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first offense, a penalty of fine would be fair and reasonable. The Investigation Justice recommended a fine way beyond the Php 40,000 threshold.

WHEREFORE, this Court adjudges former Judge Rodrigo B. Lorenzo of the RTC, Branch 266 in Pasig City *GUILTY* of violation of Canon 3, Rules 3.01, 3.02, 3.08, and 3.09 of the *Code of Judicial Conduct*. He is hereby meted the penalty of *FINE* in the amount of forty thousand pesos (Php 40,000) to be deducted from his retirement benefits.

The Office of the Court Administrator is hereby ordered to facilitate the processing of the retirement papers of Judge Lorenzo for the speedy release of his retirement benefits.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

Corona and *Brion, JJ.,* on leave.

Leonardo-de Castro, J., on official leave.

EN BANC

[G.R. No. 141309. December 23, 2008]

LIWAYWAY VINZONS-CHATO, *petitioner, vs.* **FORTUNE TOBACCO CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; LIABILITY FOR IMPROPER PERFORMANCE OR NON-PERFORMANCE OF PUBLIC DUTY, DISCUSSED.

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— In determining whether a public officer is liable for an improper performance or non-performance of a duty, it must first be determined which of the two classes of duties is involved. For, indeed, as the eminent Floyd R. Mechem instructs, "[t]he *liability* of a public officer to an individual or the public is based upon and is co-extensive with his *duty* to the individual or the public. If to the one or the other he owes no duty, to that one he can incur no liability." Stated differently, when what is involved is a "duty owing to the public in general," an individual cannot have a cause of action for damages against the public officer, even though he may have been injured by the action or inaction of the officer. In such a case, there is damage to the individual but no wrong to him. In performing or failing to perform a public duty, the officer has touched his interest to his prejudice; but the officer owes no duty to him as an individual. The remedy in this case is not judicial but political. The exception to this rule occurs when the complaining individual suffers a *particular or special injury* on account of the public officer's improper performance or non-performance of his public duty. An individual can never be suffered to sue for an injury which, technically, is one to the public only; he must show a wrong which he specially suffers, and damage alone does not constitute a wrong. A contrary precept (that an individual, in the absence of a special and peculiar injury, can still institute an action against a public officer on account of an improper performance or non-performance of a duty owing to the public generally) will lead to a deluge of suits, for if one man might have an action, all men might have the like — the complaining individual has no better right than anybody else. If such were the case, no one will serve a public office. Thus, the rule restated is that an individual cannot have a particular action against a public officer *without a particular injury, or a particular right,* which are the grounds upon which all actions are founded.

2. ID.; ID.; ID.; ID.; AN INDIVIDUAL CAN HOLD A PUBLIC OFFICER PERSONALLY LIABLE FOR DAMAGES ON ACCOUNT OF AN ACT OR OMISSION THAT VIOLATES A CONSTITUTIONAL RIGHT ONLY IF IT RESULTS IN A PARTICULAR WRONG OR INJURY TO THE FORMER; APPLICATION. — Juxtaposed with Article 32 of the Civil Code, the principle may now translate into the rule that *an individual can hold a public officer personally liable for*

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damages on account of an act or omission that violates a constitutional right only if it results in a particular wrong or injury to the former. This is consistent with this Court's pronouncement in its June 19, 2007 Decision (subject of petitioner's motion for reconsideration) that Article 32, in fact, allows a damage suit for "tort for impairment of rights and liberties." It may be recalled that in tort law, for a plaintiff to maintain an action for damages for the injuries of which he complains, he must establish that such injuries resulted *from a breach of duty which the defendant owed the plaintiff,* meaning *a concurrence of injury to the plaintiff and legal responsibility by the person causing it.* Indeed, central to an award of tort damages is the premise that an individual was injured in contemplation of law. Thus, in *Lim v. Ponce de Leon,* we granted the petitioner's claim for damages because he, in fact, suffered the loss of his motor launch due to the illegal seizure thereof. In *Cojuangco, Jr. v. Court of Appeals,* we upheld the right of petitioner to the recovery of damages as there was an injury sustained by him on account of the illegal withholding of his horserace prize winnings. In the instant case, what is involved is a public officer's duty owing to the public in general. The petitioner, as the then Commissioner of the Bureau of Internal Revenue, is being taken to task for Revenue Memorandum Circular (RMC) No. 37-93 which she issued without the requisite notice, hearing and publication, and which, in *Commissioner of Internal Revenue v. Court of Appeals,* we declared as having "fallen short of a valid and effective administrative issuance." A public officer, such as the petitioner, vested with quasi-legislative or rule-making power, owes a duty to the public to promulgate rules which are compliant with the requirements of valid administrative regulations. But it is a duty owed not to the respondent alone, but to the entire body politic who would be affected, directly or indirectly, by the administrative rule. Furthermore, as discussed above, to have a cause of action for damages against the petitioner, respondent must allege that it suffered a *particular or special injury* on account of the non-performance by petitioner of the public duty. A careful reading of the complaint filed with the trial court reveals that no *particular injury* is alleged to have been sustained by the respondent. The phrase "financial and business difficulties" mentioned in the complaint is a vague notion, ambiguous in concept, and cannot translate into a "particular

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injury." In contrast, the facts of the case eloquently demonstrate that the petitioner took nothing from the respondent, as the latter did not pay a single centavo on the tax assessment levied by the former by virtue of RMC 37-93. With no "particular injury" alleged in the complaint, there is, therefore, no delict or wrongful act or omission attributable to the petitioner that would violate the primary rights of the respondent. Without such delict or tortious act or omission, the complaint then fails to state a cause of action, because a cause of action is the act or omission by which a party violates a right of another.

3. REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; ELEMENTS. — A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to plaintiff for which the latter may maintain an action for recovery of damages.

4. ID.; ID.; ID.; REMEDY OF A PARTY WHEN THE COMPLAINT DOES NOT ALLEGE A CAUSE OF ACTION. — The remedy of a party whenever the complaint does not allege a cause of action is to set up this defense in a motion to dismiss, or in the answer. A motion to dismiss based on the failure to state a cause of action in the complaint hypothetically admits the truth of the facts alleged therein. However, the hypothetical admission is limited to the "relevant and material facts well-pleaded in the complaint and inferences deducible therefrom. The admission does not extend to conclusions or interpretations of law; nor does it cover allegations of fact the falsity of which is subject to judicial notice." The complaint may also be dismissed for lack of cause of action if it is obvious from the complaint and its annexes that the plaintiff is not entitled to any relief.

5. ID.; ID.; ID.; CAUSE OF ACTION, ABSENCE OF; CASE AT BAR. — The June 19, 2007 Decision and the dissent herein reiterates that under Article 32 of the Civil Code, the liability of the public officer may accrue even if he/she acted in good faith, as long as there is a violation of constitutional rights, citing *Cojuangco, Jr. v. Court of Appeals*, where we said: Under the aforecited article, it is not necessary that the public officer

acted with malice or bad faith. To be liable, it is enough that there was a violation of the constitutional rights of petitioners, even on the pretext of justifiable motives or good faith in the performance of duties. The complaint in this case does not impute bad faith on the petitioner. Without any allegation of bad faith, the cause of action in the respondent's complaint (specifically, paragraph 2.02 thereof) for damages under Article 32 of the Civil Code would be premised on the findings of this Court in *Commissioner of Internal Revenue v. Court of Appeals (CIR v. CA)*, where we ruled that RMC No. 37-93, issued by petitioner in her capacity as Commissioner of Internal Revenue, had "*fallen short of a valid and effective administrative issuance.*" This is a logical inference. Without the decision in *CIR v. CA*, the bare allegations in the complaint that respondent's rights to due process of law and to equal protection of the laws were violated by the petitioner's administrative issuance would be conclusions of law, hence not hypothetically admitted by petitioner in her motion to dismiss. But in *CIR v. CA*, this Court did not declare RMC 37-93 unconstitutional; certainly not from either the due process of law or equal protection of the laws perspective. On due process, the majority, after determining that RMC 37-93 was a legislative rule, cited an earlier Revenue Memorandum Circular (RMC No. 10-86) requiring prior notice before RMC's could become "operative." However, this Court did not make an express finding of violation of the right to due process of law. On the aspect of equal protection, *CIR v. CA* said: "*Not insignificantly, RMC 37-93 might have likewise infringed on uniformity of taxation*"; a statement that does not amount to a positive indictment of petitioner for violation of respondent's constitutional right. Even if one were to ascribe a constitutional infringement by RMC 37-93 on the non-uniformity of tax provisions, the nature of the constitutional transgression falls under Section 28, Article VI — not Section 1, Article III — of the Constitution. This Court's own summation in *CIR v. CA*: "*All taken, the Court is convinced that the hastily promulgated RMC 37-93 has fallen short of a valid and effective administrative issuance*," does not lend itself to an interpretation that the RMC is unconstitutional. Thus, the complaint's reliance on *CIR v. CA* — which is cited in, and a copy of which is annexed to, the complaint — as suggestive of a violation of due process and equal protection,

