

FIRST DIVISION

[G.R. No. 131522. July 19, 1999.]

PACITA I. HABANA, ALICIA L. CINCO and JOVITA N. FERNANDO, petitioners, vs. FELICIDAD C. ROBLES and GOODWILL TRADING CO., INC., respondents.

Jesus R. Cornego for petitioners.

Crisanto L. Francisco & Associates for respondents.

SYNOPSIS

Petitioners herein are authors and copyright owners of their published books while respondents Robles and Goodwill Trading Co., Inc. are authors and publishers, respectively, of another published work that was also covered by copyrights issued to them. In the course of revising their published works, petitioners chanced upon the book of respondent Robles. After an itemized examination and comparison of the books, petitioners found that several pages of the respondents' book are similar, if not altogether a copy from the petitioners' book, which is a case of plagiarism and copyright infringement. When respondents ignored demands of petitioners for damages, the latter filed a complaint for infringement and/or unfair competition with damages. The trial court dismissed the complaint of the petitioners herein. Petitioners appealed their case to the Court of Appeals (CA), which affirmed the judgment of the trial court. The CA also deleted the award of attorneys' fees, since its view was that there was no bad faith on the part of the petitioners in instituting the action. The petitioners filed a motion for reconsideration, but, the CA denied the same, hence, this petition for review on *certiorari*.

In cases of infringement, copying alone is not what is prohibited. The copying must produce an "injurious effect." Here, the injury consists in that respondent Robles lifted from petitioners' book materials that were the result of the latter's research work and compilation and misrepresented them as her own. The least that respondent Robles could have done was to acknowledge petitioners as the source of her book. To allow another to copy the book without appropriate acknowledgment is injury enough. The petition was granted. The case was ordered remanded to the trial court for further proceedings to receive evidence of the parties to ascertain the damages caused and sustained by petitioners and to render decision in accordance with the evidence submitted to it.

SYLLABUS

1. COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES; PROVIDES PROTECTION FOR COPYRIGHT OWNER. — At present, all laws dealing with the protection of intellectual property rights have been consolidated and as the law now stands, the protection of copyrights is governed by Republic Act No. 8293. Notwithstanding the change in the law, the same principles are reiterated in the new law under Section 177. It provides for the copy or economic rights of an owner of a copyright as follows: "Sec. 177. Copy or Economic rights. — Subject to the provisions of chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts: 177.1 *Reproduction of the work or substantial portion of the work*; 177.2 Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work; 177.3 The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership; 177.4 Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n) 177.5 Public display of the original or copy of the work; 177.6 Public performance of the work; and 177.7 Other communication to the public of the work." The law also provided for the limitations on copyright, thus: "Sec. 184.1 Limitations on copyright. — Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright: (a) the recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society; [Sec. 10(1), P.D. No. 49] (b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries; Provided, that the source and the name of the author, if appearing on the work are mentioned; (Sec. 11 third par. P.D. 49) . . . (e) *The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording of film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and the name of the author, if appearing in the work is mentioned*; In the above-quoted provisions, "work" has reference to literary and artistic creations and this includes books and other literary, scholarly and scientific works.

2. ID.; ID.; INFRINGEMENT; CONSTRUED; WHEN COMMITTED. — When is there a substantial reproduction of a book? It does not necessarily require that the entire copyrighted work, or even a large portion of it, be copied. If so much is taken that the value of the original work is substantially diminished, there is an infringement of copyright and to an injurious extent, the work is appropriated. In determining the question of infringement, the amount of matter copied from the copyrighted work is an important consideration. To constitute infringement, it is not necessary that the whole

or even a large portion of the work shall have been copied. If so much is taken that the value of the original is sensibly diminished, or the labors of the original author are substantially and to an injurious extent appropriated by another, that is sufficient in point of law to constitute piracy. The essence of intellectual piracy should be essayed in conceptual terms in order to underscore its gravity by an appropriate understanding thereof. Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright.

3. ID.; ID.; ID.; WHEN NOT COMMITTED. — In this jurisdiction under Sec. 184 of Republic Act 8293 it is provided that: Limitations on Copyright. Notwithstanding the provisions of Chapter V, the following shall not constitute infringement of copyright: . . . (c) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: *Provided, That the source and the name of the author, if appearing on the work, are mentioned.* A copy of a piracy is an infringement of the original, and it is no defense that the pirate, in such cases, did not know whether or not he was infringing any copyright; he at least knew that what he was copying was not his, and he copied at his peril.

4. ID.; ID.; COPYRIGHT; PURPOSE THEREOF. — In copyrighting books the purpose is to give protection to the intellectual product of an author. This is precisely what the law on copyright protected, under Section 184.1 (b). Quotations from a published work if they are compatible with fair use and only to the extent justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries are allowed provided that the source and the name of the author, if appearing on the work, are mentioned.

DAVIDE, JR., C.J., *dissenting opinion*:

1. COMMERCIAL LAW; R.A. No. 8293 (INTELLECTUAL PROPERTY CODE); COPYRIGHT; DEFINED; PURPOSE OF THE LAW. — A copyright may be accurately defined as the right granted by statute to the proprietor of an intellectual production to its exclusive use and enjoyment to the extent specified in the statute. Under Section 177 of R.A. No. 8293, the copy or economic right (copyright and economic right are used interchangeably in the statute) consists of the exclusive right to carry out, authorize or prevent the following acts: 177.1 Reproduction of the work or substantial portion of the work; 177.2 Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work; 177.3 The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership; 177.4 Rental of the original or a copy of an audiovisual or

cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; 177.5 Public display of the original or a copy of the work; 177.6 Public performance of the work; and 177.7 Other communication to the public of the work. "The work," as repeatedly mentioned, refers to the literary and artistic works defined as original intellectual creations in the literary and artistic domain protected from the moment of their creation and enumerated in Section 172.1, which includes books and other literary, scholarly, scientific and artistic works. Stripped in the meantime of its indisputable social and beneficial actions, the use of intellectual property or creations should basically promote the creator or author's personal and economic gain. Hence, the copyright protection extended to the creator should ensure his attainment of some form of personal satisfaction and economic reward from the work he produced.

2. ID.; ID.; ID.; INFRINGEMENT; CONSTRUED. — The execution of any one or more of the exclusive rights conferred by law on a copyright owner, without his consent, constitutes copyright infringement. In essence, copyright infringement, known in general as "piracy," is a trespass on a domain owned and occupied by a copyright owner; it is violation of a private right protected by law. With the invasion of his property rights, a copyright owner is naturally entitled to seek redress, enforce and hold accountable the defrauder or usurper of said economic rights.

