41 Phil. 280 (1920); Asiain v. Jalandoni, 45 Phil. 296 (1923).
[14] G. M. Razi, Reflections on Equity in the civil law systems, The American University Law Review, Vol. 13.
[15] Cited in Allen, Law in the Making 171 (3d ed. 1939).

Aristotle standardly translated equity and equitable as "*epieikeia*" and "*epiekis*", respectively. Aristotle pithily characterizes *epieikeia* in the specific sense as an *epanorthoma nomou, hei elleipei dia to katholou* "a correction of law, where law falls short because of its universality."[16] In other words, equity is "a correction of the law, where the law is defective owing to its universality."[17]

Equity was conceptualized by Aristotle as a form of justice or the just, is in some respects superior to "strict justice", that is, to justice in accordance with an established rule of strict law, to strict common law justice, but is not superior to justice as being generically from it.[18] Thus "justice and equality are one and the same thing, and both are good, though equity (in some respects) maybe the better."[19]

Equity is a principle of natural law that is applied in almost all legal systems in the world which has been broadly defined as justice according to natural law and what is just or right. The modern interpretation of equity, as used and favored by various authors, is what the conscience or the inner forum considers to be in accordance with justice.[20]

Unlike positive law, it is not subject to the stringencies or technicalities, and to the restrictive and inflexible rules, by which courts of law are ordinarily circumscribed.[21] Ancient Greek and Roman philosophers ascertained that the strict application of legal rules results in injustice. In certain cases fair minded men find it arduous to accept the application of strict rules which, sometimes, results to more injustice than justice, which is its main purpose.[22]

Equity may exhibit itself in two cardinal forms, first, is the one we call equity in general which is a liberal and human construction of law that does not antagonize the law itself. Second, is particular equity in which there is a modification of the law in order to cater to exceptional circumstances which is outside the ambit of the legal provision.[23]

[16] Roger A. Shiner, Aristotle's Theory of Equity, 27 Loy. L.A. L. Rev. 1245 (1994).
[17] Aristotle, the Nicomachean Ethics V. Ch. 10 (Ross's transl. 1925).
[18] Quoted from Aristotelis Opera Omnia, edit. Academia Regia Borusica, Berlin, 1831, vol. 1H, page 1108, left hand column (a), line 6; 1137 b 10 f; 24.
[19] 1137 b 11 f.
[20] DESSENS, supra note 1.
[21] REYES, supra note 2.
[22] Id.
[23] Id.

III. BACKGROUND ON THE RULE OF EQUITY

A. Emergence of Equity

Thurman Arnold said, "Yet if law did not pretend to be what it is not, it would lose its magic and effectiveness."[24] It is conceded that the legal system of a state should not be a captive of the restrictive provisions of the law. The law, in its own, is fallible since the legislators or the makers of the law cannot predict each and every factual circumstance that may arise in a given case. However, the fear of too much power for judges might be more acceptable than that of the polar danger of having an arbitrary and strict law.

One of the paramount problems in the strict application of law is that it cannot be changed easily in order to adapt to the quick tranformation of society and prevailing circumstances. Legislation is simply a slow and arduous process. It just cannot keep up with the ever changing times. The only way to strengthen an unchanged or old law is when the courts have indirectly changed it by transgressing the law.

It can be observed that there are instances in which judges used such power to lessen the arbitrariness of the law. The liberties taken by the courts with the letter of the statute can be attributed to a desire to bring into the existing law the innovations required by the economic or social changes occurring in the structure of human society. There are even situations that the courts does not have an intention to innovate but rather they apply equity in order to escape the undue hardships that would result from the insufficiency of the law.

E.H. Perreau, in his analysis of the Giry case, opined that in not awarding compensation to Dr. Giry, judges will not have any leeway in supplying the deficiency or gaps in the legislation. Dr. Giry and the other persons injured simply do not have any remedy just because there is no legal text that points out who will be liable in case of such accident.[25]

There are times that the rule of law may be unjust. Say for instance that a provision of law provides the amount of damages that should be awarded to the winning litigant for a specific act or

[24] Arnold, Apologia for Jurisprudence, 44 Yale L.J. 729 (1935).
[25] II Perreau, Techniqué de la Jurisprudence en Droit Privé 232 (1923).

violation. It would sound fair and reasonable, if the circumstances are similar, that the liability for the violation of the law will be applied to all. But what if the violator is destitute and the victim is affluent, a strict application of the law will surely entail that the weak party will be unduly pressed by the liabilities that may be imposed upon him. Although equity may destroy a law it will, however, humanize its application in a particular circumstance.