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must fail. Accordingly, from the foregoing discussion, it is obvious that paragraph 2.02 of respondent's complaint loses the needed crutch to sustain a valid cause of action against the petitioner, for what is left of the paragraph is merely the allegation that only respondent's "Champion," "Hope" and "More" cigarettes were reclassified. If we divest the complaint of its reliance on *CIR v. CA*, what remains of respondent's cause of action for violation of constitutional rights would be paragraph 2.01, which reads: 2.01. On or about July 1, 1993, defendant issued Revenue Memorandum Circular No. 37-93 (hereinafter referred to as RMC No. 37-93) reclassifying specifically "Champion," "Hope" and "More" as locally manufactured cigarettes bearing a foreign brand. A copy of the aforesaid circular is attached hereto and made an integral part hereof as ANNEX "A". The issuance of a circular and its implementation resulted in the "deprivation of property" of plaintiff. *They were done without due process of law and in violation of the right of plaintiff to the equal protection of the laws.* But, as intimated above, the bare allegations, "done without due process of law" and "in violation of the right of plaintiff to the equal protection of the laws" are conclusions of law. They are not hypothetically admitted in petitioner's motion to dismiss and, for purposes of the motion to dismiss, are not deemed as facts. In *Fluor Daniel, Inc. Philippines v. EB. Villarosa & Partners Co., Ltd.,* this Court declared that the test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not, admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of the complaint. In the instant case, since what remains of the complaint which is hypothetically admitted, is only the allegation on the reclassification of respondent's cigarettes, there will not be enough facts for the court to render a valid judgment according to the prayer in the complaint.

6. CIVIL LAW; DAMAGES; AN ACTION FOR DAMAGES UNDER ARTICLE 32 OF THE CIVIL CODE PREMISED ON VIOLATION OF DUE PROCESS IN RELATION TO TAX LAWS; AVAILMENT OF REMEDIES UNDER THE TAX LAWS NEGATES THE CLAIM OF DUE PROCESS INFRINGEMENT. — [I]n an action for damages under Article 32 of the Civil Code premised on violation of due process, it may be necessary to harmonize the Civil Code provision with subsequent legislative enactments, particularly those related

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to taxation and tax collection. Judicial notice may be taken of the provisions of the National Internal Revenue Code, as amended, and of the law creating the Court of Tax Appeals. Both statutes provide ample remedies to aggrieved taxpayers; remedies which, in fact, were availed of by the respondent — without even having to pay the assessment under protest — as recounted by this Court in *CIR v. CA*, *viz.*: In a letter, dated 19 July 1993, addressed to the appellate division of the BIR, Fortune Tobacco requested for a review, reconsideration and recall of RMC 37-93. The request was denied on 29 July 1993. The following day, or on 30 July 1993, the CIR assessed Fortune Tobacco for *ad valorem* tax deficiency amounting to ₱9,598,334.00. On 03 August 1993, Fortune Tobacco filed a petition for review with the CTA. The availability of the remedies against the assailed administrative action, the opportunity to avail of the same, and actual recourse to these remedies, contradict the respondent's claim of due process infringement.

7. ID.; ID.; ID.; ID.; AN ACTION FOR DAMAGES AGAINST A TAX OFFICIAL WILL NOT BE ALLOWED WHEN OTHER SAFEGUARDS OR REMEDIES ARE AVAILABLE UNDER THE TAX CODE; RELEVANT AMERICAN JURISPRUDENCE, CITED. — 42 U.S. Code 1983, a provision incorporated into the Civil Rights Act of 1871, presents a parallel to our own Article 32 of the Civil Code, as it states: Every person who, under color of any statute, ordinance, regulation, custom, usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. This provision has been employed as the basis of tort suits by many petitioners intending to win liability cases against government officials when they violate the constitutional rights of citizens. *Webster Bivens v. Six Unknown Named Agents of Federal Bureau of Investigation,* has emerged as the leading case on the victim's entitlement to recover money damages for any injuries suffered as a result of flagrant and unconstitutional abuses of administrative power. In this case, federal narcotics officers broke into Bivens' home at 6:30 a.m. without a search warrant and in the absence of probable cause. The agents handcuffed Bivens, searched his premises,

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employed excessive force, threatened to arrest his family, subjected him to a visual strip search in the federal court house, fingerprinted, photographed, interrogated and booked him. When Bivens was brought before a United States Commissioner, however, charges against him were dismissed. On the issue of whether violation of the Fourth Amendment "by a federal agent acting under color of authority gives rise to a cause of action for damages consequent upon his constitutional conduct," the U.S. Supreme Court held that Bivens is entitled to recover damages for injuries he suffered as a result of the agents' violation of the Fourth Amendment. A number of subsequent decisions have upheld *Bivens.* For instance, in *Scheuer v. Rhodes,* a liability suit for money damages was allowed against Ohio Governor James Rhodes by petitioners who represented three students who had been killed by Ohio National Guard troops at Kent State University as they protested against U.S. involvement in Vietnam. In *Wood v. Strickland,* local school board members were sued by high school students who argued that they had been deprived of constitutional due process rights when they were expelled from school for having spiked a punch bowl at a school function without the benefit of a full hearing. In *Butz v. Economou,* Economou, whose registration privilege as a commodities futures trader was suspended, without prior warning, by Secretary of Agriculture Earl Butz, sued on a *Bivens* action, alleging that the suspension was aimed at "chilling" his freedom of expression right under the First Amendment. A number of other cases with virtually the same conclusion followed. However, it is extremely dubious whether a *Bivens* action against government tax officials and employees may prosper, if we consider the pronouncement of the U.S. Supreme Court in *Schweiker v. Chilicky,* that a Bivens remedy will not be allowed when other "meaningful safeguards or remedies for the rights of persons situated as (is the plaintiff)" are available. It has also been held that a *Bivens* action is not appropriate in the civil service system or in the military justice system. In *Frank Vennes v. An Unknown Number of Unidentified Agents of the United States of America,* petitioner Vennes instituted a *Bivens* action against agents of the Internal Revenue Service (IRS) who alleged that he (Vennes) owed $250,000 in tax liability, instituted a jeopardy assessment, confiscated Vennes' business, forced a total asset sale, and put Vennes out of business, when in fact he owed not a dime.