3. ID.; ID.; ID.; ID.; TEST TO DETERMINE COPYRIGHT INFRINGEMENT; NO VIOLATION; CASE AT BAR. — To constitute infringement, the usurper must have copied or appropriated the "original" work of an author or copyright proprietor; absent copying, there can be no infringement of copyright. In turn, a work is deemed by law an original if the author created it by his own skill, labor and judgment. On its part, a copy is that which comes so near to the original so as to give to every person seeing it the idea created by the original. It has been held that the test of copyright infringement is whether an ordinary observer comparing the works can readily see that one has been copied from the other. To constitute a substantial reproduction, it is not necessary that the entire copyrighted work, or even a large portion of it, be copied, if so much is taken that the value of the original is substantially diminished, or if the labors of the original author are substantially, and to an injurious extent, appropriated. But the similarity of the books here does not amount to an appropriation of a substantial portion of the published work COLLEGE ENGLISH FOR TODAY. If the existence of substantial similarities does not of itself establish infringement, mere similarities (not substantial similarities) in some sections of the books in question decisively militate against a claim for infringement where the similarities had been convincingly established as proceeding from a number of reasons and/or factors.

4. ID.; ID.; ID.; FAIR USE OF COPYRIGHTED MATERIAL; DEFINED AND CONSTRUED. — Fair use has been defined as a privilege to use the copyrighted material in a reasonable manner without the consent of the copyright owner or as copying the theme or ideas rather than their expression. No question of fair or unfair

use arises however, if no copying is proved to begin with. This is in consonance with the principle that there can be no infringement if there was no copying. It is only where some form of copying has been shown that it becomes necessary to determine whether it has been carried to an "unfair," that is, illegal, extent.

5. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE TRIAL COURT; CONCLUSIVE AND BINDING UPON THE SUPREME COURT; EXCEPTION. — Of doctrinal persuasion is the principle that factual determinations of the Court of Appeals and the trial court are conclusive and binding upon this Court, and the latter will not, as a rule, disturb these findings unless compelling and cogent reasons necessitate a reexamination, if not a reversal, of the same. Tested against this jurisprudential canon, to subject the challenged decision of the Court of Appeals to further scrutiny would be superfluous, if not, improvident.

D E C I S I O N

PARDO, J :

The case before us is a petition for review on *certiorari* [1] to set aside the (a) decision of the Court of Appeals, [2] and (b) the resolution denying petitioners' motion for reconsideration, [3] in which the appellate court affirmed the trial court's dismissal of the complaint for infringement and/or unfair competition and damages but deleted the award for attorney's fees.

The facts are as follows:

Petitioners are authors and copyright owners of duly issued certificates of copyright registration covering their published works, produced through their combined resources and efforts, entitled COLLEGE ENGLISH FOR TODAY (CET for brevity), Books 1 and 2, and WORKBOOK FOR COLLEGE FRESHMAN ENGLISH, Series 1.

Respondent Felicidad Robles and Goodwill Trading Co., Inc. are the author/publisher and distributor/seller of another published work entitled "DEVELOPING ENGLISH PROFICIENCY" (DEP for brevity), Books 1 and 2 (1985 edition) which book was covered by copyrights issued to them.

In the course of revising their published works, petitioners scouted and looked around various bookstores to check on other textbooks dealing with the same subject matter. By chance they came upon the book of respondent Robles and upon perusal of said book they were surprised to see that the book was strikingly similar to the contents, scheme of presentation, illustrations and illustrative examples in their own book, CET.

After an itemized examination and comparison of the two books (CET and DEP), petitioners found that several pages of the respondent's book are similar, if not all together a copy of petitioners' book, which is a case of plagiarism and copyright infringement.

Petitioners then made demands for damages against respondents and also demanded that they cease and desist from further selling and distributing to the general public the infringed copies of respondent Robles' works.

However, respondents ignored the demands, hence, on July 7, 1988, petitioners filed with the Regional Trial Court, Makati, a complaint for "Infringement and/or unfair competition with damages" [4] against private respondents. [5]

In the complaint, petitioners alleged that in 1985, respondent Felicidad C. Robles being substantially familiar with the contents of petitioners' works, and without securing their permission, lifted, copied, plagiarized and/or transposed certain portions of their book CET. The textual contents and illustrations of CET were literally reproduced in the book DEP. The plagiarism, incorporation and reproduction of particular portions of the book CET in the book DEP, without the authority or consent of petitioners, and the misrepresentations of respondent Robles that the same was her original work and concept adversely affected and substantially diminished the sale of the petitioners' book and caused them actual damages by way of unrealized income.

Despite the demands of the petitioners for respondents to desist from committing further acts of infringement and for respondent to recall DEP from the market, respondents refused. Petitioners asked the court to order the submission of all copies of the book DEP, together with the molds, plates and films and other materials used in its printing destroyed, and for respondents to render an accounting of the proceeds of all sales and profits since the time of its publication and sale.

Respondent Robles was impleaded in the suit because she authored and directly committed the acts of infringement complained of, while respondent Goodwill Trading Co., Inc. was impleaded as the publisher and joint co-owner of the copyright certificates of registration covering the two books authored and caused to be published by respondent Robles with obvious connivance with one another.

On July 27, 1988, respondent Robles filed a motion for a bill of particulars [6] which the trial court approved on August 17, 1988. Petitioners complied with the desired particularization, and furnished respondent Robles the specific portions, inclusive of pages and lines, of the published and copyrighted books of the petitioners which were transposed, lifted, copied and plagiarized and/or otherwise found their way into respondent's book.

On August 1, 1988, respondent Goodwill Trading Co., Inc. filed its answer to the complaint [7] and alleged that petitioners had no cause of action against Goodwill Trading Co., Inc. since it was not privy to the misrepresentation, plagiarism, incorporation and reproduction of the portions of the book of petitioners; that there was

an agreement between Goodwill and the respondent Robles that Robles guaranteed Goodwill that the materials utilized in the manuscript were her own or that she had secured the necessary permission from contributors and sources; that the author assumed sole responsibility and held the publisher without any liability.

On November 28, 1988, respondent Robles filed her answer, [8] and denied the allegations of plagiarism and copying that petitioners claimed. Respondent stressed that (1) the book DEP is the product of her independent researches, studies and experiences, and was not a copy of any existing valid copyrighted book; (2) DEP followed the scope and sequence or syllabus which are common to all English grammar writers as recommended by the Association of Philippine Colleges of Arts and Sciences (APCAS), so any similarity between the respondents book and that of the petitioners was due to the orientation of the authors to both works and standards and syllabus; and (3) the similarities may be due to the authors' exercise of the "right to fair use of copyrighted materials, as guides."

Respondent interposed a counterclaim for damages on the ground that bad faith and malice attended the filing of the complaint, because petitioner Habana was professionally jealous and the book DEP replaced CET as the official textbook of the graduate studies department of the Far Eastern University. [9]

During the pre-trial conference, the parties agreed to a stipulation of facts [10] and for the trial court to first resolve the issue of infringement before disposing of the claim for damages.

After the trial on the merits, on April 23, 1993, the trial court rendered its judgment finding thus:

"WHEREFORE, premises considered, the court hereby orders that the complaint filed against defendants Felicidad Robles and Goodwill Trading Co., Inc. shall be DISMISSED; that said plaintiffs solidarily reimburse defendant Robles for P20,000.00 attorney's fees and defendant Goodwill for P5,000.00 attorney's fees. Plaintiffs are liable for cost of suit.

IT IS SO ORDERED.