Some laws in itself provided its own flexibility by delegating to the courts the discretion and power to accommodate situations which the law could not have foreseen. However, even without the delegation of law, judges will still have to decide base on equity for the simple reason that judges are human beings and are not mere machines that blindly adheres to what the rules have provided. The judges' own knowledge of the law, his compassion and logic will come into play in each and every case that he will decide.[26] Such notion will always exist since judges will always think and have their own interpretation of what is just as each human being do. Limiting the mental processes of a judge would result to a burdensome rigidity in the actuality of the law.

Professor Carbonnier writes, that an equity judgment appears, therefore, as a judgment in a pure state which does not claim to become a rule of law. This judgment, however, creates law and not a general rule since it is merely a solution to an individual case.[27]

B. Equity in the Philippine setting

There has been a great shift towards the use of equity in the Philippine jurisdiction after the end of the Spanish occupation up to the present. The Philippine Civil Code is strongly influenced by the Spanish *Código Civil or* Spanish Civil Code, which was first enforced in 1899 within the Philippines, then a colony of the Spanish Empire. Under the Spanish Civil Code of 1899, only two articles in the code made reference to equity namely; Article 1154, which gave the judge the power to equitably modify penal clause in case of partial or irregular performance and, in Article 1690 which provides that an inequitable award can be assailed if the designation of profits and losses has been entrusted by partners to third persons.[28]

[26] I Carbonnier, Droit. Civil 15-19 (1955).
[27] Id.
[28] REYES, supra note 2.

It can be noticed that the American occupation significantly changed the usage of equity in Philippine jurisprudence. In the early case of *U.S. vs Tamparong*, the Court noted that the courts in the Philippines are not only courts of law, but also of equity.[29] The decision allowed the culminating of new remedies that is based on equity. Early decisions show assertion in the use of Philippine Courts of its equity jurisdiction.[30] Pronouncements based on equity were made to justify the granting of new remedies like specific performance[31] injunction,[32] mutual mistake,[33] constructive trusts,[34] reformation of contracts,[35] estoppel by silence or laches,[36] etc., that were non-existent during the Spanish era.

The legislature, through Article 9 of the New Civil Code, recognizes that in certain instances, the court, must fill in the gaps in the law. The mind of the legislator, like all human beings, is finite and therefore cannot envisage all possible cases to which the law may apply, nor has the human mind have the infinite capacity to anticipate all situations. This concept is even supplemented by Article 8 of the New Civil Code which decrees that judicial decisions applying or interpreting the laws or the Constitution forms part of this jurisdiction's legal system. These decisions, although in themselves are not laws, constitute evidence of what the law mean. The application or interpretation placed by the Court upon a law is part of the law as of the date of the enactment of the said law since the Court's application or interpretation establishes the contemporaneous legislative intent that the construed law purports to carry into effect.[37]

The Court, strictly adhered to the maxim that "equity follows the law", *i.e.,* that equitable considerations of natural or moral law and justice warranted a remedy only in those cases where the positive law would not be violated.[38]

Furthermore, it is paramount to point out that the Court explicitly asserted in various cases that equity is a mere compliment for the attainment of justice and not a legislative power that can supersede a statute, despite the equitable maxim "equity will not suffer a wrong to be without

[29] REYES, supra note 2.
[30] Supra note 12.
[31] Seva v. Alfred Berwin & Co., 48 Phil. 580 (1926).
[32] Rustia v. Franco, 41 Phil. 280 (1920).
[33] Asiain v. Jalandoni, 45 Phil. 296 (1923).
[34] Gayondato v. Treasurer of the Philippine Islands, 49 Phil. 244 (1926).
[35] Tolentino v. Gonzalez Sy Chiam, 50 Phil. 558 (l927).
[36] Gabriel v. Baens, 56 Phil. 314 (1931).
[37] People v. Licera, 65 SCRA 270, 272, 273, L-39990, July 22, 1975.
[38] REYES, supra note 2.

remedy".[39] The reason for such was enunciated in the cases of *Labayen v. Talisay-Silay Milling Co.*[40] *and De Castro v. Longa*:[41]

> It is elemental that the law requires parties to do what they have agreed to do. If, a party charges himself with an obligation possible to be performed, he must abide by it unless performance is rendered impossible by the Act of God, the law, or the other party. A showing of mere inconvenience, unexpected impediments or increased expenses is not enough. Equity cannot relieve from bad bargains simply because they are such.

Lastly, in *Poso v. Judge Mijares,*[42] the Court further expounded on this concept as follows:

> Equity as the complement of legal jurisdiction seeks to reach and do complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent so to do. Equity regards the spirit of and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts.

