

TITLE:	LIFE, DEATH, AND DATA: EXAMINING THE HUMAN RIGHTS IMPLICATIONS OF INTRODUCING DATA EXCLUSIVITY TO INDIA'S PHARMACEUTICAL SYSTEM, IN LIGHT OF THE GLOBAL SITUATION OF DISEASES SUCH AS HIV/AIDS IN THE PHILIPPINES AND OTHER DEVELOPING COUNTRIES
AUTHOR:	PATRICIA ANNE D. STA. MARIA
DATE:	2015
<p>ABSTRACT:</p> <p><i>The interactions between Human Rights and Intellectual Property laws are complicated ones. There is at any one time, a flurry of competing interests which aim to take precedence over each other. Caught in the crossfire are the people who depend on the benefits of both areas of law for the improvement of their lives. There is no more evident illustration of this than the ongoing debate on access to medicines. Human Rights insist on respect, protection, and fulfillment of the rights to health and life, which is argued to include access to medicine, while Intellectual Property law claims to be protecting the interests of the owners of the information and formulation necessary for producing medicine from exploitation, and from the unjustness of not being able to benefit fully from their creative and commercial endeavors.</i></p> <p><i>Neither is this debate purely academic. It took on a life of its own during the advent of the TRIPS agreement and the subsequent DOHA declaration. One of the more important arguments in relation to access to medicine that was raised and settled during this time was that the TRIPS agreement obligated States to implement data protection, and not data exclusivity.</i></p> <p><i>Data exclusivity is a practice whereby generics companies are prohibited from availing of bioequivalency tests for a certain period. This means that government regulatory boards cannot rely on data submitted in relation to an already approved drug in order to make conclusions about a new drug's efficacy, safety, and quality. This results in a stalling of new entrants, the more affordable generics, into the market.</i></p> <p><i>Because the TRIPS agreement does not espouse data exclusivity, States have been resorting to the negotiation of Free Trade Agreements in order to ensure that other States introduce these measures in their respective legal systems. Currently the European Union is negotiating such an agreement with India, and a concern is that the former is insisting on data exclusivity periods, something it has included in past agreements with States such as Korea and the Andean States.</i></p>	

The agreement between the EU and India is of special concern because India is known to be a large source of generic medicine, not only for its own population but for other developing nations as well. Furthermore, affordable medicine produced in India includes antiretroviral medicine designed to treat HIV/AIDS. Those who depend on these medicines include both AIDS stricken areas such as Africa, as well as international organizations which aim to address the situation such as Medecins Sans Frontieres (Doctors Without Borders).

On the home front, the Free Trade Agreement currently being negotiated between the EU and India is also a concern. The Philippines does not have the capacity to produce all the medicines needed by its citizens, and is therefore highly dependent on imports. Furthermore, prices of drugs in the Philippines are among the highest in Asia, and among developing countries. This makes the availability of affordable generics imported from abroad very important to the Philippines. In fact, imported generics from India and Pakistan have proved to be highly significant in government projects which make affordable generic medicine more available to the population. Adding to the Philippines' dilemma are the facts that, one, its number of HIV/AIDS infected persons is rising, and two, resources for addressing the disease are very limited.

The trade agreement between the EU and India in particular and the impact of data exclusivity on access to medicine in general, renew the debate between Intellectual Property and Human Rights. This study examines the various components of each area of law, and ultimately comes to a conclusion as to how the competing interests that are once again clashing with each other may be reconciled, given the rights, liberties, and even lives, that are at stake.

TITLE:

DEMISTIFYING DOMINANCE: ESTABLISHING LEGAL
PARAMETERS FOR ABUSE OF DOMINANCE

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DATE:	2015
<p>ABSTRACT:</p> <p><i>It is only natural to strive to be the biggest, the best and the brightest. Instinct drives man to do anything and everything in his power to achieve these goals, including eliminating rivals who stand in his way.</i></p> <p><i>The law, however, must step in to regulate human nature. No less than the highest law of the land proscribes anti-competitive behavior. The Revised Penal Code, the Civil Code and various other sectorial regulations seek the same end. Unfortunately, these provisions have failed to effectively deter anti-competitive behavior. The wealth of the country remains concentrated in the hands of a very select few. Moreover, Philippine markets remain extremely saturated. In fact the Philippines, has the least competitive market in ASEAN (second only to Myanmar), since it continues to be dominated by corporate giants. Given this bleak situation, there is a necessity to create a comprehensive competition law to foster competition on the market.</i></p> <p><i>There is not only a practical necessity for enacting a comprehensive competition law, but a legal one as well. The Philippines may be subjected to paying compensation, or worse, to a suspension of trade concessions if it is found that the Philippines has an obligation under international law to develop a competition law by 2015. To obviate the risk at the outset, it is advisable to enact a competition law.</i></p> <p><i>If there is indeed a duty to enact a competition law by 2015, there is a particular necessity to establish a proper framework for punishing abuse of dominance, one of the main kinds of anti-competitive behavior. As mentioned, the Philippine market is dominated by a few big players. Not all of their behavior, however, can be classified as abusive. Rather, certain acts that appear abusive of dominance may serve to promote competition, rather than inhibit it. Thus, in order to avoid producing a "chilling effect" on the very behavior competition law is intended to encourage, it is necessary to clearly and carefully define dominance and the acts constituting abuse thereof. Due to the prevalence of dominant firms in the Philippine market, and the importance of carefully regulating their conduct, this paper is concerned only with abuse of dominance.</i></p> <p><i>Currently, the Philippines has an existing legal framework and sector-specific regulations to punish anti-competitive behavior. Congress has proposed several House Bills and Senate Bills on competition law that are still pending. Still, the Philippine market continues to be ruled by large corporations. Existing laws have proven ineffectual at curbing anti-competitive practices, and the Bills have failed to materialize into an actual law. What is needed is a comprehensive competition law that will clearly and definitively demystify dominance.</i></p>	

TITLE:	UNSOLICITED NOTORIETY: ESTABLISHING A FRAMEWORK IN THE APPLICATION OF THE PUBLIC FIGURE DOCTRINE TO PRIVATE INDIVIDUALS WHOSE LIVES INTERSECT WITH PUBLIC INTEREST
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DATE:	2015

ABSTRACT:

In a modern era of mass society, the right to privacy continues to be one of the most controversial and threatened human rights. Intimately associated with this right is man's right to a good name and reputation as constitutive of a person's dignity. However, as conflict arises from an ever - expanding right to freedom of expression, libel laws were established to address the need to strike a balance between the right to privacy on one hand, and the right to freedom of expression on the other. With the Philippine's adoption of the public figure doctrine from U.S. jurisprudence, public figures suing for libel are now subject to a more stringent rule of showing proof of actual malice.

The public figure doctrine in the Philippines is arguably broader than its American counterpart. For while the U S. Supreme Court follows the status-based approach in Gertz, our Supreme Court generally follows the content-based approach or the public interest test in Rosenbloom. As such, unlike in American jurisprudence, the public figure doctrine in the Philippines applies the actual malice standard to private individuals involved in an issue imbued with public interest. However, with the broad concept of "public interest" and the absence of an established definition therefore, any issue that may pique the curiosity of an ordinary citizen may come within the purview of "public interest". The problem becomes more complex in the case of public figures ex-post who become instant celebrities primarily because of the defamatory imputations that propel them to fame or notoriety. These considerations, together with the lack of standards in the application of the doctrine to private individuals involved in an issue imbued with public interest, essentially gives the Supreme Court unbridled discretion to determine whether or not an issue is infused with public interest, and consequently, whether or not the plaintiff involved is a public figure who has the burden of proving actual malice for the libel suit to prosper.

An examination of pertinent jurisprudence demonstrates that the Philippines generally follows Rosenbloom 's public interest test. However, our Supreme Court has on more than one occasion deviated from Rosenbloom and applied the status-based approach in Gertz_ Oscillating between Rosenbloom and Gertz inevitably spawned inconsistent decisions, the unfortunate result being an unlawful intrusion upon a private individual's right to privacy or an unlawful restraint upon an individual's freedom of expression. Without a clear set of guidelines, the Supreme

Court will be given much latitude in the doctrine's application to private individuals whose lives intersect with public interest. And considering the general trend of the Supreme Court, there is a higher probability to allow the public controversy to take precedence in the characterization and thereby transform any individual in its path into a public figure.

This study proposes that to strike a balance between the right to privacy and freedom of expression in light of the public figure doctrine, a legal framework must be adopted where considerations of public interest are tempered by the plaintiff's role in the public controversy. In providing working parameters in the doctrine's application to private individuals involved in an issue imbued with public interest, an examination of when a private individual may be deemed to have waived his or her right to privacy must be undertaken. After all, while public discussion on matters of public concern is without a doubt a societal interest that must be protected, equally deserving of consideration is the right to privacy of private individuals in which the state has a legitimate interest to protect. Otherwise, anyone whose life inadvertently intersects with public interest will automatically be deemed to have assumed the status of a public figure who is burdened with a limited right to privacy.