"Done in the City of Manila this 23rd day of April, 1993.

"(s/t) MARVIE R. ABRAHAM SINGSON

"Assisting Judge

"S.C. Adm. Order No. 124-92" [11]

On May 14, 1993, petitioners filed their notice of appeal with the trial court, [12] and on July 19, 1993, the court directed its branch clerk of court to forward all the records of the case to the Court of Appeals. [13]

In the appeal, petitioners argued that the trial court completely disregarded their evidence and fully subscribed to the arguments of respondent Robles that the books in issue were purely the product of her researches and studies and that the copied portions were inspired by foreign authors and as such not subject to copyright. Petitioners also assailed the findings of the trial court that they were animated by bad faith in instituting the complaint. [14]

On June 27, 1997, the Court of Appeals rendered judgment in favor of respondents Robles and Goodwill Trading Co., Inc. The relevant portions of the decision state:

"It must be noted, however, that similarity of the allegedly infringed work to the author's or proprietor's copyrighted work does not of itself establish copyright infringement, especially if the similarity results from the fact that both works deal with the same subject or have the same common source, as in this case.

Appellee Robles has fully explained that the portion or material of the book claimed by appellants to have been copied or lifted from foreign books. She has duly proven that most of the topics or materials contained in her book, with particular reference to those matters claimed by appellants to have been plagiarized were topics or matters appearing not only in appellants and her books but also in earlier books on College English, including foreign books, i.e. Edmund Burke's "Speech on Conciliation", Boerigs' "Competence in English" and Broughton's, "Edmund Burke's Collection."

xxx xxx xxx

"Appellant's reliance on the last paragraph on Section 11 is misplaced. It must be emphasized that they failed to prove that their books were made sources by appellee." [15]

The Court of Appeals was of the view that the award of attorneys' fees was not proper, since there was no bad faith on the part of petitioners Habana *et al.* in instituting the action against respondents.

On July 12, 1997, petitioners filed a motion for reconsideration, [16] however, the Court of Appeals denied the same in a Resolution [17] dated November 25, 1997.

Hence, this petition.

In this appeal, petitioners submit that the appellate court erred in affirming the trial court's decision.

Petitioners raised the following issues: (1) whether or not, despite the apparent textual, thematic and sequential similarity between DEP and CET, respondents committed no copyright infringement; (2) whether or not there was *animus furandi* on the part of respondent when they refused to withdraw the copies of CET from the market despite notice to withdraw the same; and (3) whether or not respondent Robles abused a writer's right to fair use, in violation of Section 11 of Presidential Decree No. 49. [18]

We find the petition impressed with merit.

The complaint for copyright infringement was filed at the time that Presidential Decree No. 49 was in force. At present, all laws dealing with the protection of intellectual property rights have been consolidated and as the law now stands, the protection of copyrights is governed by Republic Act No. 8293. Notwithstanding the change in the law, the same principles are reiterated in the new law under Section 177. It provides for the copy or economic rights of an owner of a copyright as follows:

"SECTION 177. *Copy or Economic rights.* — Subject to the provisions of chapter VIII, copyright or economic rights shall consist of the exclusive right to carry out, authorize or prevent the following acts:

177.1 *Reproduction of the work or substantial portion of the work;*

177.2 Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3 The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4 Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental; (n)

177.5 Public display of the original or copy of the work;

177.6 Public performance of the work; and

177.7 Other communication to the public of the work" [19]

The law also provided for the limitations on copyright, thus:

"SECTION 184.1 *Limitations on copyright.* — Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

- (a) the recitation or performance of a work, once it has been lawfully made accessible to the public, if done privately and free of charge or if made strictly for a charitable or religious institution or society; [Sec. 10(1), P.D. No. 49]
- (b) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries; Provided, that the source and the name of the author, if appearing on the work are mentioned; (Sec. 11 third par. P.D. 49)

xxx xxx xxx

- (e) *The inclusion of a work in a publication, broadcast, or other communication to the public, sound recording of film, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair use: Provided, That the source and the name of the author, if appearing in the work is mentioned;* [20]

In the above quoted provisions, "work" has reference to literary and artistic creations and this includes books and other literary, scholarly and scientific works. [21]

A perusal of the records yields several pages of the book DEP that are similar if not identical with the text of CET.

On page 404 of petitioners' Book 1 of College English for Today, the authors wrote:

Items in dates and addresses:

He died on Monday, April 15, 1975.

Miss Reyes lives in 214 Taft Avenue, Manila [22]

On page 73 of respondents Book 1 Developing English Today, they wrote:

He died on Monday, April 25, 1975.

Miss Reyes address is 214 Taft Avenue Manila [23]

On Page 250 of CET, there is this example on parallelism or repetition of sentence structures, thus:

"The proposition is peace. Not peace through the medium of war; not peace to be hunted through the labyrinth of intricate and endless negotiations; not peace to arise out of universal discord, fomented from principle, in all parts of the empire; not peace to depend on the juridical determination of perplexing questions, or the precise marking of the boundary of a complex government. It is

simple peace; sought in its natural course, and in its ordinary haunts. It is peace sought in the spirit of peace, and laid in principles purely pacific.

— Edmund Burke, "Speech on Criticism." [24]

On page 100 of the book DEP, [25] also in the topic of parallel structure and repetition, the same example is found *in toto*. The only difference is that petitioners acknowledged the author Edmund Burke, and respondents did not.

In several other pages [26] the treatment and manner of presentation of the topics of DEP are similar if not a rehash of that contained in CET.

We believe that respondent Robles' act of lifting from the book of petitioners substantial portions of discussions and examples, and her failure to acknowledge the same in her book is an infringement of petitioners' copyrights.

When is there a substantial reproduction of a book? It does not necessarily require that the entire copyrighted work, or even a large portion of it, be copied. If so much is taken that the value of the original work is substantially diminished, there is an infringement of copyright and to an injurious extent, the work is appropriated. [27]

In determining the question of infringement, the amount of matter copied from the copyrighted work is an important consideration. To constitute infringement, it is not necessary that the whole or even a large portion of the work shall have been copied. If so much is taken that the value of the original is sensibly diminished, or the labors of the original author are substantially and to an injurious extent appropriated by another, that is sufficient in point of law to constitute piracy. [28]

The essence of intellectual piracy should be essayed in conceptual terms in order to underscore its gravity by an appropriate understanding thereof. Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy, which is a synonymous term in this connection, consists in the doing by any person, without the consent of the owner of the copyright, of anything the sole right to do which is conferred by statute on the owner of the copyright. [29]

The respondents' claim that the copied portions of the book CET are also found in foreign books and other grammar books, and that the similarity between her style and that of petitioners can not be avoided since they come from the same background and orientation may be true. However, in this jurisdiction under Sec. 184 of Republic Act 8293 it is provided that:

Limitations on Copyright. Notwithstanding the provisions of Chapter V, the following shall not constitute infringement of copyright:

- (c) The making of quotations from a published work if they are compatible with fair use and only to the extent justified for the purpose, including quotations from newspaper articles and periodicals in the form of press summaries: *Provided, That the source and the name of the author, if appearing on the work, are mentioned.*

A copy of a piracy is an infringement of the original, and it is no defense that the pirate, in such cases, did not know whether or not he was infringing any copyright; he at least knew that what he was copying was not his, and he copied at his peril. [30]

The next question to resolve is to what extent can copying be injurious to the author of the book being copied. Is it enough that there are similarities in some sections of the books or large segments of the books are the same?