C. Equity in the foreign setting

Equity, according to Capitant, has remained one of the most radiant formulas of justice by which the Greeks and Romans illuminated as the hope of human societies.[43] It is in Middle Age of England where the concept of equity was developed as a supplement to the strict set of rules or laws which were considered too rough when applied to certain cases. When decisions on certain cases were

[39] Estrellado v. Martinez, 48 Phil. 256 (1925).
[40] Labayen v. Talisay-Silay Milling Co., 52 Phil. 440, 443 (l928).
[41] De Castro v. Longa 89 Phil. 581, 591 (1951).
[42] Poso v. Judge Mijares, 436 Phil. 295, 324 (2002).
[43] Capitant, Revue Trimestrielle 371 (1928).

considered unfair, the defendant could appeal to the King of England who later delegated the responsibility to the chancellor.[44]

The reliance on equity is dependent mainly on the legal system, whether civil or common law, applied by the country in which the court has jurisdiction. The United States, a common law jurisdiction, adopted the common law of England which came with an entire system that is adapted based on the circumstances of each case.[45] This adoption also brought with it the principles of equity for the purpose of giving practical effects to a law.

In the State of California, the courts adhered to the rule that they can apply equity so long as they are not inconsistent with law and the constitution. Another rule that should be noted is that courts of law, generally, were triable to a jury while in equity there was no right to a jury.

In various cases, the Seventh Amendment was constructed to mean that equitable and legal issues cannot be tried in the same suit. In the case of *Dairy Queen v. Wood,*[46] the plaintiff prayed for various equitable reliefs such as injunction and an accounting for money damages. The Court ruled that, although equitable reliefs are incidental to the legal relief, issues belonging to the realm of law should be tried before a jury because the rights that are being adjudicated are legal in nature. Such created a rule that legal claims must first be tried before equitable ones.

In France, a civil law jurisdiction, the word equity or equité is mentioned in three articles in the Code of Napoleon. Namely, Article 565: "When the right of accession has as its object two movables belonging to two different masters, it is entirely subordinated to the principles of natural equity". Article 1845: "When the partners have agreed that the settlement of shares will be made by one of them or by a third party, such settlement will not be open to attack unless it is contrary to equity in an obvious manner". Art. 1135: "Agreements are binding not only for what has been expressed but also for all consequences that equity, usage or the statute give to the obligation, according to its nature."

[44] Difference between Law and Equity, Difference Between.net, http://www.differencebetween.net/miscellaneous/politics/political-institutions/difference-between-law-and-equity/#ixzz4QXvKXK91, last accesed: March 1, 2017.
[45] Continental Guaranty Corp. v. People's Bus Line, Inc., 31 Del. 595, 605 (Del. Super. Ct. 1922).
[46] Dairy Queen, Inc. v. Wood, 369 U.S. 469 (1962).

According to Gorphe, an authority on the Code of Napoleon, the three articles took notice of the overwhelming complexity of circumstances in which a general rule cannot be properly formulated. The judges, under the code, are given the authority to decide according to his conscience since a general rule cannot be properly applied for the law cannot perfectly cover all factual situations in a given circumstance.[47] However, even with such power, French judges did not take advantage of the freedom given to them by the legislature.

The courts *renvoi* to equity remained of little or without any significance. To elaborate, Article 565 has no known application whatsoever. Article 1845 was simply interpreted to mean that the settlement will be susceptible to rescission only in cases of fraud, violence, or lesion of more than twenty-five percent. Finally, Article 1135 was construed in a manner that gives the trial judge the right of a final assessment as far as the facts of a case are concerned in which the *la Cour De Cassation*, France's courts of last resort having jurisdiction over all matters triable in the judicial stream with the scope of certifying questions of law and review in determining miscarriages of justice, only has the power to check the conditions that made the lower courts interpret the facts in such manner.

The Swiss Civil Code, on the other hand, illustrates a more emphatic latitude for tribunals to decide base on equity. Article 4 of the Code provides that: "The judge applies the rules of law and of equity when the statute reserves his power of appreciation or asks him to decide taking into account either the circumstances or just reasons."

The Swiss legislators placed the rule of law and of equity in equal footing as they intended to allow the courts to use the rule of equity only for just reasons or based on the circumstance if provided for by the law. Such a conclusion would be reinforced by the reading of the often quoted Article 1 of the same Code: "The statute govern all matters which have reference to the letter or to the spirit of one of its provisions". In the absence of an applicable legal provision, the judge decides according to customary law and in the absence of custom, according to the rules, he would establish such as if he acts as a legislator.[48] The reservation of both French and Swiss court in the usage of equity rule are shared by other civil law countries in whose codes expressly provides the authority to use equity.

[47] Gorphe, Encyclopdie Dalloz 573.
[48] RAZI, supra note 13.

A good illustration of the rule of equity would be the Giry Case.[49] In such case toxic fumes from a café-hotel took the life of several persons and made other persons very uncomfortable. Dr. Giry was requested by the police captain to establish the cause of the death. When Dr. Giry arrived an explosion occurred destroying the whole building and injuring twenty-nine persons, including Dr. Giry.