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The U.S. Court of Appeals, Eighth Circuit, ruled: The district court dismissed these claims on the ground that a taxpayer's remedies under the Internal Revenue Code preclude such a *Bivens* action. Vennes cites to us no contrary authority, and we have found none. Though the Supreme Court has not addressed this precise question, it has strongly suggested that the district court correctly applied *Bivens:* When the design of a Government program suggests that Congress has provided what it considers adequate remedial mechanisms for constitutional violations that may occur in the course of its administration, we have not created additional *Bivens* remedies. x x x Congress has provided specific and meaningful remedies for taxpayers who challenge overzealous tax assessment and collection activities. A taxpayer may challenge a jeopardy assessment both administratively and judicially, and may sue the government for a tax refund, and have authorized taxpayer actions against the United States to recover limited damages resulting from specific types of misconduct by IRS employees. These carefully crafted legislative remedies confirm that, in the politically sensitive realm of taxation, Congress's refusal to permit unrestricted damage action by taxpayers has not been inadvertent. Thus, the district court correctly dismissed Vennes's *Bivens* claims against IRS agents for their tax assessment and collection activities. In still another *Bivens* action, instituted by a taxpayer against IRS employees for alleged violation of due process rights concerning a tax dispute, the U.S. District Court of Minnesota said: In addition, the (Tax) Code provides taxpayers with remedies, judicial and otherwise, for correcting and redressing wrongful acts taken by IRS employees in connection with any collection activities. Although these provisions do not provide taxpayers with an all-encompassing remedy for wrongful acts of IRS personnel, the rights established under the Code illustrate that it provides all sorts of rights against the overzealous officialdom, including, most fundamentally, the right to sue the government for a refund if forced to overpay taxes, and it would make the collection of taxes chaotic if a taxpayer could bypass the remedies provided by Congress simply by bringing a damage suit against IRS employees. American jurisprudence obviously validates the contention of the petitioner.

8. ID.; ID.; ID.; A TAX OFFICIAL CANNOT BE HELD LIABLE FOR ACTS DONE IN THE PERFORMANCE OF OFFICIAL

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DUTY IF THE PARTY'S COMPLAINT DOES NOT IMPUTE NEGLIGENCE OR BAD FAITH TO HER. — [W]e invite attention to Section 227, Republic Act No. 8424 (Tax Reform Act of 1997), which provides: **Section 227.** *Satisfaction of Judgment Recovered Against any Internal Revenue Officer.* — When an action is brought against any Internal Revenue officer to recover damages by reason of any act done in the performance of official duty, and the Commissioner is notified of such action in time to make defense against the same, through the Solicitor General, any judgment, damages or costs recovered in such action shall be satisfied by the Commissioner, upon approval of the Secretary of Finance, or if the same be paid by the person sued shall be repaid or reimbursed to him. No such judgment, damages or costs shall be paid or reimbursed in behalf of a person who has acted negligently or in bad faith, or with willful oppression. Because the respondent's complaint does not impute negligence or bad faith to the petitioner, any money judgment by the trial court against her will have to be assumed by the Republic of the Philippines. As such, the complaint is in the nature of a suit against the State.

YNARES-SANTIAGO, *J., dissenting opinion*:

CIVIL LAW; DAMAGES; A PUBLIC OFFICIAL MAY BE HELD LIABLE UNDER ARTICLE 32 OF THE CIVIL CODE FOR AN ACT IN VIOLATION OF A PERSON'S CONSTITUTIONAL RIGHTS WHETHER OR NOT HE ACTED IN GOOD FAITH OR WHETHER THE ACT WAS DONE WITHIN OR BEYOND HIS AUTHORITY; REASONS; RELEVANT RULINGS, CITED. — Jurisprudence is settled that to be liable under Article 32 of the Civil Code, a **public officer** or a private individual must have committed **an act in violation of the plaintiff's constitutional rights** regardless of whether he/she acted in good faith or whether the act was done within or beyond the bounds of authority of said public officer. The act may have been committed **in any manner**; what is pivotal is that the act resulted in a violation of another person's constitutional rights. No distinction was made whether the public officer acted within or beyond the scope of authority in order to hold him/her liable. As long as there was a violation of constitutional rights, a public officer may be held liable for damages, and it is not even required that he/she acted with malice

or bad faith. That the Legislature did not intend to hold the public officer liable for damages under Article 32 of the Civil Code for violation of constitutional rights only if he/she acted beyond the scope of authority, is further made clear by the fact that under Artcile 32, a private individual is similarly held accountable. The clear intention of the legislature in inserting Article 32 of the Civil Code was to create a distinct cause of action in the nature of tort **for violation of constitutional rights**, irrespective of the motive or intent of the defendant or whether it was done within or without the bounds of the public officer's authority. In enacting the Administrative Code, then President Aquino could not have intended to obliterate this fundamental innovation in the Civil Code for the constitutional protection of civil liberties. The complaint for damages filed against petitioner was brought under Article 32 of the Civil Code for the latter's alleged violation of respondent's constitutional rights against deprivation of property without due process of law and for equal protection of law. In *Lim v. Ponce de Leon,* the Court held hat "[t]o be liable under Article 32 of the New Civil Code, it is enough that there was a violation of the constitutional rights of the plaintiffs and it is not required that defendants should have acted with malice or bad faith." In said case, Fiscal Ponce de Leon was found liable for damages because he committed a violation of the plaintiffs' constitutional right against unreasonable search and seizure. There is no merit to petitioner's contention that Fiscal Ponce de Leon was found liable for damages on the basis of his lack of authority to order the seizure. The discussion of his lack of authority to order the search and seizure was only necessary to establish the violation of plaintiffs' constitutional right. The reasons for Article 32 as expressed by Dr. Jeorge Bocobo, Chairman of the Code Commission, are: "DEAN BOCOBO. Article 32, regarding individual rights, Attorney Cirillo Paredes proposes that Article 32 be so amended as to make a public official liable for violation of another person's constitutional rights only if the public official acted maliciously or in bad faith. The Code Commission **opposes** this suggestion for these reasons: "The very nature of Article 32 is that the wrong may be civil or criminal. It is not necessary therefore that there should be malice or bad faith. To make such a requisite would defeat the main purpose of Article 32 which is the **effective protection of individual rights. Public Officials in the past**

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have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties. Precisely, the object of the Article is to put an end to official abuse by the plea of good faith. In the United States this remedy is in the nature of a tort. "Mr. Chairman, this article is firmly one of the fundamental articles introduced in the New Civil Code to implement democracy. There is no real democracy if a public official is abusing, and we made the article so strong and so comprehensive that it concludes an abuse of individual rights even if done in good faith, that official is liable. As a matter of fact, we know that there are very few public officials who openly and definitely abuse the individual rights of citizens. In most cases, the abuse justified on a plea of desire to enforce the law to comply with one's duty. And so, if we should limit the scope of this article, that would practically nullify the object of the article. Precisely, the opening of the article is to put an end to abuses which are justified by a plea of good faith, which is in most cases the plea of officials abusing individual rights." Petitioner argues that unlike in *Cojuangco, Jr. v. Court of Appeals*, respondent could not validly claim that it was deprived of its property without due process of law. However, this is a matter of defense which should be threshed out during trial proper. What is at issue in the instant case is the propriety of the denial by the trial court of petitioner's motion to dismiss. In fact, an answer has yet to be filed before the trial court. It is therefore premature for petitioner to conclude that she is not liable for damages because respondent was not deprived of its property without due process of law. The ruling in *Cojuangco, Jr. v. Court of Appeals* supports the decision of the Court's Third Division that a public officer may be held liable for damages even if he/she acted in good faith as long as thee is a violation of constitutional rights, thus: Under the aforecited article, it is not necessary that the public officer acted with malice or bad faith. To be liable, it is enough that there was a violation of the constitutional rights of petitioners, even on the pretext of justifiable motives or good faith in the performance of one's duties. The Court in *Cojuangco, Jr. v. Court of Appeals*, noted the uncertainties faced by respondent Carrascoso, Jr., as then Chairman of the Philippine Charity Sweepstakes Office (PCSO) in withholding the winnings of petitioner from horse races. The Court noted that at the time, the scope of the sequestration

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order was not well-defined; the Presidential Commission on Good Government (PCGG) was a newly born legal creation; and sequestration was a novel remedy. The court deemed the above consideration only as badges of good faith on the part of respondent; however the latter was still held liable under Article 32 of the Civil Code. The Court ruled that it is not necessary that the public officer acted with malice or bad faith; to be liable under Article 32 of the Civil Code, it is enough that there was a violation of the constitutional rights of petitioner, even on the pretext of justifiable motives or good faith in the performance of one's duties.