In the case at bar, there is no question that petitioners presented several pages of the books CET and DEP that more or less had the same contents. It may be correct that the books being grammar books may contain materials similar as to some technical contents with other grammar books, such as the segment about the "Author Card". However, the numerous pages that the petitioners presented showing similarity in the style and the manner the books were presented and the identical examples can not pass as similarities merely because of technical consideration.

The respondents claim that their similarity in style can be attributed to the fact that both of them were exposed to the APCAS syllabus and their respective academic experience, teaching approach and methodology are almost identical because they were of the same background.

However, we believe that even if petitioners and respondent Robles were of the same background in terms of teaching experience and orientation, it is not an excuse for them to be identical even in examples contained in their books. The similarities in examples and material contents are so obviously present in this case. How can similar/identical examples not be considered as a mark of copying?

We consider as an indicia of guilt or wrongdoing the act of respondent Robles of pulling out from Goodwill bookstores the book DEP upon learning of petitioners' complaint while pharisaically denying petitioners' demand. It was further noted that when the book DEP was re-issued as a revised version, all the pages cited by petitioners to contain portion of their book College English for Today were eliminated.

In cases of infringement, copying alone is not what is prohibited. The copying must produce an "injurious effect". Here, the injury consists in that respondent Robles lifted from petitioners' book materials that were the result of the latter's research work and compilation and misrepresented them as her own. She circulated the book DEP for commercial use and did not acknowledge petitioners as her source.

Hence, there is a clear case of appropriation of copyrighted work for her benefit that respondent Robles committed. Petitioners' work as authors is the product of their

long and assiduous research and for another to represent it as her own is injury enough. In copyrighting books the purpose is to give protection to the intellectual product of an author. This is precisely what the law on copyright protected, under Section 184.1 (b). Quotations from a published work if they are compatible with fair use and only to the extent justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries are allowed provided that the source and the name of the author, if appearing on the work, are mentioned.

In the case at bar, the least that respondent Robles could have done was to acknowledge petitioners Habana et al. as the source of the portions of DEP. The final product of an author's toil is her book. To allow another to copy the book without appropriate acknowledgment is injury enough.

WHEREFORE, the petition is hereby GRANTED. The decision and resolution of the Court of Appeals in CA-G.R. CV No. 44053 are SET ASIDE. The case is ordered remanded to the trial court for further proceedings to receive evidence of the parties to ascertain the damages caused and sustained by petitioners and to render decision in accordance with the evidence submitted to it.

SO ORDERED.

Kapunan and Ynares-Santiago, JJ., concur.

Davide, C.J., dissents. Please see dissenting opinion.

Melo, J., took no part; personal reasons.

Separate Opinions

DAVIDE, JR., C.J., dissenting:

I am unable to join the majority view.

From the following factual and procedural antecedents; I find no alternative but to sustain both the trial court and the Court of Appeals.

On 12 July 1988, HABANA, *et al.* filed with the trial court a complaint for infringement and unfair competition, with damages against private respondent Felicidad C. Robles (hereafter ROBLES) and her publisher and distributor, Goodwill Trading Co., Inc. (hereafter GOODWILL). The case was docketed as Civil Case No. 88-1317.

HABANA, *et al.* averred in their complaint that they were the co-authors and joint copyright owners of their published works *College English for Today, Books 1 and 2* (hereafter CET) and *Workbook for College Freshmen English, Series 1*; [1] they discovered that ROBLES' own published works, *Developing English Proficiency, Books 1 and 2*, (hereafter DEP), published and distributed in 1985, exhibited an

uncanny resemblance, if not outright physical similarity, to CET as to content, scheme, sequence of topics and ideas, manner of presentation and illustrative examples; the plagiarism, incorporation and reproduction of particular portions of CET into DEP could not be gainsaid since ROBLES was substantially familiar with CET and the textual asportation was accomplished without their authority and/or consent; ROBLES and GOODWILL jointly misrepresented DEP (over which they shared copyright ownership) "as the former's original published works and concept;" and "notwithstanding formal demands made . . . to cease and desist from the sale and distribution of DEP, [ROBLES and GOODWILL] persistently failed and refused to comply therewith." HABANA *et al.* then prayed for the court to: (1) order the submission and thereafter the destruction of all copies of DEP, together with the molds, plates, films and other materials used in the printing thereof; (2) require ROBLES and GOODWILL to render an accounting of the sales of the "infringing works from the time of its (sic) inceptive publication up to the time of judgment, as well as the amount of sales and profits . . . derived;" and (3) to enjoin ROBLES and GOODWILL to solidarily pay actual, moral and exemplary damages, as well as attorney's fees and expenses of litigation.

In its Answer, GOODWILL denied culpability since "it had no knowledge or information sufficient to form a belief as to the allegations of plagiarism, incorporation and reproduction" and hence "could not be privy to the same, if (there were) any;" and that in an Agreement with co-defendant ROBLES, the latter would be solely responsible for acts of plagiarism or violations of copyright or any other law, to the extent of answering for any and all damages GOODWILL may suffer. GOODWILL also interposed a compulsory counterclaim against PACITA, *et al.* and a crossclaim against its co-defendant anchored on the aforementioned Agreement.

In her answer, ROBLES asserted that: (1) DEP was the exclusive product of her independent research, studies and experience; (2) DEP, particularly the segments where the alleged literal similitude appeared, were admittedly influenced or inspired by earlier treatises, mostly by foreign authors; but that "influences and/or inspirations from other writers" like the methodology and techniques as to presentation, teaching concept and design, research and orientation which she employed, fell within the ambit of general information, ideas, principles of general or universal knowledge which were commonly and customarily understood as incapable of private and exclusive use, appropriation or copyright; and (3) her works were the result of the legitimate and reasonable exercise of an author's "right to fair use of even copyrighted materials as [a] guide." She further claimed that her various national and regional professional activities in general education, language and literature, as well as her teaching experience in graduate and post graduate education would obviate the remotest possibility of plagiarism.

ROBLES likewise suggested that any similarity between DEP and CET as regards scope and sequence could be attributed to "the orientation of the authors to the scope and sequence or syllabus — which incorporates standards known among English grammar book writers — of the subject-matter for Basic Communication Arts

recommended by the Association of Philippine Colleges of Arts and Sciences (APCAS)." While the syllabus was admittedly adopted in DEP, she claimed to have treated quite differently in DEP the very ideas, techniques or principles expressed in CET such that neither textbook could be considered a copy or plagiarism of the other.

