

BOOK II

PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS

Title I. — CLASSIFICATION OF PROPERTY

PRELIMINARY PROVISIONS

(1) Definition of ‘Property’ in the Civil Code

Under the Civil Code, *property*, considered as an object, is that which is, or may be, appropriated. (See Art. 414).

(2) Definition of ‘Property’ as a Subject in a Law Course

Considered as a subject or course in law, *property* is that branch of civil law which classifies and defines the different kinds of appropriable objects, provides for their acquisition and loss, and in general, treats of the nature and consequences of real rights.

[NOTE: Every right (*derecho*) has two elements — subjects (persons) and objects (properties). Since Book I of the Civil Code deals with Persons, it is logical that *Property* should be the subject matter of Book II.].

(3) ‘Thing’ Distinguished from ‘Property’

As used in the Civil Code, the word “*thing*” is apparently SYNONYMOUS with the word “*property*.” However, technically, “*thing*” is broader in scope for it includes both appropriable and non-appropriable objects. The planets, the stars, the sun for example, are “*things*” (*cosas*), but since we cannot appropriate them, they are not technically “*property*” (*bienes*). Air, in general, is merely a “*thing*,” but under certain condi-

tions, as when a portion of it is placed in a container, it may be considered as property.

[NOTE: Property involves not only material objects but also intangible things, like rights or credits.]

(4) Classification of Things

There are three kinds of things, depending on the nature of their ownership:

- (a) *res nullius* (belonging to no one)
- (b) *res communes* (belonging to everyone)
- (c) *res alicujus* (belonging to someone)

Res Nullius

These things belong to no one, and the reason is that they have not yet been appropriated, like fish still swimming in the ocean, or because they have been abandoned (*res derelictae*) by the owner with the intention of no longer owning them. Other examples include wild animals (*ferae naturae*), wild birds, and pebbles lying on the seashore.

Res Communes

While in particular no one owns common property, still in another sense, *res communes* are really owned by everybody in that their use and enjoyment are given to all of mankind. Examples would be the air we breathe, the wind, sunlight, and starlight.

Res Alicujus

These are objects, tangible or intangible, which are owned privately, either in a collective or individual capacity. And precisely because they can be owned, they really should be considered “property.” *Examples:* your book, your shares of stock, your parcel of land.

(5) Classification of Property

Properties may be classified from different viewpoints. Among the most important bases are the following:

CIVIL CODE OF THE PHILIPPINES

(a) *Mobility and non-mobility*

- 1) movable or personal property (like a car)
- 2) immovable or real property (like land)

(b) *Ownership*

- 1) public dominion or ownership (like rivers)
- 2) private dominion or ownership (like a fountain pen)

(c) *Alienability*

- 1) within the commerce of man (or which may be the objects of contracts or judicial transactions)
- 2) outside the commerce of man (like prohibited drugs)

(d) *Existence*

- 1) present property (*res existentes*)
- 2) future property (*res futurae*)

[NOTE: Both present and future property, like a harvest, may be the subject of sale but generally not the subject of a donation.]

(e) *Materiality or Immateriality*

- 1) tangible or corporeal (objects which can be seen or touched, like the paper on which is printed a P1,000 *Bangko Sentral* Note)
- 2) intangible or incorporeal (rights or credits, like the credit represented by a P1,000 *Bangko Sentral* Note)

[NOTE: The Philippine peso bills when attempted to be exported may be deemed to have been taken out of domestic circulation as legal tender, and may therefore be treated as a COMMODITY. Hence, bills carried in excess of that allowed by the *Bangko Sentral* may be forfeited under Sec. 1363(f) of the Revised Administrative Code. (*Commissioner of Customs v. Capistrano, L-11075, June 30, 1960*).]

- (f) *Dependence or Importance*
 - 1) Principal
 - 2) Accessory
- (g) *Capability of Substitution*
 - 1) fungible (capable of substitution by other things of the same quantity and quality)
 - 2) non-fungible (incapable of such substitution, hence, the identical thing must be given or returned)
- (h) *Nature or Definiteness*
 - 1) generic (one referring to a group or class)
 - 2) specific (one referring to a single, *unique object*)
- (i) *Whether in the Custody of the Court or Free*
 - 1) in *custodia legis* (in the custody of the court) — when it has been seized by an officer under a writ of attachment or under a writ of execution. (*De Leon v. Salvador, L-30871, Dec. 28, 1970*).
 - 2) “free” property (not in “*custodia legis*”).

(6) Characteristics of Property

- (a) utility for the satisfaction of moral or economic wants
- (b) susceptibility of appropriation
- (c) individuality or substantivity (*i.e.*, it can exist by itself, and not merely as a part of a whole). (Hence, the human hair becomes property only when it is detached from the owner.)

Article 414. All things which are or may be the object of appropriation are considered either:

- (1) Immovable or real property; or**
- (2) Movable or personal property.**

COMMENT:**(1) Importance of the Classification of Property Into Immovables and Movables**

The classification of property into immovables or movables does not assume its importance from the fact of mobility or non-mobility, but from the fact that different provisions of the law govern the acquisition, possession, disposition, loss, and registration of immovables and movables.

Examples:

- (a) In general, a donation of real property, like land, must be in a public instrument, otherwise the alienation will not be valid even as between the parties to the transaction. (*Art. 749*). Upon the other hand, the donation of an *Audi* automobile, worth let us say, P1.8 million, needs only to be in a private instrument. (*Art. 748*).
- (b) The ownership of real property may be acquired by *prescription* although there is bad faith, in thirty (30) years (*Art. 1137*); whereas, acquisition in bad faith of personal property needs only eight (8) years. (*Art. 1132*).
- (c) Generally, to affect *third persons*, transactions involving real property must be recorded in the Registry of Property; this is not so in the case of personal property.