APPEARANCES OF COUNSEL

Liwayway Vinzons-Chato for and in her own behalf.
Estelito P. Mendoza and *Lorenzo G. Timbol* for respondent.

R E S O L U T I O N

NACHURA, *J.*:

It is a fundamental principle in the law of public officers that a duty owing to the public in general cannot give rise to a liability in favor of particular individuals.[1] The failure to perform a public duty can constitute an individual wrong only when a person can show that, in the public duty, a duty to himself as an individual is also involved, and that he has suffered a special and peculiar injury by reason of its improper performance or non-performance.[2]

By this token, the Court reconsiders its June 19, 2007 Decision[3] in this case.

As culled from the said decision, the facts, in brief, are as follows:

On June 10, 1993, the legislature enacted Republic Act No. 7654 (RA 7654), which took effect on July 3, 1993. Prior to its effectivity,

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[1] Cruz, *The Law of Public Officers*, 2007 ed., p. 223.

[2] *Moss v. Cummins*, 44 Mich. 359, 360-361, 6 N.W. 843, 844 (1880).

[3] *Rollo*, pp. 630-645; *Vinzons-Chato v. Fortune Tobacco Corporation*, G.R. No. 141309, June 19 2007, 525 SCRA 11.

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cigarette brands "Champion," "Hope," and "More" were considered local brands subjected to an *ad valorem* tax at the rate of 20-45%. However, on July 1, 1993, or two days before RA 7654 took effect, petitioner issued RMC 37-93 reclassifying "Champion," "Hope," and "More" as locally manufactured cigarettes bearing a foreign brand subject to the 55% *ad valorem* tax. RMC 37-93 in effect subjected "Hope," "More," and "Champion" cigarettes to the provisions of RA 7654, specifically, to Sec. 142, (c)(1) on locally manufactured cigarettes which are currently classified and taxed at 55%, and which imposes an *ad valorem* tax of "55% provided that the minimum tax shall not be less than Five Pesos (₱5.00) per pack."

On July 2, 1993, at about 5:50 p.m., BIR Deputy Commissioner Victor A. Deoferio, Jr. sent *via telefax* a copy of RMC 37-93 to Fortune Tobacco but it was addressed to no one in particular. On July 15, 1993, Fortune Tobacco received, by ordinary mail, a certified xerox copy of RMC 37-93. On July 20, 1993, respondent filed a motion for reconsideration requesting the recall of RMC 37-93, but was denied in a letter dated July 30, 1993. The same letter assessed respondent for *ad valorem* tax deficiency amounting to ₱9,598,334.00 (computed on the basis of RMC 37-93) and demanded payment within 10 days from receipt thereof. On August 3, 1993, respondent filed a petition for review with the Court of Tax Appeals (CTA), which on September 30, 1993, issued an injunction enjoining the implementation of RMC 37-93. In its decision dated August 10, 1994, the CTA ruled that RMC 37-93 is defective, invalid, and unenforceable and further enjoined petitioner from collecting the deficiency tax assessment issued pursuant to RMC No. 37-93. This ruling was affirmed by the Court of Appeals, and finally by this Court in *Commissioner of Internal Revenue v. Court of Appeals*. It was held, among others, that RMC 37-93, has fallen short of the requirements for a valid administrative issuance.

On April 10, 1997, respondent filed before the RTC a complaint for damages against petitioner in her private capacity. Respondent contended that the latter should be held liable for damages under Article 32 of the Civil Code considering that the issuance of RMC 37-93 violated its constitutional right against deprivation of property without due process of law and the right to equal protection of the laws.

Petitioner filed a motion to dismiss contending that: (1) respondent has no cause of action against her because she issued RMC 37-93 in the performance of her official function and within the scope of

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her authority. She claimed that she acted merely as an agent of the Republic and therefore the latter is the one responsible for her acts; (2) the complaint states no cause of action for lack of allegation of malice or bad faith; and (3) the certification against forum shopping was signed by respondent's counsel in violation of the rule that it is the plaintiff or the principal party who should sign the same.

On September 29, 1997, the RTC denied petitioner's motion to dismiss holding that to rule on the allegations of petitioner would be to prematurely decide the merits of the case without allowing the parties to present evidence. It further held that the defect in the certification against forum shopping was cured by respondent's submission of the corporate secretary's certificate authorizing its counsel to execute the certification against forum shopping. x x x

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The case was elevated to the Court of Appeals *via* a petition for *certiorari* under Rule 65. However, same was dismissed on the ground that under Article 32 of the Civil Code, liability may arise even if the defendant did not act with malice or bad faith. The appellate court ratiocinated that Section 38, Book I of the Administrative Code is the general law on the civil liability of public officers while Article 32 of the Civil Code is the special law that governs the instant case. Consequently, malice or bad faith need not be alleged in the complaint for damages. It also sustained the ruling of the RTC that the defect of the certification against forum shopping was cured by the submission of the corporate secretary's certificate giving authority to its counsel to execute the same.[4] [Citations and underscoring omitted.]

In the aforesaid June 19, 2007 Decision, we affirmed the disposition of the Court of Appeals (CA) and directed the trial court to continue with the proceedings in Civil Case No. 97-341-MK.[5]

Petitioner, on July 20, 2007, subsequently moved for the reconsideration of the said decision.[6] After respondent filed its

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[4] *Id.* at 632-634.

[5] *Id.* at 643.

[6] *Id.* at 646.

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comment, the Court, in its April 14, 2008 Resolution,[7] denied with finality petitioner's motion for reconsideration.

Undaunted, petitioner filed, on April 29, 2008 her Motion to Refer [the case] to the Honorable Court *En Banc*.[8] She contends that the petition raises a legal question that is novel and is of paramount importance. The earlier decision rendered by the Court will send a chilling effect to public officers, and will adversely affect the performance of duties of superior public officers in departments or agencies with rule-making and quasi-judicial powers. With the said decision, the Commissioner of Internal Revenue will have reason to hesitate or refrain from performing his/her official duties despite the due process safeguards in Section 228 of the National Internal Revenue Code.[9] Petitioner hence moves for the reconsideration of the June 19, 2007 Decision.[10]

In its June 25, 2008 Resolution,[11] the Court referred the case to the *En Banc*. Respondent consequently moved for the reconsideration of this resolution.

We now resolve both motions.

There are two kinds of duties exercised by public officers: the "duty owing to the public collectively" (the body politic), and the "duty owing to particular individuals, thus:

> **1. Of Duties to the Public. —** The first of these classes embraces those officers whose duty is owing primarily to the public collectively — to the body politic — and not to any particular individual; who act for the public at large, and who are ordinarily paid out of the public treasury.
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> The officers whose duties fall wholly or partially within this class are numerous and the distinction will be readily recognized. Thus, the governor owes a duty to the public to see that the laws are properly

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[7] *Id.* at 859.

[8] *Id.* at 860-882.

[9] *Id.* at 860-864.

[10] *Id.* at 881.

[11] *Id.* at 891.

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executed, that fit and competent officials are appointed by him, that unworthy and ill-considered acts of the legislature do not receive his approval, but these, and many others of a like nature, are duties which he owes to the public at large and no one individual could single himself out and assert that they were duties owing to him alone. So, members of the legislature owe a duty to the public to pass only wise and proper laws, but no one person could pretend that the duty was owing to himself rather than to another. Highway commissioners owe a duty that they will be governed only by considerations of the public good in deciding upon the opening or closing of highways, but it is not a duty to any particular individual of the community.

These illustrations might be greatly extended, but it is believed that they are sufficient to define the general doctrine.