At the pre-trial conference, the parties agreed to a stipulation of facts [2] and for the court to first resolve the issue of infringement before disposing of the claims for damages. After trial on the merits, the trial court rendered its decision in favor of defendants, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby orders that the complaint filed against defendants Felicidad Robles and Goodwill Trading Co. Inc. shall be DISMISSED: that said plaintiffs solidarily reimburse defendant Robles for P20,000.00 attorney's fees and defendant Goodwill for P5,000.00 attorney's fees. Plaintiffs are liable for costs of suit.

IT IS SO ORDERED. [3]

Noting that the law applicable to the case was Presidential Decree No. 49, [4] the trial court found that HABANA, *et al.* failed to discharge their onus of proving that ROBLES and GOODWILL committed acts constituting copyright infringement. Moreover, the trial court found that "the cause of action or acts complained of [were] not covered by said decree" as Section 10 thereof barred authors of works already lawfully made accessible to the public from prohibiting the reproductions, translations, adaptations, recitation and performance of the same, while Section 11 allowed the utilization of reproductions, quotations and excerpts of such works. The trial court thus agreed with ROBLES that "the complained acts [were] of general and universal knowledge and use which plaintiffs cannot claim originality or seek redress to the law for protection" and observed that DEP and CET had the same sources, consisting chiefly of earlier works, mostly foreign books. GOODWILL's crossclaim against ROBLES, counterclaim against HABANA, *et al.* as well as ROBLES' compulsory counterclaim against GOODWILL were all dismissed for lack of factual and legal bases.

HABANA, *et al.* appealed to the Court of Appeals. The case was docketed as CA-G.R. CV No. 44053. Before said court HABANA, *et al.*, in the main, argued that the trial court totally disregarded their evidence and merely subscribed to ROBLES' arguments. The Court of Appeals, however, likewise disposed of the controversy in favor of ROBLES and GOODWILL. [5]

However, the Court of Appeals modified the trial court's decision by reversing the award for attorney's fees. It held that the good faith and sincerity of HABANA, *et al.* in commencing the action negated the basis therefor. Their motion for reconsideration having been denied for want of cogent reasons, HABANA, *et al.*, instituted this petition. They claim that the Court of Appeals committed reversible error

in failing to appreciate: (1) the insuperable evidence and facts admitted and proved demonstrating plagiarism or piracy and instead afforded full weight and credit to ROBLES' matrix of general, hypothetical and sweeping statements and/or defenses; (2) ROBLES' and GOODWILL's *animo furandi* or intent to appropriate or copy CET with the non-removal of the damaging copies of DEP from the bookstores despite notice to withdraw the same; and (3) the fact that ROBLES abused a writer's right to fair use, in violation of Section 11 of P.D. No. 49. [6] They invoke *Laktaw v. Paglinawan* [7] which, they theorize is on all fours with the case at bar. ROBLES contends that appeal by *certiorari* does not lie in this case for the challenged decision and the trial court's judgment were amply supported by evidence, pertinent laws and jurisprudence. Hence, her counterclaim for moral damages should, therefore, be granted or for us to order the remand of the case to the trial court for reception of evidence on damages. GOODWILL, on its part, stood pat on its disclaimer, with the assertion that no proof was ever introduced that it co-authored DEP or that it singly or in cabal with ROBLES committed any act constituting copyright infringement.

The core issue then is whether or not the Court of Appeals erred in affirming the trial court's judgment that despite the apparent textual, thematic and sequential similarity between DEP and CET, no copyright was committed by ROBLES and GOODWILL.

While the complaint, in Civil Case No. 88-1317 was filed during the effectivity of P.D. No. 49, the provisions of the new intellectual property law, R.A. No. 8293, [8] nevertheless bears significance here. It took effect on 1 January 1998, but its Section 239.3 clearly states that its provisions shall apply to works in which copyright protection obtained prior to the effectivity of the Act subsists, provided, however, that the application of the Act shall not result in the diminution of such protection. Also, the philosophy behind both statutes as well as the essential principles of copyright protection and copyright infringement have, to a certain extent, remained the same.

A copyright may be accurately defined as the right granted by statute to the proprietor of an intellectual production to its exclusive use and enjoyment to the extent specified in the statute. [9] Under Section 177 of R.A. No. 8293, [10] the copy or economic right (copyright and economic right are used interchangeably in the statute) consists of the exclusive right to carry out, authorize or prevent the following acts:

177.1 Reproduction of the work or substantial portion of the work;

177.2 Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3 The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4 Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;

177.5 Public display of the original or a copy of the work;

177.6 Public performance of the work; and

177.7 Other communication to the public of the work.

"The work," as repeatedly mentioned, refers to the literary and artistic works defined as original intellectual creations in the literary and artistic domain protected from the moment of their creation and enumerated in Section 172.1, which includes books and other literary, scholarly, scientific and artistic works. [11]

Stripped in the meantime of its indisputable social and beneficial functions, [12] the use of intellectual property or creations should basically promote the creator or author's personal and economic gain. Hence, the copyright protection extended to the creator should ensure his attainment of some form of personal satisfaction and economic reward from the work he produced. Without conceding the suitability of *Laktaw* as precedent, the Court there quoted *Manresa* and explained:

He who writes a book, or carves a statue, or makes an invention, has the absolute right to reproduce or sell it, just as the owner of the land has the absolute right to sell it or its fruits. But while the owner of the land, by selling it and its fruits, perhaps fully realizes all its economic value, by receiving its benefits and utilities, which are represented for example, by the price, on the other hand the author of a book, statue or invention does not reap all the benefits and advantages of his *own property* by disposing of it, for the most important form of realizing the economic advantages of a book, statue or invention, consists in the right to reproduce it in similar or like copies, everyone of which serves to give to the person reproducing them all the conditions which the original requires in order to give the author the full enjoyment thereof. If the author of a book, after its publication, cannot prevent its reproduction by any person who may want to reproduce it, then the property right granted him is reduced to a very insignificant thing and the effort made in the production of the book is in no way rewarded. [13]

The execution, therefore, of any one or more of the exclusive rights conferred by law on a copyright owner, without his consent, constitutes copyright infringement. In essence, copyright infringement, known in general as "piracy," is a trespass on a domain owned and occupied by a copyright owner; it is violation of a private right protected by law. [14] With the invasion of his property rights, a copyright owner is naturally entitled to seek redress, enforce and hold accountable the defrauder or usurper of said economic rights.

Now, did ROBLES and GOODWILL infringe upon the copyright of HABANA *et al.* by publishing DEP, which the latter alleged to be a reproduction, or in the least, a substantial reproduction of CET? Both the trial court and respondent court found in the negative. I submit they were correct.

To constitute infringement, the usurper must have copied or appropriated the "original" work of an author or copyright proprietor; [15] absent copying, there can be no infringement of copyright. [16] In turn, a work is deemed by law an original if the author created it by his own skill, labor and judgment. [17] On its part, a copy is that which comes so near to the original so as to give to every person seeing it the idea created by the original. It has been held that the test of copyright infringement is whether an ordinary observer comparing the works can readily see that one has been copied from the other. [18] A visual comparison of the portions of CET [19] juxtaposed against certain pages of DEP, [20] would inescapably lead to a conclusion that there is a discernible similarity between the two; however, as correctly assessed by respondent court and the lower court, no conclusion, can be drawn that DEP, in legal contemplation, is a copy of CET.