(2) Incompleteness of the Classification

The classification given in Art. 414 is not complete in that there should be a third kind — the “mixed” or the “semi-immovable.” This refers to movable properties (like machines, or removable houses or transplantable trees) which under certain conditions, may be considered *immovable* by virtue of their being attached to an immovable for certain specified purposes. This clarification, however, does not affect the classification indeed of properties only into two, *immovable* or *movable*; for as has been intimated, a machine is, under other conditions, immovable. (*See 3 Manresa, pp. 9-12*).

(3) Historical Note

Under the Spanish Civil Code, immovables were referred to as *bienes inmuebles*, and movables as *bienes muebles*. Under Anglo-American law, the terms given are “real” and “personal” respectively. Inasmuch as our country has been influenced both by Spanish and Anglo-American jurisprudence, the two sets of terms have been advisedly used by the Code Commission. Incidentally, it should be remembered that it was Justinian who first classified corporeal property (*res corporales*) into immovables (*res immobiles*) and movables (*res mobiles*).

(4) Jurisprudence on the Classification

According to the Supreme Court in the case of *Standard Oil Co. of New York v. Jaranillo*, 44 Phil. 630, under certain conditions, it is undeniable that the parties to a contract may, by agreement, treat as *personal* property that which by nature would be real property. However, the true reason why the agreement would be valid between the parties is the application of *estoppel*. It stated further that it is a familiar phenomenon to see things classed as real property for purposes of taxation, which on general principles may be considered as *personal* property.

However, it would seem that under the Civil Code, it is *only* the LAW which may consider certain real property (like growing crops) as personal property (for the purpose of making a chattel mortgage). (See Art. 416, par. 2).

(5) ‘Reclassification’ Distinguished from ‘Conversion’

Reclassification is very much different from conversion — the *former* is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, or commercial — as embodied in the land use plan, subject to the requirements and procedures for land use conversion, while the *latter* is the act of changing the current use of a piece of agricultural land into some other use as approved by the Dept. of Agrarian Reform (DAR). A mere reclassification of agricultural land does not automatically allow a landowner to change its use and, thus, cause the ejection of the tenants — he has to undergo the process of conversion before he

is permitted to use the agricultural land for other purposes. (*Ludo & Luym Development Corp. v. Barretto*, 471 SCRA 391 [2005]).

The fact that a caretaker plants rice or corn on a residential lot in the middle of a residential subdivision in the heart of a metropolitan area cannot by any strained interpretation of law convert it into agricultural land and subject to the agrarian reform program. At any rate, court proceedings are indispensable where the classification/conversion of a landholding in duly-determined before ejectment can be effected, which, in turn, paves the way for the payment of disturbance compensation. (*Ibid.*).

(6) The Human Body

Is the human body real or personal property? It is submitted that the human body, whether alive, or dead, is neither real nor personal property, for it is *not even property* at all, in that it generally cannot be appropriated. It is indeed a *thing* or a *being*, for it exists; in fact, it is a tangible or corporeal being or thing, as distinguished from the human soul, which is necessarily intangible or incorporeal.

While a human being is alive, he cannot, as such, be the object of a contract, for he is considered outside the commerce of man. He may, of course, offer to another the use of various parts of his body, even the entire body itself in obligations requiring demonstration of strength or posing in several ways, as when he poses for a painter or sculptor. He may donate part of his blood, may even sell part of his hair, but he cannot sell his body.

(7) Organ Donation Act

The “Organ Donation Act of 1991,” otherwise known as RA 7170, as amended, was effective on Feb. 24, 1992, upon its publication in the *Official Gazette*.

The law’s complete title is “An Act Authorizing the Legacy or Donation of All or Part of a Human Body After Death for Specified Purposes.” This means that all or part of a human body may only occur after a person’s “death” (*i.e.*, the irre-

versible cessation of circulatory and respiratory functions or the irreversible cessation of all functions of the entire brain, including the brain system. (*Sec. 2[j], RA 7170, as amended*).

Person Who May Execute a Legacy

Said person may be “[a]ny individual, at least 18 years of age and of sound mind may give by way of legacy, to take effect after his/her death, all or part of his/her body for any specified purpose.” (*Sec. 3 read together with Sec. 6, Ibid.*).

Who may Execute a Donation?

Any of the following persons, in the order of priority stated hereunder, in the absence of any actual notice of contrary intentions by the decedent or actual notice of opposition by a member of the immediate family of the decedent (that includes a still-born infant or fetus (*Sec. 2[b], id.*), may donate all or any part of the decedent’s body for any purpose specified, thus:

1. spouse;
2. son or daughter of legal age;
3. either parent;
4. brother or sister of legal age; or
5. guardian over the person of the decedent at the time of his death. (*Sec. 4[a][1-5], id.*).

[*NOTE*: The persons authorized may make the donation after or immediately before death. (*Sec. 4{b}, id.*)].

Manner of Executing a Legacy

Such may be made by a will, and with said legacy only become effective upon a testator’s death without waiting for probate of the will. Now, if the will is not probated, or if it is declared invalid for testamentary purposes, the legacy, to the extent that it was executed in good faith, is nevertheless valid and effective. (*Sec. 8[a], id.*).