Dr. Giry sued the government for an amount of seven million francs in damages. The district court awarded such amount and based its decision on equity for it was completely at a loss as to what law will be applicable in the given situation. The District court noted that Dr. Giry did not come by his own will and that he was just requested to perform a public service. The *la Cour d'Appel de Paris* (Court of Appeals) ruled, "without failing to recognize the importance of such an argument on the humanitarian level, that the Court could not base a decision on this sole reason; that the Court must base its decision upon texts and could not justify the granting of damages on the sole principle of equity if the latter is not put in concrete form by a legislative text; that indeed our Codes do not leave to the judge the latitude of supplying the deficiency of a gap in legislation for a reason of equity; that no text grants damages to someone who is requested in case of an accident".

In such case the court was explicit in its pronouncement that judges do not have the latitude on basing its decisions on sources other than legislative or statutory provisions. The court even emphasized that the lack of legal provisions is not an excuse for invoking equity. The Giry case simply restates the classic attitude of French law in this matter, which is shared by both the judicial and the administrative tribunals.[50] The Court in this case fears too much power in the hands of the judges which might lead to arbitrariness and unpredictability in jurisprudence.

D. Equity in international law

Equity is not a stranger in the realm of international law since tribunals like the International Court of Justice applies such principle in special cases. A clear rule on equity may not be explicitly found in the Statute of the International Court of Justice, however, by implication such rule could be

[49] Paris, lére Ch., 2 fev. 1955 and Cass. civ. 2e, 23 Nov. 1956. See J.C.P. No. 8619, 1955 and No. 9681, 1956 with notes by Esmein.
[50] I Mazeaud, Lecons du Droit Civil 26 (1955).

applied since Article 38 (1) provides that the Court may decide cases in accordance with international conventions, customs and general principles of law.

Further, Article 38 (2) of the same statute states that "this provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agrees thereto". The *ex aequo et bono*, latin for "according to the right and good" or "from equity and conscience", exception allows the courts to analyze the case beyond the law, provided that the parties expressly agrees to it.

IV. NEGATIVE EFFECTS OF EQUITY

The courts may have a noble and righteous cause in applying equity in their decisions but great caution must be given in applying a rule that, sometimes, has no basis in law and, in some instances, contrary to law. Erratic usage of the rule would lead to a plethora of enigmas in the stability of Philippine jurisprudence.

According to Pomeroy, there are instances indeed in which a court of equity gives a remedy when the law gives none. But when a particular remedy is given by the law, and that remedy is bound and circumscribed by particular rules, it would be very improper for the court to take it up where the law leaves it and to extend it further than what the law allows.[51]

The disadvantages will pose degradation and uncertainty in the operation and execution of law. Further, the notion of what is just and right will always depend on the personal moral sense of the individual judges or justices that sits in the bench. There will be an inevitable conclusion that the individual member's subjective senses will be considered as a variable in the resolution of cases. Such variable should not be sustained in a body that is mandated to act with impartiality in all its undertakings. It must be remembered that the courts paramount mission is to shed light to the unclear and give certainty to what is uncertain in the law through its judicial decisions.

Justice Reyes even noted that, "equity as a legal tool demands circumspection, and realization of the fact that, unless carefully controlled, its tendency is to make the judiciary assume legislative power."[52] The Court, in its decisions, even acknowledged the dangers of relying in equity when it

[51] Pomeroy's Equity Jurisprudence Vol. 2 pp. 188-189.
[52] REYES, supra note 2.

previously ruled that "while equity might tilt on the side of one party, the same cannot be enforced so as to overrule positive provisions of law in favor of the other."[53]

A. Uncertainty in jurisprudence

The ideal effect of a sound judicial decision is to give foreseeability and consistency in a legal discourse. Jurisprudence should set a predictable path in the outcome of one's plight for the enforcement of his or her rights.

Extemporary judgements founded on equity, especially when a doctrine has already been laid down, will most likely be unusable in other cases. Circumstances in which prior awards fail to serve as an escort to subsequent awards will negatively affect a litigant's case who gave reliance on a previous ruling which bears identical circumstances. Such kind of judgment does not create a guiding rule when it is incapable of being applied in an indefinite number of cases for it will simply be a solution in a single case.

Great caution must be exercised by the judicial body in crafting and finding basis in its decisions especially when the basis is grounded on equity. It is an inescapable fact that equity would certainly be bound by the judge's own perception of what is just and equitable and will, at certain times, force him to go beyond a prevailing ruling to cater to his own sense of justice.

B. Judicial legislation

Alexander Hamilton pragmatically admits that judicial legislation may be justified but denies that the power of the judiciary to nullify statutes may give rise to judicial tyranny.[54] Further, in the vocabulary of Chief Justice Harlan F. Stone, "the only limit to judicial legislation is the restraint of the judge."[55]

[53] BPI Family Savings Bank v. Sps. Januario Antonio And Natividad Veloso, Et Al., G.R. No. 141974, August 9, 2004.
[54] The Federalist, Modern Library, pp. 503-511, 1937 ed.
[55] U.S. vs. Butler, 297 U.S. 1 Dissenting Opinion, p. 79.