Was DEP a substantial reproduction of CET? To constitute a substantial reproduction, it is not necessary that the entire copyrighted work, or even a large portion of it, be copied, if so much is taken that the value of the original is substantially diminished, or if the labors of the original author are substantially, and to an injurious extent, appropriated. [21] But the similarity of the books here does not amount to an appropriation of a substantial portion of CET. If the existence of substantial similarities does not of itself establish infringement, [22] mere similarities (not substantial similarities) in some sections of the books in question decisively militate against a claim for infringement where the similarities had been convincingly established as proceeding from a number of reasons and/or factors.

1. As both books are grammar books, they inevitably deal with the same subjects typically and ordinarily treated by writers of such genre, [23] *e.g.*, system of book classification, the different kinds of card catalogs and their entries, use of punctuation marks, paragraphs, the characteristics of an effective paragraph, language structure, different parts of a book, *etc.* These standard subjects fall within the domain of ideas, concepts, universal and general knowledge that have, as admitted by the protagonists here, been in existence for quite a long time. [24] As such, HABANA, *et al.* cannot demand monopoly, by way of example, in the use of the recognized library classification systems (Dewey Decimal System and the Library of Congress System), or how a book can be divided into parts (frontispiece, title page, copyright page, preface, table of contents, *etc.*) or to the different headings used in a card catalogue (title card, author card and subject card), since these are of common or general knowledge. Even in this jurisdiction, no protection can be extended to such an idea, procedure, system method or operation, concept, principle, discovery or mere data, even if expressed, explained, illustrated or embodied in a work. [25]

2. As found by respondent court, CET and DEP had common sources and materials, [26] such that the particular portions claim to have been lifted and literally reproduced also appeared in earlier works, mostly by foreign authors. This is clear from the testimony of petitioner Dr. Pacita Habana:

Q Let's clarify your position Dra. Habana. When defendants test (sic) showed 10 words similar to yours, you so concluded it was (sic) copied from yours but when I pointed out to you same (sic) words contained in the earlier book of Wills then you earlier in your test in your book (sic) you refused to admit that it was copied from Wills.

A Yes, sir. We have never — all 35 words were copied from there.

Q But what I am asking how could you conclude that by just similarity of 10 words of defendants words that was copied from yours [sic] and when I point out to you the similarity of that same words from the words earlier than yours (sic) you refused to admit that you copied?

A I would like to change the final statement now that in the case of defendant Robles you pointed out her source very clear. She copied it from that book by Wills.

Q So, she did not copy it from yours?

A Alright, maybe she did not copy it but definitely it is a pattern of plagerism [sic]. [27]

3. Similarity in orientation and style can likewise be attributed to the exposure of the authors to the APCAS syllabus and their respective academic experience, teaching approaches and methodology. It is not farfetched that they could have even influenced each other as textbook writers. ROBLES and Dr. Pacita Habana were faculty members of the Institute of English of the Far Eastern University from 1964 to 1974. [28] Both were ardent students, researchers, lecturers, textbook writers and teachers of English and grammar. They even used to be on friendly terms with each other, to the extent that Dr. Habana admitted that ROBLES assisted the former in the preparation of her doctoral dissertation. Given their near-identical academic and professional background, it is natural they would use many expressions and definitions peculiar to teaching English grammar. It comes therefore with no surprise that there are similarities in some parts of the rival books. Indeed, it is difficult to conceive how writers on the same subject matter can very well avoid resorting to common sources of information and materials and employing similar expressions and terms peculiar to the subject they are treating. [29]

To illustrate, an excerpt from page 21 of CET reads:

Author Card

The author card is the main entry card. It contains

1. the author's complete name on the first line, surname first, which may be followed by the date of his birth and death if he is no longer living;
2. the title of the book, and the subtitle, if there is one;
3. the edition, if it is not the first;
4. the translator or illustrator, if there is any;
5. the imprint which includes the publisher, the place and date of publication;
6. the collation composed of the number of pages, volume, illustrations, and the size of the book;
7. the subjects with which the book deals [*sic*];
8. the call number on the upper left-hand corner.

Names beginning with *Mc*, or *M* are filed in the card catalog as though spelled out as *MAC*, for example *Mc Graw-MacGraw*. The same is true of *St.* and *Saint*.

While a portion of DEP found on page 18 which discusses the author card provides:

The *author* card is the main entry card containing:

1. the author's complete name on the first line, surname first, which may be followed by the date of his birth and death if he is no longer living;
2. the title of the book, and the subtitle if there is one;
3. the edition, if it is not the first;
4. the translator or illustrator, if any;
5. the imprint which includes the publisher, the place and date of publication;

6. the collation, composed of the number of pages, volume, illustrations, and the size of the book;
7. the subject with which the book deals; and
8. the call number on the upper-left hand corner.

Names beginning with MC, or M are filed in the card catalog considered spelled out as MAC, for example: Mcleod-Macleod. This is true also of St. and Saint.

The entries found in an author card, having been developed over quite some time, are expectedly uniform. Hence, HABANA *et al.* and ROBLES would have no choice but to articulate the terms particular to the entries in an identical manner.

I thus find that the ruling of the respondent court is totally supported by the evidence on record. Of doctrinal persuasion is the principle that factual determinations of the Court of Appeals and the trial court are conclusive and binding upon this Court, and the latter will not, as a rule, disturb these findings unless compelling and cogent reasons necessitate a reexamination, if not a reversal, of the same. [30] Tested against this jurisprudential canon, to subject the challenged decision of the Court of Appeals to further scrutiny would be superfluous, if not, improvident.

I am not persuaded by the claim of HABANA, *et al.* that *Laktaw* is on all fours with and hence applicable to the case at bar. There, this Court disposed that defendant, without the consent of and causing irreparable damage to *Laktaw*, reproduced the latter's literary work *Diccionario Hispano-Tagalog*, and improperly copied the greater part thereof in the work *Diccionariong Kastila-Tagalog* published by defendant, in violation of Article 7 of the Law of 10 January 1879 on Intellectual Property. This Court anchored its decision on the following observations:

(1) [O]f the 23,560 Spanish words in the defendant's dictionary . . . only 3,108 words are the defendant's own, or, what is the same thing, the defendant has added only this number of words to those that are in the plaintiff's dictionary, he having reproduced or copied the remaining 20,452 words;

(2) [T]he defendant also literally reproduced and copied for the Spanish words in his dictionary, the equivalents, definitions and different meanings in Tagalog, given in plaintiff's dictionary, having reproduced, as to some words, everything that appears in the plaintiff's dictionary for similar Spanish words, although as to some he made some additions of his own. Said copies and reproductions are numerous . . .;

(3) [T]he printer's errors in the plaintiff's dictionary as to the expression of some words in Spanish as well as their equivalents in Tagalog are also reproduced, a fact which shows that the defendant, in preparing his dictionary,

literally copied those Spanish words and their meanings and equivalents in Tagalog from the plaintiff's dictionary. [31]