2. Of Duties to Individuals. — The second class above referred to includes those who, while they owe to the public the general duty of a proper administration of their respective offices, yet become, by reason of their employment by a particular individual to do some act for him in an official capacity, under a special and particular obligation to him as an individual. They serve individuals chiefly and usually receive their compensation from fees paid by each individual who employs them.

A sheriff or constable in serving civil process for a private suitor, a recorder of deeds in recording the deed or mortgage of an individual, a clerk of court in entering up a private judgment, a notary public in protesting negotiable paper, an inspector of elections in passing upon the qualifications of an elector, each owes a general duty of official good conduct to the public, but he is also under a special duty to the particular individual concerned which gives the latter a peculiar interest in his due performance.[12]

In determining whether a public officer is liable for an improper performance or non-performance of a duty, it must first be determined which of the two classes of duties is involved. For, indeed, as the eminent Floyd R. Mechem instructs, "[t]he *liability* of a public officer to an individual or the public is based upon and is co-extensive with his *duty* to the individual or the public.

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[12] Mechem, *A Treatise on the Law of Public Offices and Officers* (1890), pp. 386-387.

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If to the one or the other he owes no duty, to that one he can incur no liability."[13]

Stated differently, when what is involved is a "duty owing to the public in general," an individual cannot have a cause of action for damages against the public officer, even though he may have been injured by the action or inaction of the officer. In such a case, there is damage to the individual but no wrong to him. In performing or failing to perform a public duty, the officer has touched his interest to his prejudice; but the officer owes no duty to him as an individual.[14] The remedy in this case is not judicial but political.[15]

The exception to this rule occurs when the complaining individual suffers a *particular or special injury* on account of the public officer's improper performance or non-performance of his public duty. An individual can never be suffered to sue for an injury which, technically, is one to the public only; he must show a wrong which he specially suffers, and damage alone does not constitute a wrong.[16] A contrary precept (that an individual, in the absence of a special and peculiar injury, can still institute an action against a public officer on account of an improper performance or non-performance of a duty owing to the public generally) will lead to a deluge of suits, for if one man might have an action, all men might have the like — the complaining individual has no better right than anybody else.[17] If such were the case, no one will serve a public office. Thus, the rule restated is that an individual cannot have a particular action against a public officer *without a particular injury, or a particular right,* which are the grounds upon which all actions are founded.[18]

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[13] *Id.* at 390.

[14] *Id.* at 390-391.

[15] *Supra* note 1.

[16] *Supra* note 12, at 390-391.

[17] *Butler v. Kent,* 19 Johns. 223, 10 Am. Dec. 219 (1821).

[18] *Id.*

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Juxtaposed with Article 32[19] of the Civil Code, the principle may now translate into the rule that *an individual can hold a public officer personally liable for damages on account of an act or omission that violates a constitutional right only if it*

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[19] Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

(1) Freedom of religion;
(2) Freedom of speech;
(3) Freedom to write for the press or to maintain a periodical publication;
(4) Freedom from arbitrary or illegal detention;
(5) Freedom of suffrage;
(6) The right against deprivation of property without due process of law;
(7) The right to a just compensation when private property is taken for public use;
(8) The right to the equal protection of the laws;
(9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
(10) The liberty of abode and of changing the same;
(11) The privacy of communication and correspondence;
(12) The right to become a member of associations or societies for purposes not contrary to law;
(13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
(14) The right to be free from involuntary servitude in any form;
(15) The right of the accused against excessive bail;
(16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf;
(17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
(19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted) and may be proved by preponderance of evidence.

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results in a particular wrong or injury to the former. This is consistent with this Court's pronouncement in its June 19, 2007 Decision (subject of petitioner's motion for reconsideration) that Article 32, in fact, allows a damage suit for "tort for impairment of rights and liberties."[20]

It may be recalled that in tort law, for a plaintiff to maintain an action for damages for the injuries of which he complains, he must establish that such injuries resulted *from a breach of duty which the defendant owed the plaintiff*, meaning *a concurrence of injury to the plaintiff and legal responsibility by the person causing it.* Indeed, central to an award of tort damages is the premise that an individual was injured in contemplation of law.[21] Thus, in *Lim v. Ponce de Leon*,[22] we granted the petitioner's claim for damages because he, in fact, suffered the loss of his motor launch due to the illegal seizure thereof. In *Cojuangco, Jr. v. Court of Appeals*,[23] we upheld the right of petitioner to the recovery of damages as there was an injury sustained by him on account of the illegal withholding of his horserace prize winnings.

In the instant case, what is involved is a public officer's duty owing to the public in general. The petitioner, as the then Commissioner of the Bureau of Internal Revenue, is being taken to task for Revenue Memorandum Circular (RMC) No. 37-93 which she issued without the requisite notice, hearing and publication, and which, in *Commissioner of Internal Revenue v. Court of Appeals*,[24] we declared as having "fallen short of

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The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

[20] *Vinzons-Chato v. Fortune Tobacco Corporation, supra* note 3.

[21] *Sps. Custodio v. Court of Appeals,* 323 Phil. 575 (1996), cited in *Laynesa v. Uy*, G.R. No. 149553, February 29, 2008, 547 SCRA 200.

[22] No. L-22554, August 29, 1975, 66 SCRA 299.

[23] G.R No. 119398, July 2, 1999, 309 SCRA 602, 621.

[24] G.R. No. 119761, August 29, 1976, 261 SCRA 236.

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a valid and effective administrative issuance."[25] A public officer, such as the petitioner, vested with quasi-legislative or rule-making power, owes a duty to the public to promulgate rules which are compliant with the requirements of valid administrative regulations. But it is a duty owed not to the respondent alone, but to the entire body politic who would be affected, directly or indirectly, by the administrative rule.

Furthermore, as discussed above, to have a cause of action for damages against the petitioner, respondent must allege that it suffered a *particular or special injury* on account of the non-performance by petitioner of the public duty. A careful reading of the complaint filed with the trial court reveals that no *particular injury* is alleged to have been sustained by the respondent. The phrase "financial and business difficulties"[26] mentioned in the complaint is a vague notion, ambiguous in concept, and cannot translate into a "particular injury." In contrast, the facts of the case eloquently demonstrate that the petitioner took nothing from the respondent, as the latter did not pay a single centavo on the tax assessment levied by the former by virtue of RMC 37-93.

With no "particular injury" alleged in the complaint, there is, therefore, no delict or wrongful act or omission attributable to the petitioner that would violate the primary rights of the respondent. Without such delict or tortious act or omission, the complaint then fails to state a cause of action, because a cause of action is the act or omission by which a party violates a right of another.[27]

A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of

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[25] *Id.* at 252.

[26] *Rollo,* p. 686.

[27] *Drilon v. Court of Appeals,* G.R. No. 106922, April 20, 2001.

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the obligation of defendant to plaintiff for which the latter may maintain an action for recovery of damages.[28]

The remedy of a party whenever the complaint does not allege a cause of action is to set up this defense in a motion to dismiss, or in the answer. A motion to dismiss based on the failure to state a cause of action in the complaint hypothetically admits the truth of the facts alleged therein. However, the hypothetical admission is limited to the "relevant and material facts well-pleaded in the complaint and inferences deducible therefrom. The admission does not extend to conclusions or interpretations of law; nor does it cover allegations of fact the falsity of which is subject to judicial notice."[29]

The complaint may also be dismissed for lack of cause of action if it is obvious from the complaint and its annexes that the plaintiff is not entitled to any relief.[30]

The June 19, 2007 Decision and the dissent herein reiterates that under Article 32 of the Civil Code, the liability of the public officer may accrue even if he/she acted in good faith, as long as there is a violation of constitutional rights, citing *Cojuangco, Jr. v. Court of Appeals*,[31] where we said:

> Under the aforecited article, it is not necessary that the public officer acted with malice or bad faith. To be liable, it is enough that there was a violation of the constitutional rights of petitioners, even on the pretext of justifiable motives or good faith in the performance of duties.[32]

The complaint in this case does not impute bad faith on the petitioner. Without any allegation of bad faith, the cause of action in the respondent's complaint (specifically, paragraph 2.02 thereof)

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[28] *Id.*

[29] *Id.*

[30] *Fluor Daniel, Inc. Philippines v. EB. Villarosa & Partners Co., Ltd.*, G.R. No. 159648, July 27, 2007.