The Court, in one case, agreed with the language of Justice Holmes that the courts, "do and must legislate" to fill in the gaps in the law.[56] Further, it was even acknowledged that there is a mandate from the legislature to fill the gaps in the law through Article 9 of the New Civil Code.

Even with such ruling and authority one must not forget the well-known latin maxim "*dura lex sed lex*". The law should always prevail over equity and judges should refrain from incorporating his own sense of justice in ruling a case in order to prevent the creation of the so called judge made laws.

Untoward freedom to depart from the clear rule of law, which allows individual judges to apply his own interpretation as his discretion pleases, will result to a plethora of interpretations that may probably go beyond the purpose and intent of the law.

It has been enunciated by the Court in *People v. Garcia*[57] that the courts are not authorized to insert into a law what they think should be in it or to supply what they think the legislature would have supplied if its attention had been called to the omission. Further, it is the sworn duty of the judge to apply the law without any fear or favor and must not tamper with the law in order to further the judge's personal inclination.[58]

Duty calls upon the courts to be bound to interpret and apply the law regardless of whether such law is wise or salutary.[59] This notion was even emphasized by the Court in *Phil. Rabbit Bus Lines, Inc. v. Judge Arciaga*[60] when it held that:

> For the foregoing reasons, neither can private respondent invoke equity as a ground for the reopening of the case "there being an express provision of law under which the remedy can be invoked." (*Barrios v. Go Thong & Co., 7 Phil. 542 [1963*]). The rule is, "equity follows the law" and as discussed in Pomeroy's Equity Jurisprudence

[56] Floresca v. Philex Mining, G.R. No. L-30642, April 30, 1985.
[57] People v. Garcia, 65 Phil. 651, 47 O.G. 4188.
[58] Go v. Anti-Chinese League, 84 Phil. 468 (1949).
[59] Quintos v. Lacson, 97 Phil. 290 (1955).
[60] Phil. Rabbit Bus Lines, Inc. v. Judge Arciaga, G.R. No. L-29701 March 16, 1987.

> Vol. 2 pp. 188-189 (as cited in Appellant's Brief p. 20), the meaning of the principle is stated as follows:
>
> > There are instances, indeed, in which a court of equity gives a remedy, where the law gives none; but where a particular remedy is given by the law, and that remedy is bounded and circumscribed by particular rules, it would be very improper for the court to take it up where the law leaves it and to extend it further than the law allows.

Such practice defeats the legislative powers of the Congress for the simple reason that the judge, in interpreting and applying the law, does not adhere strictly to its provisions since his own sense of justice demands that he apply some sort of flexibility to the law. Equity has no place when there is a governing law, even if the literal interpretation would result in hardships or inconvenience to the litigants.

The courts may not solely rely on equity and good conscience in situations when the law provides for a clear rule. Equity can only supplement the law when there is a gap in it, but it cannot supplant the law. According to Blackstone, the great eighteenth century English legal scholar, equity "must not be indulged too far, lest thereby we destroy all law, and leave the decision of every question entirely in the breast of the judge."[61] Justice Holmes even opined with a cautionary undertone that "judges do and must legislate, but they can do so only interstitially from molar to molecular motions."[62]

Although it is conceded that Article 8 of the New Civil Code provides that judicial decisions of the Supreme Court assumes the same authority as the statute itself,[63] however, this should not be construed as a mandate that allows judicial decisions to supersede the law that it is supplementing.

C. Decisions based on court membership

It is a well-recognized that in concluding legal questions judges may use appropriate discretion in crafting equitable remedies in order to cater to possible vulnerabilities that the law may have. It must also be emphasized that every case weights differently. One must also take note that when a case

[61] Brent K. Wilson, University of Hawai'i Law Review 36 Hawaii L. Rev. 573, 2014.
[62] Southern Pacific Company v. Jensen, 244 US 204, 1917.
[63] Caltex v. Palomar, 18 SCRA 247, September 29, 1966.

goes to court the ball is already in the judge's hand and in constructing the meaning of the law, judges do not act as servants of the legislator but rather they remain the masters.

Judges, as the masters in interpreting the law, are mere human beings encumbered by his own subjectivity, sense of justice and personal human experience. Regardless of whether or not the legislature delegates the power to rule based on equity to the courts, judges will find it inescapable to decide based on his own subjectivity for the simple reason that judges are not mere tools that mindlessly adhere to the words of the law.