Plainly, the rationale in *Laktaw* does not apply in this case. *First*, aside from an isolated accounting of the number of words supposedly usurped in a segment of DEP from CET, [32] the records do not disclose that all the words allegedly copied were tallied and that the words thus tallied were numerous enough to support a finding of copying. *Second*, as already conceded, while there is an identity in the manner by which some of the ideas and concepts were articulated, this prescinded from various factors already elucidated. Besides, ROBLES' testimony that she made an independent investigation or research of the original works or authors she consulted was unrebutted; [33] for germane here is the question of whether the alleged infringer could have obtained the same information by going to the same source by her own independent research. [34] ROBLES convinced the trial court and the Court of Appeals on this; thus, we are bound by this factual determination, as likewise explained earlier. *Third*, reproduction of the printer's errors or the author's blunders and inaccuracies in the infringing copy does not *ipso facto* constitute copying or plagiarism or infringement, but it is conceded that they are telltale signs that infringement might have been committed. [35] However, the records do not reveal this to be the case. *Fourth*, the law on intellectual property violated in *Laktaw* was a world and time apart from R.A. No. 8293 or even P.D. No. 49. Thus, under Article 7 of the Law of 10 January 1879, the Court ruled that nobody could reproduce another person's work without the owner's consent, even merely to annotate or add anything to it, or improve any edition thereof. The more recent laws on intellectual property, however, recognize recent advancements in technology transfer and information dissemination. They thus allow the use of copyrighted materials if compatible with fair use and to the extent justified for the purpose. In particular, the new laws sanction the fair use of copyrighted work for criticism, comment, news reporting, teaching including multiple copies for classroom use, scholarship, research and similar purposes. [36] Further, the limitations of the exclusive use of copyrighted materials under Sections 10 and 11 of P.D. No. 49 in consonance with the principle of fair use have been reproduced and incorporated in the new law. [37] All told, *Laktaw* is inapplicable.

Fair use has been defined as a privilege to use the copyrighted material in a reasonable manner without the consent of the copyright owner or as copying the theme or ideas rather than their expression. [38] No question of fair or unfair use arises however, if no copying is proved to begin with. This is in consonance with the principle that there can be no infringement if there was no copying. [39] It is only where some form of copying has been shown that it becomes necessary to determine whether it has been carried to an "unfair," that is, illegal, extent. [40] Consequently, there is no reason to address the issue of whether ROBLES abused a writer's right to fair use with the ascertainment that DEP was not a copy or a substantial copy of CET.

WHEREFORE, I vote to DENY the petition and to AFFIRM the challenged decision of 27 June 1997 of the Court of Appeals.

Footnotes

1. Rule 45, 1997 Rules of Civil Procedure.
2. In CA-G.R. CV No. 44053, promulgated on June 27, 1997, J. Tuquero, ponente, JJ. Luna and Hofilena, concurring, *Rollo*, pp. 28-35.
3. *Rollo*, p. 43.
4. Original Record Vol. I, Complaint, pp. 1-7.
5. Docketed as Civil Case No. 88-1317 and assigned to Branch 36.
6. Original Record Vol. I, Motion for Bill of Particulars, pp. 30-31.
7. *Ibid.*, Answer, pp. 33-39.
8. Original Record, Vol. I, Answer, pp. 134-139.
9. *Ibid.*, pp. 137-138.
10. *Ibid.*, pp. 205-206.
11. Original Record, Vol. I, Judgment, pp. 415-435.
12. *Ibid.*, Notice of Appeal, p. 436.
13. Docketed as CA-G. R. CV No. 44053.
14. CA *Rollo*, Brief for Plaintiffs-Appellants Pacita I. Habana, Alicia L. Cinco and Pacita N. Fernando, pp. 41-90, 47, 48, 49.
15. Decision, by Justice Artemio G. Tuquero, *ponente*, concurred in by J. Artemon D. Luna and J. Hector L. Hofilena, CA *Rollo*, p. 6.
16. CA *Rollo*, pp. 198-203.
17. *Ibid.*, p. 236.
18. *Rollo*, Petition, p. 10.
19. Intellectual Property Code of the Philippines (Republic Act No. 8293), p. 51.

20. Intellectual Property Code of the Philippines, Republic Act No. 8293, pp. 55-56.
21. Sec. 172, Intellectual Property Code of the Philippines.
22. Volume I, Original Record, Exh. S-1, p. 211.
23. *Ibid.*, Exh. S-2, p. 215.
24. Volume 1, Original Record, Annex "Z", p. 89.
25. *Ibid.*, Annex "V" p. 111.
26. Page 24 of CET as to examples 2, 9, 11, and 14 also found on p. 33 of DEP; similarity in technique and presentation on page 15 of CET and page 27 of DEP; on page 18, 20 and 21 of CET and page 29 of DEP; on page 74 of CET and page 86 of DEP, Original Record, Volume 1, Exhibits pp. 73, 91, 93, 96 and 97.
27. 18 Am Jur 2D, 104 citing *Mazer v. Stein*, 347 US 218, 98 L ed 630, 74 S Ct 460, reh den 347 US 949, 98 L ed 1096, 74 S Ct 637 [1953].
28. *Columbia Pictures Inc. vs. Court of Appeals*, 261 SCRA 144, 184, citing 18 CJS, Copyright and Literary Property, Sec. 94, 217, 218.
29. 18 CJS, Copyright and Literary Property, Sec. 90, 212; 18 Am Jur 2D, Copyright and Literary Property, Sec. 106, 391-392.
30. *Ibid.*

DAVIDE, JR., C.J., dissenting:

1. Original Record (OR), 10-12. The certificates of copyright registration for the three books were dated 3 August 1976, 13 October 1977 and 17 July 1973, respectively.
2. OR, 205-206.
3. OR, 415-435. The decision was rendered by Marvie R. Abraham Singson, Assisting Judge per S.C. Adm. Order No. 124-92.
4. Entitled *Decree on the Protection of Intellectual Property*, promulgated on 14 November 1972.
5. Per Associate Justice Artemio Tuquero, *J.*; with Artemon D. Luna and Hector L. Hofilena, *JJ.*, concurring.
6. Section 11. To an extend (sic) compatible with fair practice and justified by the scientific, critical, informatory or educational purpose, it shall be permissible to make quotations

or excerpts from a work already lawfully made accessible to the public. Such quotations may be utilized in their original form or in translation.

News items, editorials, and articles on current political, social, economic, scientific or religious topic may be reproduced by the press or broadcast, unless they contain or are accompanied by a notice that their reproduction or publication is reserved. In case of musical works, parts of little extent may also be reproduced.

Quotations and excerpts as well as reproductions shall always be accompanied by an acknowledgment of the source and name of author, if his name appears thereon.

7. 44 Phil 855 [1918].

8. Entitled An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for its Powers and Functions, and For Other Purposes.

9. 18 C.J.S. *Copyright and Literary Property* § 1 (hereinafter 18 C.J.S.).