[31] G.R. No. 119398, July 2, 1999, 309 SCRA 602.

[32] *Id.* at 620-621.

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for damages under Article 32 of the Civil Code would be premised on the findings of this Court in *Commissioner of Internal Revenue v. Court of Appeals (CIR v. CA),*[33] where we ruled that RMC No. 37-93, issued by petitioner in her capacity as Commissioner of Internal Revenue, had "*fallen short of a valid and effective administrative issuance*." This is a logical inference. Without the decision in *CIR v. CA*, the bare allegations in the complaint that respondent's rights to due process of law and to equal protection of the laws were violated by the petitioner's administrative issuance would be conclusions of law, hence not hypothetically admitted by petitioner in her motion to dismiss.

But in *CIR v. CA,* this Court did not declare RMC 37-93 unconstitutional; certainly not from either the due process of law or equal protection of the laws perspective. On due process, the majority, after determining that RMC 37-93 was a legislative rule, cited an earlier Revenue Memorandum Circular (RMC No. 10-86) requiring prior notice before RMC's could become "operative." However, this Court did not make an express finding of violation of the right to due process of law. On the aspect of equal protection, *CIR v. CA* said: "*Not insignificantly, RMC 37-93 might have likewise infringed on uniformity of taxation"*; a statement that does not amount to a positive indictment of petitioner for violation of respondent's constitutional right. Even if one were to ascribe a constitutional infringement by RMC 37-93 on the non-uniformity of tax provisions, the nature of the constitutional transgression falls under Section 28, Article VI — not Section 1, Article III — of the Constitution.

This Court's own summation in *CIR v. CA*: "*All taken, the Court is convinced that the hastily promulgated RMC 37-93 has fallen short of a valid and effective administrative issuance*," does not lend itself to an interpretation that the RMC is unconstitutional. Thus, the complaint's reliance on *CIR v. CA* — which is cited in, and a copy of which is annexed to, the complaint — as suggestive of a violation of due process and equal protection, must fail.

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[33] G.R. No. 119761, August 29, 1996.

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Accordingly, from the foregoing discussion, it is obvious that paragraph 2.02 of respondent's complaint loses the needed crutch to sustain a valid cause of action against the petitioner, for what is left of the paragraph is merely the allegation that only respondent's "Champion," "Hope" and "More" cigarettes were reclassified.

If we divest the complaint of its reliance on *CIR v. CA*, what remains of respondent's cause of action for violation of constitutional rights would be paragraph 2.01, which reads:

> 2.01. On or about July 1, 1993, defendant issued Revenue Memorandum Circular No. 37-93 (hereinafter referred to as RMC No. 37-93) reclassifying specifically "Champion," "Hope" and "More" as locally manufactured cigarettes bearing a foreign brand. A copy of the aforesaid circular is attached hereto and made an integral part hereof as ANNEX "A". The issuance of a circular and its implementation resulted in the "deprivation of property" of plaintiff. *They were done without due process of law and in violation of the right of plaintiff to the equal protection of the laws.* (Italics supplied.)

But, as intimated above, the bare allegations, "done without due process of law" and "in violation of the right of plaintiff to the equal protection of the laws" are conclusions of law. They are not hypothetically admitted in petitioner's motion to dismiss and, for purposes of the motion to dismiss, are not deemed as facts.

In *Fluor Daniel, Inc. Philippines v. EB. Villarosa & Partners Co., Ltd.*,[34] this Court declared that the test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not, admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of the complaint. In the instant case, since what remains of the complaint which is hypothetically admitted, is only the allegation on the reclassification of respondent's cigarettes, there will not be enough facts for the court to render a valid judgment according to the prayer in the complaint.

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[34] G.R. No. 159648, July 27, 2008.

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Furthermore, in an action for damages under Article 32 of the Civil Code premised on violation of due process, it may be necessary to harmonize the Civil Code provision with subsequent legislative enactments, particularly those related to taxation and tax collection. Judicial notice may be taken of the provisions of the National Internal Revenue Code, as amended, and of the law creating the Court of Tax Appeals. Both statutes provide ample remedies to aggrieved taxpayers; remedies which, in fact, were availed of by the respondent — without even having to pay the assessment under protest — as recounted by this Court in *CIR v. CA, viz.*:

> In a letter, dated 19 July 1993, addressed to the appellate division of the BIR, Fortune Tobacco requested for a review, reconsideration and recall of RMC 37-93. The request was denied on 29 July 1993. The following day, or on 30 July 1993, the CIR assessed Fortune Tobacco for *ad valorem* tax deficiency amounting to ₱9,598,334.00.
>
> On 03 August 1993, Fortune Tobacco filed a petition for review with the CTA.[35]

The availability of the remedies against the assailed administrative action, the opportunity to avail of the same, and actual recourse to these remedies, contradict the respondent's claim of due process infringement.

At this point, a brief examination of relevant American jurisprudence may be instructive.

42 U.S. Code 1983, a provision incorporated into the Civil Rights Act of 1871, presents a parallel to our own Article 32 of the Civil Code, as it states:

> Every person who, under color of any statute, ordinance, regulation, custom, usage, or any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

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[35] *Commissioner of Internal Revenue v. Court of Appeals,* G.R. No. 119761, August 29, 1996, 261 SCRA 236, 244.

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This provision has been employed as the basis of tort suits by many petitioners intending to win liability cases against government officials when they violate the constitutional rights of citizens.

Webster Bivens v. Six Unknown Named Agents of Federal Bureau of Investigation,[36] has emerged as the leading case on the victim's entitlement to recover money damages for any injuries suffered as a result of flagrant and unconstitutional abuses of administrative power. In this case, federal narcotics officers broke into Bivens' home at 6:30 a.m. without a search warrant and in the absence of probable cause. The agents handcuffed Bivens, searched his premises, employed excessive force, threatened to arrest his family, subjected him to a visual strip search in the federal court house, fingerprinted, photographed, interrogated and booked him. When Bivens was brought before a United States Commissioner, however, charges against him were dismissed. On the issue of whether violation of the Fourth Amendment "by a federal agent acting under color of authority gives rise to a cause of action for damages consequent upon his constitutional conduct," the U.S. Supreme Court held that Bivens is entitled to recover damages for injuries he suffered as a result of the agents' violation of the Fourth Amendment.

A number of subsequent decisions have upheld *Bivens*. For instance, in *Scheuer v. Rhodes*,[37] a liability suit for money damages was allowed against Ohio Governor James Rhodes by petitioners who represented three students who had been killed by Ohio National Guard troops at Kent State University as they protested against U.S. involvement in Vietnam. In *Wood v. Strickland*,[38] local school board members were sued by high school students who argued that they had been deprived of constitutional due process rights when they were expelled from school for having spiked a punch bowl at a school function without the benefit of a full hearing. In *Butz v. Economou*,[39] Economou, whose

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[36] 403 U.S. 388 (1971), 91 S. Ct. 1999, 29 L. Ed. 2d. 619.

[37] 416 U.S. 232 (1974).

[38] 420 U.S. 308 (1975).

[39] 434 U.S. 994 (1978).

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registration privilege as a commodities futures trader was suspended, without prior warning, by Secretary of Agriculture Earl Butz, sued on a *Bivens* action, alleging that the suspension was aimed at "chilling" his freedom of expression right under the First Amendment. A number of other cases[40] with virtually the same conclusion followed.