This sense of compassion and subjectivity of individual judges would result to an inclined decision that is masked under the color of equity. Possible abuses in the rule of equity will be present since litigants will be placed under the mercy of the judge's opinions and personal inclinations on what justice should be. As the Court explained in *Mangahas v. Court of Appeals*:[64]

> For all its conceded merits, equity is available only in the absence of law and not as its replacement. Equity is described as justice outside legality, which simply means that it cannot supplant although it may, as often happens, supplement the law. x x x all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force.

V. CASES OF IMPROPER RELIANCE IN EQUITY

Enrile vs. Sandiganbayan[65]

[64] J. Leonen, Dissenting Opinion in Enrile v. Sandiganbayan (Third Division), G.R. No. 213847, August 18, 2015, Supreme Court of the Philippines, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/august2015/213847_leonen.pdf> 3-4 [Per J. Bersamin, En Banc], citing Petition for Certiorari, Annex I, pp. 4-5, 6-7; Annex J; Annex K; Annex H; and Annex O, p. 5., last accesed: March 10, 2017.

[65] Enrile v. Sandiganbayan, G.R. No. 213847, August 18, 2015.

In the Enrile case, the Court, based on humanitarian reasons, granted the prayer of Senator Juan Ponce Enrile (hereinafter Enrile) for provisional liberty under bail even if he was charged of a crime punishable by reclusion perpetua to death.

Emphasis must be given on the fact that Article III, Section 13 of the Constitution provides that:

> Section 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.

In the said case, Enrile was charged with the crime of plunder punishable under Republic Act No. 7080 Section 2[2] which provides that:

> SEC. 2. *Definition of the Crime of Plunder, Penalties*. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder *and shall be punished by reclusion perpetua* to death

Enrile, in his Motion to Fix Bail, prayed before the Sandiganbayan, that he be allowed to post bail even if the Sandiganbayan finds probable cause against him. His prayer was based on the argument that his alleged age and voluntary surrender were mitigating and extenuating circumstances that would lower the penalty of reclusion perpetua to a bailable penalty of reclusion temporal. He further argued that his alleged age and physical condition indicated that he was not a flight risk. His prayer states:

> WHEREFORE, accused Enrile prays that the Honorable Court allow Enrile to post bail, and forthwith set the amount of bail pending determination that (a) evidence of guilt is strong; (b) uncontroverted mitigating circumstances of at least 70 years old and voluntary surrender will not lower the imposable penalty to *reclusion temporal*; and (c) Enrile is a flight risk.

Notwithstanding the clear provisions of Article III, Section 13 of the Constitution, the Court opined that "it is relevant to observe that granting provisional liberty to Enrile will then enable him to have his medical condition be properly addressed and better attended to by competent physicians in the hospitals of his choice. This will not only aid in his adequate preparation of his defense but more importantly, will guarantee his appearance in court for the trial. The Court even faulted the Sandiganbayan for "arbitrarily ignoring the objective of bail to ensure the appearance of the accused during the trial; and unwarrantedly disregarded the clear showing of the fragile health and advanced age of Enrile. As such, the Sandiganbayan gravely abused its discretion in denying Enrile's Motion to Fix Bail."

Justices who dissented in the case opined that there is danger in ruling in such matter since there will be no clear pronouncement of a doctrine or adherence to jurisprudence and that there will be a presence of untoward bias in ruling in favor of Enrile taking into consideration that the case is merely a pro hac vice decision.[66]

However, such ruling is contrary to doctrine enunciated by the Court, in a previous case of *Aguila v. C.F.I.*, in which it noted the importance of being within the bounds of the law as the court describes equity "as justice without legality, which simply means that it cannot supplant although it may, as often happens, supplement the law."[67]

We must, however, take not that there is still uncertainty as to what rule is supreme in the Philippine jurisdiction. The Court at one time declared that the courts are designated not only as courts

[66] Dissenting opinion, Leonen, J., Enrile v. Sandiganbayan, G.R. No. 213847, August 18, 2015.
[67] Aguila v. Court of First Instance of Batangas, 160 SCRA 352, 359-360, Tankiko et al. v. Cezar et al., G.R. No. 131277, February 2, 1999.

of law, but also courts of equity.[68] However, it also reiterated that the Court, while aware of its equity jurisdiction, is first and foremost, a court of law.[69]

Grace Poe vs. Comelec[70]

In this case, the 2016 presidential candidate Grace Poe declared in her certificate of candidacy that she is a natural-born citizen. Poe was born in 1968, she was found abandoned in Iloilo during her infancy and was later on legally adopted. Petitions were filed before the COMELEC to deny or cancel here certificate of candidacy on the ground that, among others, she cannot be considered as a natural-born Filipino citizen since, as a foundling, she failed to prove with certainty whether her biological parents are Filipinos.