10. Similar rights were granted under P.D. No. 49, thus:

Section 5. Copyright shall consist in the exclusive right:

- (A) To print, reprint, publish, copy, distribute, multiply, sell and make photographs, photo-engravings, and pictorial illustrations of the works;
- (B) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute it if it be a model or design;
- (C) To exhibit, perform, represent, produce, or reproduce the work in any manner or by any method whatever for profit or otherwise; if not reproduced in copies for sale, to sell any manuscript or any record whatsoever thereof;
- (D) To make any other use or disposition of the work consistent with the laws of the land.

11. Section 172. *Literary and Artistic Works*. — 172.1 Literary and artistic works, hereinafter referred to as "works," are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:

- (a) Books, pamphlets, articles and other writings;
- (b) Periodicals and newspapers;
- (c) Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;

- (d) Letters;
- (e) Dramatic or dramatico-musical compositions; choreographic works or entertainment in dumb shows;
- (f) Musical compositions, with or without words;
- (g) Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- (h) Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
- (i) Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- (j) Drawings or plastic works of a scientific or technical character;
- (k) Photographic works including works produced by a process analogous to photography; lantern slides;
- (l) Audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings;
- (m) Pictorial illustrations and advertisements;
- (n) Computer programs; and
- (o) Other literary; scholarly, scientific and artistic works.

12. The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good. (Section 2 of RA 8293) *Further*, the social interest in copyright lies in the adjustment of two objectives: the encouraging of individuals to intellectual labor by assuring them of just rewards, and by securing to society of the largest benefits of their products. The history of the concept reflects our progress in the mechanical communications, our ideas of property and the functions of the state, and our changing social ethics. 2 ARTURO M. TOLENTINO, *THE CIVIL CODE OF THE PHILIPPINES* 517 [1992].

13. *Supra* note 7 at 864-865.

14. See *Columbia Pictures, Inc. v. Court of Appeals*, 261 SCRA 144, 183-184 [1996] citing 18 C.J.S. §90; 18 AM JUR 2D, *Copyright and Literary Property*; §106 (hereinafter 18 AM JUR 2D).

15. See 18 AM JUR 2D §101 citing *Weitzenkorn v. Lesser*, 40 Cal 2d 778, 256 P2d 947 [1953]. The test of originality is not whether the work was entirely new, but whether it was the result of independent effort or copying. 18 AM JUR 2D §101 citing *Sheldon v. Metro-Goldwyn Pictures Corp.*, (CA2 NY) 81 F2d 49, cert den 298 US 669, 80 L ed 1392, 56 S Ct 835 [1936]; *Golding v. R.K.O. Pictures, Inc.*, 35 Cal 2d 690, 221 P2d 95 [1950].
16. 18 AM JUR 2D, §104 citing *Mazer v. Stein*, 347 US 218, 98 L ed 630, 74 S Ct 460, reh den 347 US 949, 98 L ed 1096, 74 S Ct 637 [1953].
17. See *Dorsey v. Old Surety L. Ins. Co.*, (CA10) 98 F2d 872 [1938].
18. *Abiva v. Weinberger (C.A.)*, 62 OG 3784, 3787 [1964] citing 34 C.J.S. §34 and 17 U.S.C.A. §101; *Lewis v. Kroger Co.*, 109 F. Supp. 484 [1952].
19. Exhibits "I" to "I-25" or Annexes "A" to "AA" of the Bill of Particulars.
20. Exhibits "J" to "J-21" or Annexes "BB to WW" of the Bill of Particulars.
21. See 18 AM JUR 2D §108 citing *Universal Pictures Co. v. Harold Lloyd Corp.*, (CA9 Cal) 162 F2d 354 [1947]; *Toksvig v. Bruce Pub. Co.*, (CA7 Wis) 181 F2d 664 [1950]; *Sheldon v. Metro-Goldwyn Pictures Corp.*, *supra* note 18.
22. *Id.*, citing *Twentieth Century-Fox Film Corp v. Stonesifer*, (CA9 Cal) 140 F2d 579 [1944].
23. Similarity of the alleged infringing work to the author's or proprietor's copyrighted work does not of itself establish copyright infringement, if the similarity results from the fact that both works deal with the same subject or have the same common source. 18 AM JUR 2D §107 citing *Dorsey v. Old Surety L. Ins. Co.*, *supra* note 20.
24. Per testimony of Dr. Pacita Habana — on the system of library classification, TSN, 11 July 1989, 44-45; on the kinds of card catalogue and their entries, TSN, 11 July 1989, 56-58; on different parts of books and their definitions, 59; uses of paragraph; uses of punctuations 75-76; use of phonemes, graphemes and morphemes, 78. Per testimony of Felicidad Robles — TSN, 31 August 1989, 10-22.
25. Section 175 of RA 8293.
26. See note 26; See Court of Appeals' decision, 6.
27. TSN, 1 August 1989, 24-26.
28. TSN, 29 June 1989, 26 — Dr. Pacita Habana entered FEU as faculty member in 1957 and left the same in 1974; TSN, 28 August 1989, 3 — FELICIDAD became a faculty member of FEU in 1964 up to time the testimony was taken.
29. See *Simms v. Stanton*, C.C. Cal 75 F. 6 [1896].

30. See *Gobonseng, Jr. v. Court of Appeals*, 246 SCRA 457, 468 [1996].
31. *Supra* Note 10 at 860.
32. TSN, 1 August 1989, 29.
33. *Rollo*, 159; TSN, 28 August 1989, 23-24.
34. See 18 AM JUR 2D §104 citing *Orgel v. Clark Boardman Co.*, (CA 2 NY) 301 F2d 119, cert den 371 US 817, 9 L ed 2d 58, 83 S Ct 31 [1962]; *Eisenschiml v. Fawcett Publications, Inc.*, (CA7 III) 246 F2d 598, cert den 355 US 907, 2 L ed 262, 78 S Ct 334 [1957]; *Toksvig v. Bruce Publishing Co.*, *supra* note 24.
35. One of the most significant evidences of infringement exists in the presence, in an alleged infringing work, of the same errors and peculiarities that are to be found in the work said to be infringed. See 18 AM JUR 2D §107 citing *Callaghan v. Myers*, 128 US 617, 32 L ed 547, 9 S Ct 177 [1888]; *W.H. Anderson Co. v. Baldwin Law Pub. Co.*, (CA6 Ohio) 27 F2d 82 [1928]; *Jeweler's Circular Pub. Co. v. Keystone Pub. Co.*, (CA2) 281 F 83, 26 ALR 571, cert den 259 US 581, 66 L ed 1074, 42 S Ct 464 [1922].
36. See Section 185 of RA 8293.
37. See Sections 184 & 184.1 of RA 8293.
38. See 18 AM JUR 2D §109 citing *Toksvig v. Bruce Pub. Co.*, *supra* note 24; *Bradbury v. Columbia Broadcasting System, Inc.*, (CA9 Cal) 287 F2d 478, cert den 368 US 801, 7 L ed 2d 15, 82 S Ct 19 [1961]; *Shipman v. R.K.O. Radio Pictures, Inc.*, (CA2 NY) 100 F2d 533 [1938].
39. *Supra* note 19.
40. 18 C.J.S. §94-94b.