A legacy of all or part of the human body may also be made in any document other than a will. The legacy becomes

effective upon the death of the testator and shall be respected by and binding upon the testator's:

1. executor;
2. administrator;
3. heirs;
4. assign;
5. successors-in-interest
6. all members of the family. (*Sec. 8[b], ibid.*)

The document, which may be a card or any paper designed to be carried on a person, must be signed by the testator in the presence of two witnesses who must sign the document in his presence. (*Sec. 8[b], id.*) As a general rule, the legacy may be made to a specified legatee or without specifying a legatee. (*See Sec. 8[c], id.*) Also as a general rule, the testator may designate in his will, card or other document, the surgeon or physician who will carry out the appropriate procedures. (*See Sec. 8[d], id.*)

International Sharing of Human Organs or Tissues

Such “shall be made only thru exchange programs duly-approved by the Dept. of Health. This is provided that foreign organ or tissue ‘bank storage facilities’ and similar establishments grant reciprocal rights to their Philippine counterparts to draw human organs or tissues at any time.” (*Sec. 14, id.*) “Organ bank storage facility” refers to a facility licensed, accredited, or approved under the law for storage of human bodies or parts thereof. (*Sec. 2[a], id.*)

Rules and Regulations

It is the Sec. of Health who “shall endeavor to persuade *all* health professionals, both government and private, to make an appeal for human organ donation” (*Sec. 15[2nd par.], id.*), *e.g.*, kidney (See Adm. Order 41, s. 2003, Organ Donation Program [14 NAR 3, p. 1409], re Kidney Transplantation [14 NAR, p. 314] — “shall promulgate rules and regulations as may be necessary or proper to[wards] [the] implement[ation] [of] this Act.” (*Sec. 16, id.*).

(8) Any Right in the Nature of Property Less than Title**PNB v. CA
82 SCAD 472 (1997)**

The term “interests” is broader and more comprehensive than the word “title” and its definition in a narrow sense by lexicographers as any right in the nature of property less than title, indicates that the terms are not considered synonymous. It is practically synonymous, however, with the word “estate” which is the totality of interest which a person has from *absolute ownership* down to *naked possession*.

An “interest in land” is the legal concern of a person in the thing or property, or in the right to some of the benefits or uses from which the property is inseparable.

Chapter 1

IMMOVABLE PROPERTY

Art. 415. The following are immovable property:

(1) Land, buildings, roads and constructions of all kinds adhered to the soil;

(2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;

(3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;

(4) Statues, reliefs, paintings, or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;

(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;

(6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;

(7) Fertilizer actually used on a piece of land;

(8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;

(9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;

(10) Contracts for public works, and servitudes and other real rights over immovable property.

COMMENT:

(1) Definition of ‘Immovable Property’

The law does not define what properties are immovable; they are merely enumerated. While it is true that the dictionary defines immovable property as that which is firmly fixed, settled, or fastened, and while in general, immovable property is that which is fixed in a definite place, still there are many exceptions to this general criterion. The etymological meaning should, therefore, yield to the legal or juridical significance attached to the term by the law. (*See 3 Manresa 18*). As a matter of fact, the enumeration given in Art. 415 does not give an *absolute* criterion as to which properties are real, and which are personal. (*See Standard Oil Co. of New York v. Jaranillo, 44 Phil. 630*).

(2) Academic Classification of Real Properties

- (a) Real property by *nature* (like trees and plants)
- (b) Real property by *incorporation* (like a building)
- (c) Real property by *destination* or *purpose* (like machinery placed by the owner of a tenement on it for direct use in an industry to be carried on therein)
- (d) Real property by *analogy* (like the right of usufruct, or a contract for public works, or easements and servitudes, or “sugar quotas” under Republic Act 1825 and Executive Order 873. (*Presbitero v. Fernandez, L-19527, Mar. 30, 1963*).

(3) Paragraph 1: ‘Land, buildings, roads, and constructions of all kinds adhered to the soil.’

- (a) *Land* is the best example of immovable property. It is immovable by its very nature. And even if land is moved by an earthquake, an extraordinary happening, the land should still be considered immovable. A shovelful of land however, should be considered personal property, since this no longer adheres to the soil. If land is rented, it is still immovable.
- (b) *Buildings* are considered immovable provided they are more or less of a permanent structure, substantially adhering to the land, and not mere superimpositions on the land like *barong-barongs* or quonset fixtures and provided there is the intent of permanent annexation. (*See Salmond, Jurisprudence, p. 449*). Note that the law uses the term “adhered” and not “superimposed.” (*See Luna v. Encarnacion, et al., 91 Phil. 531*). And this is true, whether the building is built on one’s own land, or on rented land. The reason is clear: the law on this point does not distinguish as to who built or owns the building. (*See Ladera v. Hodges, CA, 48 O.G. 5374*). It is obvious that the inclusion of “building,” separate and distinct from the land, in Art. 415, can only mean that a building is by itself an immovable property. (*Lopez v. Oroso, Jr., et al., L-10817-18, Feb. 28, 1958; Assoc., Inc. and Surety Co., Inc. v. Iya, et al., L-10837-38, May 30, 1958*). Therefore, the general rule is that mortgage on a building is a real estate mortgage, and not a mortgage on a chattel (personal property) or a chattel mortgage. Indeed, the *nature* of the building as real property does not depend on the way the parties deal with it. (*Leung Yee v. Strong Machinery Co., 37 Phil. 644; Ladera v. Hodges, [CA] 48 O.G. 5374*). A dismantled house and/or materials of such house should be regarded as personal properties. (*See Biscerra, et al. v. Teneza, et al., L-16218, Nov. 29, 1962*).

**Leung Yee v. Strong Machinery Co.
37 Phil. 644**

FACTS: The “Compania Agricola Filipina” purchased from “Strong Machinery Co.” rice-cleaning machines which

the former installed in one of its buildings. As security for the purchase price, the buyer executed a CHATTEL MORTGAGE on the *machines* and the *building* on which they had been installed. Upon buyer's failure to pay, the registered mortgage was foreclosed, and the building was purchased by the seller, the "Strong Machinery Co." This sale was annotated in the Chattel Mortgage Registry. Later, the "Agricola" also sold to "Strong Machinery" the lot on which the building had been constructed. This sale was not registered in the Registry of Property BUT the Machinery Co. took possession of the building and the lot. *Previously however*, the same building had been purchased at a sheriff's sale by Leung Yee, a creditor of "Agricola," although Leung Yee knew all the time of the prior sale in favor of "Strong Machinery." This sale in favor of Leung Yee was recorded in the Registry. Leung Yee now sues to recover the property from "Strong Machinery." *Issue*: who has a better right to the property?