The COMELEC en banc cancelled her certificate of candidacy for the reason that she does not comply with the citizenship requirements of the 1987 Constitution which requires that candidates for presidency must be a natural-born Filipino citizen. The high court ruled that Poe might be and is considerably a natural-born Filipino since the statistical probability that a child born in the Philippines would be a natural born Filipino will not be affected by whether or not the parents are known. If at all, the likelihood that a foundling would have a Filipino parent might even be higher than 99.9%. The court further opined that, the general principles of international law are applicable in the case. The court applied the general principle of equity, *i.e.,* the general principles of fairness and justice in order to address the possible discriminatory consequences of ruling against Poe.

However, it is respectfully submitted that such ruling is contrary to the clear provisions of the 1987 Constitution which provides:

Article IV, Section 1 of the 1935 Constitution provides:

> Section 1. The following are citizens of the Philippines:

[68] F. F. Mañacop Construction Co., Inc.v. C.A., G.R. No. 122196, January 15, 1997.
[69] National Housing Authority v. Grace Baptist Church, G.R. No. 156437, March 1, 2004.
[70] Poe-Llamanzares v. COMELEC, G.R. No. 221697, March 8, 2016.

> 1. Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
>
> 2. Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
>
> 3. Those whose fathers are citizens of the Philippines.
>
> 4. Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
>
> 5. Those who are naturalized in accordance with law.

Under the constitution an individual is only considered natural born if he did not perform any act to perfect his citizenship. The provisions of the 1935 constitution, the prevailing law at the time of Poe's birth, provides that one can be considered a natural-born Filipino if he's born of Filipino father or if he elected Philippine citizenship or if born of Filipino mother.

If a child's parents are neither Filipino citizens, the only way that the child may be considered a Filipino citizen is through the process of naturalization in accordance with statutory law, under paragraph (5), Section 1 of Article IV of the 1935 Constitution. If a child's parents are unknown, as in the case of a foundling, there is no basis to consider the child as a natural-born Filipino citizen since there is no proof that either the child's father or mother is a Filipino citizen. Thus, the only way that a foundling can be considered a Filipino citizen under the 1935 Constitution, as well as under the 1973 and 1987 Constitutions, is for the foundling to be naturalized in accordance with law.

One justice opined that the application of the social justice and equity principles that some sectors urge this Court to do and their persistent appeal to fairness must not be allowed to weigh in and override what the clear terms of the laws and jurisprudence provide.[71]

Rural Bank of Caloocan vs. Court of Appeals[72]

[71] Dissenting Opinion, Carpio, J. Poe-Llamanzares v. COMELEC, G.R. No. 221697, March 8, 2016.
[72] Rural Bank of Caloocan v. C.A., G.R. No. L-32116, April 2l, 1981.

In this case, it was contended that a consignation was made without prior offer or tender of payment to Rural Bank and is, therefore, not valid. The Court noted that the respondent, an illiterate, was correct in thinking that it was futile and useless for her to make a previous offer and tender of payment since her property was already foreclosed by the bank and has not made any claim to such deposit. It further ruled that, under the foregoing circumstances, the consignation made was valid since there is substantial compliance with the law, if not under the strict provision of the law, under the more liberal considerations of equity.

Such ruling, however, runs counter to the clear provisions of Article 1256 and 1257 of the Civil Code which provides that:

> Art. 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.
>
> Consignation alone shall produce the same effect in the following cases:
>
> 1. When the creditor is absent or unknown, or does not appear at the place of payment;
> 2. When he is incapacitated to receive the payment at the time it is due;
> 3. When, without just cause, he refuses to give a receipt;
> 4. When two or more persons claim the same right to collect;
> 5. When the title of the obligation has been lost. (1176a)
>
> Art. 1257. In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation.
>
> The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment.

It must be noted that the law clearly required that there must be a valid prior tender and prior notice of consignation. There is also a long line of established precedents and doctrines that sustain the mandatory nature of the above provisions.

These articles must be accorded a mandatory construction since it is clearly evident and plain from the very language of the codal provisions themselves which require absolute compliance with the essential requisites therein provided. Substantial compliance is not enough since that would render only a directory construction of the law. The use of the words shall and must, which are imperative, operating to impose a duty which may be enforced, positively indicated that all the essential requisites of a valid consignation must be complied with. The Civil Code Articles expressly and explicitly direct what must be essentially done in order that consignation shall be valid and effectual.

Elcano vs. Hill[73]

In this case, Atty. Hill was held subisdiarily liable under Article 2180, paragraph 2, of the Civil Code as a result of the negligence of his minor child. The child of Atty. Hill was at the time emancipated by marriage prior to the tort he committed. The court accordingly ruled that:

> In our considered view, Article 2180 applies to Atty. Hill, notwithstanding the emancipation by marriage of Reginald. However, inasmuch as it is evident that Reginald is now of age, as a matter of equity, the liability of Atty. Hill has become merely subsidiary to that of his son.

It must be noted that Article 2180 of the Civil Code provides that:

> 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.

[73] Elcano v. Hill, G.R. No. 24803, May 26, 1977.