However, it is extremely dubious whether a *Bivens* action against government tax officials and employees may prosper, if we consider the pronouncement of the U.S. Supreme Court in *Schweiker v. Chilicky*,[41] that a Bivens remedy will not be allowed when other "meaningful safeguards or remedies for the rights of persons situated as (is the plaintiff)" are available. It has also been held that a *Bivens* action is not appropriate in the civil service system[42] or in the military justice system.[43]

In *Frank Vennes v. An Unknown Number of Unidentified Agents of the United States of America*,[44] petitioner Vennes instituted a *Bivens* action against agents of the Internal Revenue Service (IRS) who alleged that he (Vennes) owed $250,000 in tax liability, instituted a jeopardy assessment, confiscated Vennes' business, forced a total asset sale, and put Vennes out of business, when in fact he owed not a dime. The U.S. Court of Appeals, Eighth Circuit, ruled:

> The district court dismissed these claims on the ground that a taxpayer's remedies under the Internal Revenue Code preclude such a *Bivens* action. Vennes cites to us no contrary authority, and we have found none. Though the Supreme Court has not addressed this precise question, it has strongly suggested that the district court correctly applied *Bivens:*
>
> When the design of a Government program suggests that Congress has provided what it considers adequate remedial

[40] *E.g., Carlson v. Green,* 446 U.S. 14 (1980); *Martinez v. State of California,* 444 U.S. 277 (1980).

[41] 487 U.S. 412 (1988).

[42] *Bush v. Lucas,* 462 U.S. 367 (1983).

[43] *Chappell v. Wallace,* 462 U.S. 296 (1983).

[44] 26 F. 3d 1448 (1994), 74 A.F.T.R. 2d 94-5144.

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> mechanisms for constitutional violations that may occur in the course of its administration, we have not created additional *Bivens* remedies.
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> x x x x x x x x x
>
> Congress has provided specific and meaningful remedies for taxpayers who challenge overzealous tax assessment and collection activities. A taxpayer may challenge a jeopardy assessment both administratively and judicially, and may sue the government for a tax refund, and have authorized taxpayer actions against the United States to recover limited damages resulting from specific types of misconduct by IRS employees. These carefully crafted legislative remedies confirm that, in the politically sensitive realm of taxation, Congress's refusal to permit unrestricted damage action by taxpayers has not been inadvertent. Thus, the district court correctly dismissed Vennes's *Bivens* claims against IRS agents for their tax assessment and collection activities.

In still another *Bivens* action, instituted by a taxpayer against IRS employees for alleged violation of due process rights concerning a tax dispute, the U.S. District Court of Minnesota said:

> In addition, the (Tax) Code provides taxpayers with remedies, judicial and otherwise, for correcting and redressing wrongful acts taken by IRS employees in connection with any collection activities. Although these provisions do not provide taxpayers with an all-encompassing remedy for wrongful acts of IRS personnel, the rights established under the Code illustrate that it provides all sorts of rights against the overzealous officialdom, including, most fundamentally, the right to sue the government for a refund if forced to overpay taxes, and it would make the collection of taxes chaotic if a taxpayer could bypass the remedies provided by Congress simply by bringing a damage suit against IRS employees.[45]

American jurisprudence obviously validates the contention of the petitioner.

Finally, we invite attention to Section 227, Republic Act No. 8424 (Tax Reform Act of 1997), which provides:

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[45] *Tonn v. United States of America*, 847 F. Supp. 711, 73 A.F.T.R. 2d 94-727.

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Section 227. *Satisfaction of Judgment Recovered Against any Internal Revenue Officer.* — When an action is brought against any Internal Revenue officer to recover damages by reason of any act done in the performance of official duty, and the Commissioner is notified of such action in time to make defense against the same, through the Solicitor General, any judgment, damages or costs recovered in such action shall be satisfied by the Commissioner, upon approval of the Secretary of Finance, or if the same be paid by the person sued shall be repaid or reimbursed to him.

No such judgment, damages or costs shall be paid or reimbursed in behalf of a person who has acted negligently or in bad faith, or with willful oppression.

Because the respondent's complaint does not impute negligence or bad faith to the petitioner, any money judgment by the trial court against her will have to be assumed by the Republic of the Philippines. As such, the complaint is in the nature of a suit against the State.[46]

WHEREFORE, premises considered, we *GRANT* petitioner's motion for reconsideration of the June 19, 2007 Decision and *DENY* respondent's motion for reconsideration of the June 25, 2008 Resolution. Civil Case No. CV-97-341-MK, pending with the Regional Trial Court of Marikina City, is *DISMISSED*.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, Leonardo-de Castro, and *Brion, JJ.,* concur.

Ynares-Santiago, J., see dissenting opinion.

Corona, J., on leave.

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[46] See *Veterans Manpower and Protective Services, Inc. v. Court of Appeals,* 214 SCRA 286.

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DISSENTING OPINION

YNARES-SANTIAGO, *J.*:

Jurisprudence is settled that to be liable under Article 32[1] of the Civil Code, a **public officer** or a private individual must have committed **an act in violation of the plaintiff's constitutional rights** regardless of whether he/she acted in good faith or whether the act was done within or beyond the bounds of authority of said public officer. The act may have been committed **in any manner**; what is pivotal is that the act resulted in a violation of another person's constitutional rights.

No distinction was made whether the public officer acted within or beyond the scope of authority in order to hold him/her liable. As long as there was a violation of constitutional rights, a public officer may be held liable for damages, and it is not even required that he/she acted with malice or bad faith. That the Legislature did not intend to hold the public officer liable for damages under Article 32 of the Civil Code for violation of constitutional rights only if he/she acted beyond the scope of authority, is further made clear by the fact that under Article 32, a private individual is similarly held accountable.

The clear intention of the legislature in inserting Article 32 of the Civil Code was to create a distinct cause of action in the nature of tort **for violation of constitutional rights**, irrespective of the motive or intent of the defendant or whether it was done within or without the bounds of the public officer's authority.

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[1] Article 32 of the Civil Code partly reads:

Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates, or **in any manner** impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages.

x x x x x x x x x

(6) The right against deprivation of property without due process of law;

x x x x x x x x x

(7) The right to the equal protection of the laws;

x x x x x x x x x.

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In enacting the Administrative Code, then President Aquino could not have intended to obliterate this fundamental innovation in the Civil Code for the constitutional protection of civil liberties.

As pertinently discussed in the June 19, 2007 Decision of the Third Division:

> On the other hand, Sections 38 and 39, Book I of the Administrative Code, laid down the rule on the civil liability of superior and subordinate public officers **for acts done in the performance of their duties.** For both superior and subordinate public officers, the presence of bad faith, malice, and negligence are vital elements that will make them liable for damages. **Note that while said provisions deal in particular with the liability of government officials, the subject thereof is general, *i.e.*, "*acts*" done in the performance of official duties, without specifying the action or omission that may give rise to a civil suit against the official concerned.**
>
> Contrarily, Article 32 of the Civil Code specifies in clear and unequivocal terms a particular specie of an "act" that may give rise to an action for damages against a public officer, and that is, a tort for impairment of rights and liberties. Indeed, Article 32 is a special provision that deals **specifically with violation of constitutional rights** by public officers. All other actionable acts of public officers are governed by Sections 38 and 39 of the Administrative Code. While the Civil Code, specifically, the Chapter on Human Relations is a general law, Article 32 of the same Chapter is a special and specific provision that holds a public officer liable for and allows redress from a particular class of wrongful acts that may be committed by public officers. Compared thus with Section 38 of the Administrative Code, which broadly deals with civil liability arising from errors in the performance of duties, Article 32 of the Civil Code is the specific provision which must be applied in the instant case precisely filed to seek damages for violation of constitutional rights.

The complaint for damages filed against petitioner was brought under Article 32 of the Civil Code for the latter's alleged violation of respondent's constitutional rights against deprivation of

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property without due process of law and for equal protection of law.[2]

In *Lim v. Ponce de Leon*,[3] the Court held that "[t]o be liable under Article 32 of the New Civil Code, it is enough that there was a violation of the constitutional rights of the plaintiffs and it is not required that defendants should have acted with malice or bad faith."[4] In said case, Fiscal Ponce de Leon was found liable for damages because he committed a violation of the plaintiffs' constitutional right against unreasonable search and seizure. There is no merit to petitioner's contention that Fiscal Ponce de Leon was found liable for damages on the basis of his lack of authority to order the seizure. The discussion on his lack of authority to order the search and seizure was only necessary to establish the violation of plaintiffs' constitutional right.