HELD: The building is *real property*, therefore, its sale as annotated in the Chattel Mortgage Registry *cannot* be given the legal effect of registration in the Registry of Real Property. The mere fact that the parties decided to deal with the building as personal property does not change its character as real property. Thus, neither the original registry in the chattel mortgage registry, nor the annotation in said registry of the sale of the mortgaged property had any effect on the building. However, since the land and the building had first been purchased by "Strong Machinery" (ahead of Leung Yee), and this fact was known to Leung Yee, it follows that Leung Yee was *not* a purchaser in good faith, and should therefore *not* be entitled to the property. "Strong Machinery" thus has a better right to the property.

Prudential Bank v. Panis
GR 50008, Aug. 31, 1988

In the enumeration of properties under Article 415, the inclusion of "building" separate and distinct from the land, in said provision of law, can only mean that a building is by itself an immovable property.

While a mortgage of land necessarily includes, in the absence of stipulation of the improvements thereon, buildings, still a building by itself may be mortgaged apart from the land on which it has been built. Such a mortgage would still be a real estate mortgage for the building would still be considered immovable property even if dealt with separately and apart from the land.

Possessory rights, thus, over buildings before title is vested on the grantee may be validly transferred or conveyed as in a deed of mortgage.

- (c) *May a house built on rented land be the object of a mortgage?*

ANS.: Yes, in a real mortgage (real estate mortgage). It may even be the subject of a chattel mortgage provided two conditions are present; namely, that the parties to the contract so agree, and that no innocent third party will be prejudiced. Thus, if a *chattel mortgage*, duly registered, is made on a building, and subsequently a *real mortgage* is made on the land and the building, it is the *real mortgage*, not the chattel mortgage which should be preferred. This is particularly true with respect to third persons. Moreover, insofar as execution proceedings are considered, the house would be considered real property. (*See Evangelista v. Abad*, 36 O.G. 2913 [CA]; *Tomines v. San Juan*, [CA] 45 O.G. 2935; *Navarro v. Pineda*, L-18456, Nov. 30, 1963). This is really because one who has so agreed is estopped from denying the existence of the chattel mortgage. However, even if so stipulated as personal property, still for purposes of sale at a public auction (particularly regarding notice by publication) under Rule 39, Sec. 15 of the Rules of Court on execution sales, the house should be considered real property. (*Manalang, et al. v. Ofilada*, L-8133, May 18, 1956). Moreover, a building subjected to a chattel mortgage, cannot be sold extra-judicially under the provisions of Act 3135 since said Act refers only to real estate mortgages. (*Luna v. Encarnacion, et al.*, 91 Phil. 531).

- (d) *Building Mortgaged Separately from the Land on Which It Has Been Built*

While it is true that a mortgage of land necessarily includes, in the absence of stipulation, the improvements thereon, including buildings, still a building by itself may be mortgaged *apart* from the land on which it has been built. Such a mortgage would still be a real estate mortgage for the building would still be considered immovable property even if dealt with separately and apart from the land. (*Leung Yee v. Strong Machinery Co.*, 37 Phil. 644). In case such a building is made the subject of a *chattel* mortgage, and the mortgage is registered in the chattel mortgage registry, the mortgage would still be void insofar as third persons are concerned. (*Leung Yee v. Strong Machinery Co.*, 37 Phil. 644; *Evangelista v. Alto Surety and Ins., Co., Inc.*, L-11139, Apr. 23, 1958).

[NOTE: There is no legal compulsion to register (to serve as notice to third persons), transactions over buildings that do *not* belong to the owners of the lands on which they stand. There is NO registry in this jurisdiction of buildings apart from the land. (*Manalansan v. Manalang, et al.*, L-13646, July 26, 1960).]

(e) *Sale or Mortgage of a Building which Would Be the Object of Immediate Demolition*

A building that is sold or mortgaged and which would immediately be demolished may be considered personal property and the sale or mortgage thereof would be a sale of chattel, or a chattel mortgage respectively, for the true object of the contract would be the materials thereof. (3 *Manresa*, 6th Ed., p. 19, See also *Bicerra, et al. v. Teneza, et al.*, L-16218, Nov. 29, 1962).

Bicerra, et al. v. Teneza, et al.
L-16218, Nov. 29, 1962

FACTS: A complaint was filed in the Court of First Instance (now Regional Trial Court) alleging that the defendants had forcibly demolished the house of the plaintiffs worth P200. The plaintiffs asked for damages or for a declaration that the materials belong to them. *Issue:* Does the CFI (now RTC) have jurisdiction?

HELD: No, because no real property is being sued upon, the house having ceased to exist, and the amount of damages sought does not exceed the jurisdictional amount in inferior courts. While it is true that the complaint also seeks that the plaintiffs be declared the owners of the dismantled house or the materials, such does not in any way constitute the relief itself, but is only incidental to the real cause of action — which concerns the recovery of damages.

(f) *Ministerial Duty of the Registrar of Property*

When parties present to the registrar of property a document of chattel mortgage, the registrar must record it as such even if in his opinion, the object of the contract is *real* property. This is because his duties in respect to the registration of chattel mortgages are of a purely ministerial character, as long as the proper fee has been paid. Thus in one case, the tenant executed a deed of chattel mortgage on the building she had built on the land she was renting. The court held that the registrar has the ministerial duty to record the chattel mortgage since he is not empowered to determine the nature of any document of which registration is sought as a chattel mortgage. (*Standard Oil Co. v. Jaranillo, 44 Phil. 631*).