> 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.
>
> xxx

The conclusion of the court runs contrary to the clear provision of the law for the reason that it has been consistently been ruled that the liability of a parent under Article 2180 is always principal and direct and not merely subsidiary.

In the words of Justice Reyes, clearly then, the liability of the parent for the negligent acts of the son has a different and independent source from the son's liability. The latter answers for his own tortious acts; the parent responds for his own carelessness in the training or vigilance of the son.[74] The court departed from the rule of positive law when equity was applied to convert the liability in to subsidiary by the mere reason that the son subequently became of age.

Vda. de Chi vs. Tanada[75]

This case is an example of a clear deviation from a clear provision of procedural law which may be considered mandatory in nature. In this case a passenger bus driven by Simplicio Lawas, owned and operated by Alfonso Corominas Jr., fell into an embankment which caused serious physical injuries to Rosita Vda. de Chi. Her injuries required her hospitalization for more than five months and necessitated constant case and medical attention. The court ordered Corominas Jr. and Lawas, to pay the damages caused to Vda. de Chi. After the decision became final and executory, the court, upon motion of Southern Island Hospitals issued an order for the defendants to pay Southern Islands for the unpaid hospitalization bills and further ordered the same to pay Chong Hua Hospital. It was claimed that the issuance of the orders was beyond the power and jurisdiction of the respondent court since both are not parties to the case and in effect of modifying a judgment that has become final and executory.

The Court noted that there was a technical error of the respondent court to order the defendants to pay the two hospitals since they are not parties to the case and that such order will

[74] REYES, supra note 2.
[75] Vda. de Chi v. Tanada, G.R. No. L-27274, January 30, 1982.

modify, alter or vary the terms of a final judgment. However, the court did not favor the claim for the reason that the interest of justice will be best served if a hearing will be conducted to determine whether the hospital bills have been paid rather than requiring the hospitals to file a separate action which would unduly result in multiplicity of suits.

It must be noted that after the decision has become final and executory, the Court may no longer require the trial court to conduct a new or an additional hearing to determine what reliefs may be granted to persons who were never parties to the case. Under Rule 12, Sec. 2 (now Rule 19, Sec. 2):

> **Section 2.** *Time to intervene.* — The motion to intervene may be filed at any time before rendition of judgment by the trial court.

The Court can allow intervention only before or during a trial and trial is here used in a restricted sense and refers to the period for the introduction of evidence by both parties. Where a judgment has been rendered, intervention is no longer proper.[76]

Avoiding multiplicity of suits, in this author's opinion, is a lame excuse to justify a rehearing of a case that has long become final and executory, especially if such a rehearing may result to a substantial amendment of the original decision. The respondent hospitals are not deprived of their appropriate remedy. They may file their own complaints in separate actions against the petitioner for the collection of her hospital bills. In the separate actions, the defendant is also given ample opportunity to assert her defenses either in a motion to quash or in her answer.[77]

VII. CONCLUSION

The rule of strict law, in consequence, being limited and, at the same time, consisting of general statements cannot cover every concrete case. Such rule, in certain instances, may be considered defective on account of its definiteness and generality. However, the application of equity also has its own defects since its indefiniteness and lack of a clear limitation creates a wide uncertainty in the application of an already established legal principle.

[76] Pacursa v. Del Rosario, G.R. No. L-26353, July 29, 1968.
[77] Dissenting Opinion, Ericta, J., Vda. de Chi v. Tanada, G.R. No. L-27274, January 30, 1982.

It cannot be argued that there is a necessity for both equity and law to coexist, however great caution must be used in applying the former. The principle of equity should remain subordinate to positive law, and should not be allowed to debauch positive law, nor give the courts the power to do so.[78] Judges have the sworn duty to apply the law without fear and favor.[79] They are bound to interpret and apply the law regardless of whether such law is wise and benevolent.[80]

There is a need for the courts to have a set of standards in order to demarcate the usage of equity in ruling cases in order to maintain certainty in jurisprudence, predictability of cases and to uphold the rule of law. It must be remembered that the Constitution only vested the Supreme Court with judicial powers and defined such power as the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable.[81] Legally demandable and enforceable entails that controversies must be settled on the basis of positive law.

It is not within the power of the courts to apply their own interpretation of what is just and fair when the legislature has already provided for such. Although the courts has an inherent power to control its processes, it must still do so in such a manner that will be conformable with what is provided by positive law. Courts should apply the law without any recourse to their own sense of justice since in such process they become the masters of law rather than the servants of the law's purpose and meaning.

[78] 27 AM. JUR. 2d, Equity, 645 (1966).
[79] Go v. Anti-Chinese League, 84 Phil. 468 (1949).
[80] Quintos v. Lacson, 97 Phil. 290 (1955).
[81] CONST. art. 3, sec. 1(2).