The reasons for Article 32 as expressed by Dr. Jorge Bocobo, Chairman of the Code Commission, are:

"DEAN BOCOBO. Article 32, regarding individual rights, Attorney Cirilo Paredes proposes that Article 32 be so amended as to make a public official liable for violation of another person's constitutional rights only if the public official acted maliciously or in bad faith. The Code Commission **opposes** this suggestion for these reasons:

"The very nature of Article 32 is that the wrong may be civil or criminal. It is not necessary therefore that there should be malice or bad faith. To make such a requisite would defeat the main purpose of Article 32 which is the **effective protection of individual rights. Public officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties. Precisely, the object of the Article is to put an end to official abuse by the plea of good faith. In the United States this remedy is in the nature of a tort.**

"Mr. Chairman, this article is firmly one of the fundamental articles introduced in the New Civil Code to implement democracy. There is no real democracy if a public official is abusing, and we

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[2] *Rollo*, p. 534.

[3] No. L-22554, August 29, 1975, 66 SCRA 299.

[4] *Id*. at 309.

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made the article so strong and so comprehensive that it concludes an abuse of individual rights even if done in good faith, that official is liable. As a matter of fact, we know that there are very few public officials who openly and definitely abuse the individual rights of citizens. In most cases, the abuse is justified on a plea of desire to enforce the law to comply with one's duty. And so, if we should limit the scope of this article, that would practically nullify the object of the article. Precisely, the opening object of the article is to put an end to abuses which are justified by a plea of good faith, which is in most cases the plea of officials abusing individual rights."[5]

Petitioner argues that unlike in *Cojuangco, Jr. v. Court of Appeals*,[6] respondent could not validly claim that it was deprived of its property without due process of law. However, this is a matter of defense which should be threshed out during trial proper. What is at issue in the instant case is the propriety of the denial by the trial court of petitioner's motion to dismiss. In fact, an answer has yet to be filed before the trial court. It is therefore premature for petitioner to conclude that she is not liable for damages because respondent was not deprived of its property without due process of law.

The ruling in *Cojuangco, Jr. v. Court of Appeals* supports the decision of the Court's Third Division that a public officer may be held liable for damages even if he/she acted in good faith as long as there is a violation of constitutional rights, thus:

Under the aforecited article, it is not necessary that the public officer acted with malice or bad faith. To be liable, it is enough that there was a violation of the constitutional rights of petitioners, even on the pretext of justifiable motives or good faith in the performance of one's duties.[7]

Petitioner's reliance on *Philippine Match Co., Ltd. v. City of Cebu*,[8] is misplaced. In said case, petitioner's claim for damages

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[5] *Id*.

[6] G.R. No. 119398, July 2, 1999, 309 SCRA 602.

[7] *Id.* at 620-621.

[8] G.R. No. L-30745, January 18, 1978, 81 SCRA 99.

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is predicated on Articles 19,[9] 20,[10] 21,[11] 27[12] and 2229 of the Civil Code, arguing that the public officer (city treasurer) refused and neglected without just cause to perform his duty and to act with justice and good faith. In the instant case, the complaint specifically charged petitioner with violation of constitutional rights under Article 32 of the Civil Code.

Orocio v. Commission on Audit [13] cited by petitioner is likewise not in point. The case involved a petition seeking to annul the *Indorsement* of the Regional Auditor ordering the booking of the disallowed disbursement in petitioner's name on the ground that the fund was disbursed based on the erroneous opinion rendered by petitioner as Officer-in-charge of the Office of the General Counsel of the National Power Corporation. Unlike in the instant case, said case does not involve alleged violation of constitutional right.

Neither could petitioner rely on *Drilon v. Court of Appeals*.[14] In said case, Homobono Adaza filed a complaint for damages against Franklin Drilon and several others charging them "with engaging in a deliberate, willful and malicious experimentation by filing against him a charge of rebellion complexed with murder and frustrated murder"[15] despite being fully aware of the non-

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[9] Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[10] Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

[11] Art. 21. Any person who willfully 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.

[12] Art. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

[13] G.R. No. 75959, August 31, 1992, 213 SCRA 109.

[14] G.R. No. 107019, March 20, 1997, 270 SCRA 211.

[15] *Id.* at 217.

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existence of such crime in the statute books. On petition for review on *certiorari*, the Court granted petitioners' motion to dismiss on the ground that the complaint states no cause of action. The Court ruled that the complaint is a suit for damages for malicious prosecution, the elements of which are: (1) the fact of the prosecution and the further fact that the defendant was himself the prosecutor and that the action finally terminated with an acquittal; (2) that in bringing the action, the prosecutor acted without probable cause; and (3) that the prosecutor was actuated or impelled by legal malice, that is by improper or sinister motive. All these requisites were lacking.

Petitioner however insists that the suit for damages filed against Drilon and several others was ordered dismissed because it involves a doubtful or difficult question of law. The argument lacks basis. A reading of the *Drilon* case reveals that the dismissal was grounded on failure to state cause of action because all the elements of a complaint for damages for malicious prosecution were lacking. Concededly, the Court ruled that a "doubtful or difficult question of law may become the basis of good faith";[16] however, it was not pivotal to the dismissal of the complaint since it relates only to one of the three elements of a complaint for malicious prosecution. At any rate, good faith is irrelevant in the instant complaint for damages which is predicated on petitioner's alleged violation of respondent's constitutional rights against deprivation of property without due process of law and equal protection of law.

Similarly, the Court in *Cojuangco, Jr. v. Court of Appeals*, noted the uncertainties faced by respondent Carrascoso, Jr., as then Chairman of the Philippine Charity Sweepstakes Office (PCSO) in withholding the winnings of petitioner from horse races. The Court noted that at the time, the scope of the sequestration order was not well-defined; the Presidential Commission on Good Government (PCGG) was a newly born legal creation; and sequestration was a novel remedy. The Court deemed the above considerations only as badges of good faith on the part of respondent; however the latter was still held liable

[16] *Id*. at 224.

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under Article 32 of the Civil Code. The Court ruled that it is not necessary that the public officer acted with malice or bad faith; to be liable under Article 32 of the Civil Code, it is enough that there was a violation of the constitutional rights of petitioner, even on the pretext of justifiable motives or good faith in the performance of one's duties.[17]

ACCORDINGLY, I Vote that, as held in the June 19, 2007 Decision of the Third Division, the Decision of the Court of Appeals affirming the Order of the Regional Trial Court of Marikina, Branch 272 denying petitioner's motion to dismiss be **AFFIRMED** and the Presiding Judge, Regional Trial Court of Marikina, Branch 272, be **DIRECTED** to continue with the proceedings in Civil Case No. 97-341-MK with dispatch.

FIRST DIVISION

[G.R. No. 159589. December 23, 2008]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF JUAN FABIO, namely: DOMINGA C. FABIO, SOCORRO D. FABIO, LYDIA D. FABIO, ROLANDO D. FABIO, NORMA D. FABIO, NORMA L. FABIO, ANGELITA FABIO, ROSALIE FABIO, DANILO FABIO, RENATO FABIO, LEVITA FABIO, IRENE FABIO, TERESITA MOLERA, ROSEMARIE C. PAKAY, LIGAYA C. MASANGKAY, ALFREDO F. CASTILLO, MELINDA F. CASTILLO, MERCEDITA F. CASTILLO, ESTELA DE JESUS AQUINO, FELECITO FABIO, and ALEXANDER FABIO, represented herein by ANGELITA F. ESTEIBAR as their Attorney-in-Fact,** *respondents.*

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[17] *Supra* note 6 at 620-621.