Standard Oil Co. v. Jaranillo
44 Phil. 631

FACTS: De la Rosa, who was renting a parcel of land in Manila, constructed a building of strong materials thereon, which she conveyed to plaintiff by way of *chattel mortgage*. When the mortgagee was presenting the deed to the Register of Deeds of Manila for registration in the Chattel Mortgage Registry, the Registrar refused to allow the registration on the ground that the building was a real property, not personal property, and therefore could not be the subject of a valid chattel mortgage. *Issue:* May the deed be registered in the chattel mortgage registry?

HELD: Yes, because the Registrar's duty is MINISTERIAL in character. There is no legal provision con-

ferring upon him any judicial or quasi-judicial power to determine the nature of the document presented before him. He should therefore accept the legal fees being tendered, and place the document on record.

Toledo-Banaga v. CA
102 SCAD 906, 302 SCRA 331 (1999)

It is a ministerial function of the Register of Deeds to comply with the decision of the court to issue a title and register a property in the name of a certain person, especially when the decision had attained finality.

(g) *Constructions of All Kinds*

Though the law says “constructions of *all kinds* adhered to the soil,” it is understood that the attachment must be more or less permanent. (*3 Manresa 18*). A wall or a fence would be a good example of this kind of real property by *incorporation*. This is true even if the fence or wall is built only of stones as long as there is an intent to *permanently annex the same*. Even railroad tracks or rails would come under this category, for although they are not exactly roads, they are certainly “constructions.” Note, however, that wooden scaffoldings on which painters stand while painting the walls of a house are merely *personal property* in view of the lack of “adherence” to the soil.

(4) Paragraph 2: ‘Trees, plants and growing crops, while they are attached to the land or form an integral part of an immovable.’

(a) *Trees and Plants*

No matter what their size may be, trees and plants are considered real property, by *nature* if they are the spontaneous products of the soil, and by *incorporation*, if they were planted thru labor. But the moment they are detached or uprooted from the land, they become personal property, except in the case of uprooted timber, if the land is timber land. This is because, although no longer attached, the timber still forms an “integral part” of the timber land

— immovable. (*See 3 Manresa 22*). Indeed, trees blown by a typhoon still remain part of the land upon which they rest, and should be considered real property. (*See Walsh, The Law on Property, pp. 9-10*).

(b) *Registration of Land Containing Trees and Plants*

A filed registration proceedings for a parcel of land. The land contained trees and plants still annexed to the soil. If *A* succeeds in having the land registered under his name, will he also be considered the owner of the trees and plants?

HELD: Yes, trees and plants annexed to the land are parts thereof, and unless rights or interests in such trees or plants are claimed in the registration proceedings by others, they become the property of the person to whom the land is adjudicated. (*Lavarro v. Labitoria, 54 Phil. 788*).

(c) *Growing Crops on One's Own Land*

Growing crops, by express codal provisions, are considered real property by incorporation. Moreover, under the Rules of Court, growing crops are attached in the same way as real property. (*Rule 57, Sec. 7*). However, under the chattel mortgage law, growing crops may be considered as personal property, and may thus be the subject of a chattel mortgage. (*See Sibal v. Valdez, 50 Phil. 512*). Moreover, a sale of growing crops should be considered a sale of personal property. (*3 Manresa 22*). This is because when the crops are sold, it is understood that they are to be gathered. A harvest may indeed be classed as a sale of future or hereafter-acquired property. However, in a Court of Appeals case, it was held that coconut trees remain real property even if sold separate and apart from the land on which they grow — as long as the trees are *still attached* to the land or form an integral part thereof. (*Geguillana v. Buenaventura, et al., [CA] GR 3861-R, Jan. 31, 1951*).

(d) *Growing Crops on Another's Land*

Inasmuch as the law makes no distinction, growing crops whether on one's land or on another's, as in the

case of a usufructuary, a possessor or a tenant, should be considered real property. (3 *Manresa* 22). The important thing is for them to be still attached to the land. On the other hand, once they have been severed, they become personal property, even if left still scattered or lying about the land.

(e) *Synonyms*

“Growing crops” are sometimes referred to as “standing crops” or “ungathered fruits” or “growing fruits.”

(5) Paragraph 3: ‘Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object.’

[NOTE: Under this paragraph, for the incorporated thing to be considered real property, the injury or breakage or deterioration in case of separation, must be SUBSTANTIAL.]

[NOTE: In Roman Law, things included in paragraph 3 were called *res vinta*.]

- (a) *Examples:* A fixed fire escape stairway firmly embedded in the walls of a house, an aqueduct, or a sewer, or a well.
- (b) *Par. 3 Distinguished from Par. 4:*

Par. 3	Par. 4
(1) <i>cannot</i> be separated from immovable without breaking or deterioration	(1) can be separated from immovable without breaking or deterioration
(2) need not be placed by the owner. (<i>Ladera v. Hodges, CA, 48 O.G. 5374</i>).	(2) must be placed by the owner, or by his agent, express or implied
(3) real property by incorporation	(3) real property by incorporation and destination

- (c) *Query*: Suppose the properties referred to in paragraph 3 are temporarily removed, but there is an intention to replace them, should they be considered real or personal property?

ANS.: It is believed that they should be regarded as personal property inasmuch as the “incorporation” has ceased. The Partidas contained an express provision making said property real, but in view of the elimination in the Code of said provision, we may say that same should no longer apply, despite a contrary opinion expressed by a member of the Code Commission. (*Capis-trano, 1 Civil Code, p. 338*).

(6) Paragraph 4: ‘Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on land by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements.’

- (a) *Examples*: A fixed statue in the garden of a house, a permanent painting on the ceiling, a picture embedded in the concrete walls of a house, a rug or carpet fastened to the floor, as in the case of wall to wall carpeting.

[*NOTE*: A PC or a picture hanging on the wall should be considered chattel.].

- (b) *Placing by the Owner*

The objects must be placed by the owner of the immovable (buildings or lands) and not necessarily by the owner of the object. Of course, the owner of the building or land may act thru his agent, or if he be insane, thru his duly appointed guardian. (*See Valdez v. Altagracia, 225 U.S. 58*). If placed by a mere tenant, the objects must remain chattels or personalty for the purposes of the Chattel Mortgage Law. (*Davao Sawmill v. Castillo, 61 Phil. 709*).

- (c) *BAR*

If during the construction of my house, I request my neighbor to keep in the meantime a painting (*with*

frame) which I own and my friend attaches said painting on his own wall, should the painting be regarded as real or personal property?

ANS.: Personal, in view of the *lack* of intent to attach permanently in my neighbor's house. Note the word "permanently" in paragraph No. 4.

(7) Paragraph 5: 'Machinery, receptacles, instruments, or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works.'

(a) *Essential Requisites*

- 1) The placing must be made by the owner of the tenement, his agent, or duly authorized legal representative.
- 2) The industry or works must be carried on in the building or on the land. A transportation business is not carried on in a building or in the compound. (*Mindanao Bus Co. v. City Assessor, L-17870, Sep. 29, 1962*).
- 3) The machines, etc., must tend directly to meet the needs of said industry or works. (*ADAPTABILITY*).
- 4) The machines must be essential and principal elements in the industry, and not merely incidental. [Thus, cash registers, typewriters, calculators, computers, fax machines, etc., usually found and used in hotels, restaurants, theaters, etc. are *merely incidentals*, and not and should not be considered immobilized by destination, for these businesses can continue or carry on their functions without these equipments. The same applies to the repair or service shop of the transportation business because the vehicles may be repaired or serviced in another shop belonging to another. On the other hand, machineries of breweries used in the manufacture of liquor and soft drinks, though movable by

nature, are immobilized because they are essential to said industries; but the delivery trucks and adding machines which they usually own and use and are found within their industrial compounds are merely incidentals and retain their movable nature. (*Mindanao Bus Co. v. City Assessor and Treasurer, L-17870, Sep. 29, 1962*).

- (b) *Paragraph 5 refers to real property by destination or purpose*
- (c) *Effect of Separation*

If the machine is still in the building, but is no longer used in the industry conducted therein, the machine reverts to the condition of a chattel. Upon the other hand, if still needed for the industry, but separated from the tenement temporarily, the property continues to be immovable, inasmuch as paragraph 5 refers, not to real property by incorporation, but to real property by destination or purpose.

- (d) *Examples of the machinery, receptacles, instruments, implements.*
 - 1) Machines placed in a sugar central (and therefore, if the central has already been the subject of a real estate mortgage, the machines become subject also to such mortgage). (*Berkenkotter v. Cu Unjieng, 61 Phil. 663*).
 - 2) Machines attached to concrete foundations of buildings in a fixed manner such that they cannot be separated therefrom without unbolting the same and cutting some of their wooden supports. (*Machinery v. Pecson, L-7057, Oct. 29, 1954*).
- (e) *Cases*

Davao Sawmill Co. v. Castillo
61 Phil. 709

FACTS: A tenant placed machines for use in a sawmill on the land of the landlord. Is the machinery real or personal?

HELD: As a rule, the machinery should be considered as personal, since it was not placed on the land by the owner of said land. Immobilization by destination or purpose cannot generally be made by a person whose possession of the property is only TEMPORARY, otherwise we will be forced to presume that he intended to give the property permanently away in favor of the owner of the premises.

Valdez v. Central Altagracia, Inc.
225 U.S. 58

FACTS: Suppose in the first case, the tenant had promised to give the machinery later to the owner of the land; or suppose the tenant acted only as the *agent* of the owner of the land, would the machinery be considered real or personal?

HELD: The machinery would be considered as real property in both instances. "Machinery placed on property by a tenant does not become immobilized: when however, a tenant places it there pursuant to a contract that it shall belong to the owner, it becomes immobilized as to that tenant and his assigns having notice, although it does not become so as to the creditors not having legal notice of the lease." "Machinery which is movable in its nature becomes immobilized when placed in a plant by the owner of the property or plant, but not when so placed by a tenant, a usufructuary, or a person having only a temporary right, unless such person acted as the agent of the owner." (*Davao Sawmill Co., Inc. v. Castillo, supra*).

B.H. Berkenkotter v. Cu Unjieng
61 Phil. 663

FACTS: The Mabalacat Sugar Company borrowed from the defendant a sum of money, mortgaging as security two lots together with all its buildings and improvements. Later, to increase its productive capacity, the Company purchased additional machines and a new sugar mill which were needed for the sugar industry. *Issue:* Are the additional machines also considered mortgaged?

HELD: The mortgage of a parcel of land generally includes all future improvements that may be found on said parcel. These improvements include *real properties*, like the additional machines and sugar mill purchased. Said additional machinery are real properties because they are essential and principal elements of the sugar central. Without them, the sugar central would be unable to carry out its industrial purpose.

(f) *BAR QUESTION*

- 1) When is machinery attached to land or a tenement considered immovable? [*ANS.: Par. 5, Art. 415*].
- 2) Give the exception. [*ANS.: When placed on the land or tenement by a tenant.*] (*Davao Sawmill v. Castillo, supra*).
- 3) Give the *exception to the exception*. [*ANS.: when the tenant had promised to leave the machinery on the tenement at the end of the lease, or when he acted only as agent of the owner of the land.*] (*Valdez v. Central, supra*).

Ago v. Court of Appeals, et al.
L-17898, Oct. 31, 1962

Sawmill machineries and equipment installed in a sawmill for use in the sawing of logs, a process carried on in said building, become *real properties*, and if they are judicially sold on execution without the necessary advertisement of sale by publication in a newspaper as required in Section 16 of Rule 39 of the Rules of Court, the sale made by the sheriff would be null and void.

People's Bank and Trust Co.
v. Dahican Lumber Co.
L-17500, May 16, 1967

FACTS: Several parcels of land were the objects of a real estate mortgage. The mortgage deed also stated that

the mortgage included essential after-acquired properties such as machinery, fixtures, tools, and equipment. The real mortgage was then registered as such in the Registry of Deeds. *Issue*: Should the deed also be registered in the *chattel mortgage* registry insofar as it covered the after-acquired machinery, fixtures, tools and equipment?

HELD: No more, since the after-acquired properties had been *immobilized by destination* (they were used in the development of the lumber concession).

[*NOTE*: Please observe that in this case, the parties to the real mortgage had treated the after-acquired properties as *real properties* by agreeing that they would be automatically subject to the lien of the real estate mortgage executed by them. In the *Davao Sawmill Co. v. Castillo* (61 Phil. 709) case, the parties had treated after-acquired properties, including the machines, as *personal property by executing chattel mortgages* thereon. Hence, this *Davao Sawmill* case cannot apply to the instant case.]

Board of Assessment Appeals, Q.C. v. Meralco
10 SCRA 68

ISSUE: Are the steel towers or poles of the MERALCO considered real or personal properties?

HELD: They are personal (not real) properties. Be it noted that:

- (a) they do not come under Par. 1 of Art. 415 because they are neither buildings or constructions adhered to the soil;
- (b) they do not come under Par. 3 because they are not attached to an immovable in a fixed manner, that is, they can be separated without breaking the material or causing deterioration of the object to which they are attached;
- (c) they do not come under Par. 5 because they are not machineries, receptacles, or instruments, but even

if they are, they are not intended for an industry to be carried on in the premises.

(8) Paragraph 6: ‘Animal houses, pigeon-houses, beehives, fishponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included.’

(a) *Non-necessity for this Paragraph insofar as “Houses” are Concerned*

The “houses” referred to here may already be deemed included in paragraph 1 when speaking of “constructions of all kinds adhered to the soil.” (*See 3 Manresa 31*).

(b) *The Animals Inside*

Inasmuch as there used to be doubts before as to whether or not the animals in the “houses” are included as real property, the Code Commission decided to eliminate confusion on the matter. (*See 1 Capistrano, pp. 338-339*).

(c) *Suppose the Animals are Temporarily Outside*

It is submitted that even if the animals are temporarily outside, they may still be considered as “real property,” as long as the intent to return is present, as in the case of a homing pigeon. But from the point of view of criminal law, they must be considered as personal property, and may properly be the object of theft or robbery.

(d) *Alienation of the Animals*

When the animals inside the permanent animal houses are alienated onerously or gratuitously, it is believed that the transaction is an alienation of personal property, unless the building or the tenement is itself also alienated. This is because in said alienation, the animal structures must of necessity be detached from the immovable. Hence, an ordinary *inter vivos* donation of a pigeon-house need not be in a public instrument.

(e) *Temporary Structures of Cages*

A temporary bird cage easily removable, or which may be carried from place to place, is a *chattel*. The birds inside are also chattel.

(9) Paragraph 7: ‘Fertilizer actually used on a piece of land.’

Fertilizers still in the barn and even those already on the ground but wrapped inside some newspapers or any other covering are still to be considered personal property, for they have not yet been “actually” used or spread over the land.

(10) Paragraph 8: ‘Mines, quarries, and slag dumps while the matter thereof forms part of the bed, and waters, either running or stagnant.’

(a) Mines, including the minerals still attached thereto, are real properties, but when the minerals have been extracted, the latter become chattels. (*See 40 C.J., pp. 903-904*).

(b) “*Slag dump*” is the dirt and soil taken from a mine and piled upon the surface of the ground. Inside the “dump” can be found the minerals. (*Nordstrom v. Sivertson-Johnson Min., etc. Co., 5 Alaska 204*).

(c) The “*waters*” referred to are those still attached to or running thru the soil or ground. But “water” itself as distinguished from “waters,” is clearly personal property. Upon the other hand, canals, rivers, lakes, and such part of the sea as may be the object of appropriation, are classified as real property.

(11) Paragraph 9: ‘Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, or coast.’(a) *Floating House*

A floating house tied to a shore or bank post and used as a residence is considered real property, consider-

ing that the “waters” on which it floats, are considered immovables. In a way, we may say that the classification of the accessory (the floating house) follows the classification of the principal (the waters). However, if the floating house makes it a point to journey from place to place, it assumes the category of a vessel.

(b) *Vessels*

- 1) Vessels are considered *personal property*. As a matter of fact, they are indeed very movable. (*See Philippine Refining Co., Inc. v. Jarque, 61 Phil. 229*).
- 2) Because they are personal property, they may be the subject of a chattel mortgage. (*McMicking v. Banco Español-Filipino, 13 Phil. 429; Arroyo v. Yu de Sane, 54 Phil. 7*). However, a chattel mortgage on a vessel should be registered not in the Registry of Deeds or Property, but in the record of the Collector of Customs at the Port of Entry. (*Rubiso and Gelito v. Rivera, 37 Phil. 72; Arroyo v. Yu de Sane, 54 Phil. 7*). In all other respects, however, a chattel mortgage on a vessel is generally like other chattel mortgages as to its requisites and validity. (*Phil. Refining Co., Inc. v. Jarque, 61 Phil. 229*).

NOTE: A chattel mortgage on a car in order to affect third persons should not only be registered in the Chattel Mortgage Registry but also in the Motor Vehicles Office. (*Aleman, et al. v. De Catera, et al., L-13693-94, Mar. 25, 1961*).

- 3) Although vessels are personal property, they *partake* to a certain extent of the nature and conditions of *real property* because of their value and importance in the world of commerce. Hence, the rule in the Civil Code with reference to acquisition of rights over immovable property (particularly the rules on double sale) can be applied to vessels. (This is specially so since the rules in the Civil Code, Art. 1544, on a double sale of realty are repeated in the Code of Commerce.) Hence, priority of registration by a purchaser in good faith will give him a better

right than one who registers his right subsequently. (*Rubiso v. Rivera, 37 Phil. 72*). This is true whether the ships or vessels be moved by steam or by sail. (*Rubiso v. Rivera, supra*).

(c) *BAR*

Is the steamship President Cleveland personal or real property?

ANS.: It can be moved from place to place, hence, it is *personal* property, although it PARTAKES THE NATURE of *real property* in view of its importance in the world of commerce.

(12) Paragraph 10: ‘Contracts for public works, and servitudes and other real rights over immovable property.’

(a) *Compared with the Old Law*

Under the old Civil Code, the words “administrative concessions for public works” were used instead of “contracts for public works.”

(b) *Rights*

The properties referred to in paragraph 10 are *not material things* but *rights*, which are necessarily intangible. (*See 3 Manresa 11*). The piece of paper on which the contract for public works has been written is necessarily personal property, but the contract itself, or rather, the right to the contract, is *real property*. A servitude or easement is an encumbrance imposed on an immovable for the benefit of another immovable belonging to another owner, or for the benefit of a person, group of persons, or a community (like the easement of right of way). (*Arts. 613-614*). Other real rights over real property include real mortgage (*see Hongkong and Shanghai Bank v. Aldecoa and Co., 30 Phil. 255*), antichresis, possessory retention, usufruct and leases of real property, when the leases have been registered in the Registry of Property; or even if not registered, if their duration is for more than a year.

Upon the other hand, the usufruct of personal property or a lease of personal property, should be considered personal property.

Presbitero v. Fernandez
L-19527, Mar. 30, 1963

ISSUE: Are “sugar quotas” real or personal property?

HELD: They are real property, for they are by law considered “real rights over immovable property” just like servitudes and easements. (*See Art. 415, No. 10*). EO 873 regards them as “improvements” attached, though not physically, to the land.

(c) *Real Property by Analogy*

It should be noted that the properties or rights referred to in paragraph 10 are considered real property by analogy, inasmuch as, although they are not material, they nevertheless partake of the essential characteristics of immovable property.

(d) *Old Real Rights Eliminated*

The real right of use and *habitation*, Arts. 523-529 of the old Civil Code, and the real right of *censo* (ground rents), Arts. 1604-1664 of the old Civil Code, have been *eliminated* in the new Civil Code, because according to the Code Commission, they have *never* been referred to in Philippine contracts or wills.

Chapter 2

MOVABLE PROPERTY

Art. 416. The following things are deemed to be personal property:

(1) Those movables susceptible of appropriation which are not included in the preceding article;

(2) Real property which by any special provision of law is considered as personalty;

(3) Forces of nature which are brought under control by science; and

(4) In general, all things which can be transported from place to place without impairment of the real property to which they are fixed.

COMMENT:

(1) Examples of the Various Kinds of Personal Property

For Paragraph 1 — a fountain pen; a piano; animals.

For Paragraph 2 — growing crops for the purposes of the Chattel Mortgage Law (*Sibal v. Valdez, 50 Phil. 512*); machinery placed on a tenement by a tenant who did not act as the agent of the tenement owner. (*Davao Sawmill v. Castillo, 61 Phil. 709*).

For Paragraph 3 — electricity, gas, light, nitrogen. (*See U.S. v. Carlos, 21 Phil. 543*).

For Paragraph 4 — machinery not attached to land nor needed for the carrying on of an industry conducted therein; portable radio; a laptop computer; a diploma hanging on the wall.

(2) Cases**Sibal v. Valdez
50 Phil. 512**

FACTS: In a case brought by plaintiff against defendant, the latter won. For the purpose of satisfying the judgment won by the defendant, the sheriff attached the sugar cane that was then growing on the lots of the plaintiff. Said lots incidentally had already been previously attached by another judgment creditor of the plaintiff. Within the one-year period given by law for redemption, the plaintiff wanted to redeem the lots from one creditor, and the sugar cane from the other creditor. The lots were redeemed, the redemption of the sugar cane was however refused by the defendant, who contended that the sugar cane was personal property, and therefore could not be the subject of the legal redemption sought to be enforced. The plaintiff upon the other hand claimed that the sugar cane was real property for same could be considered as “growing fruits” under par. 2 of Art. 415. *Issue:* How should the sugar cane be regarded — as real property or as personal property?

HELD: The sugar cane, although considered as “growing fruits” and therefore ordinarily real property under Par. 2 of Art. 415 of the Civil Code, must be regarded as PERSONAL PROPERTY for purposes of the Chattel Mortgage Law, and also for purposes of attachment, because as ruled by the Louisiana Supreme Court, the right to the growing crops *mobilizes* (makes *personal*, as contradistinguished from immobilization) the crops by ANTICIPATION. More specifically, it said that the existence of a right on the growing crop is a *mobilization by anticipation, a gathering as it were, in advance*, rendering the crop movable. (*See Lumber Co. v. Sheriff, 106 La. 418*).

**U.S. v. Carlos
21 Phil. 543**

FACTS: The defendant used a “jumper” and was thus able to divert the flow of electricity, causing loss to the Meralco of over 2000 kilowatts of current. Accused of theft, his defense was that electricity was an unknown force, not a fluid, and being intangible, could *not* be the object of theft.

HELD: While electric current is not a fluid, still its manifestations and effects like those of gas may be seen and felt. The true test of what may be stolen is not whether it is corporeal or incorporeal, but whether, being possessed of value, a person other than the owner, may appropriate the same. Electricity, like gas, is a valuable merchandise, and may thus be stolen. (*See also U.S. v. Tambunting, 41 Phil. 364.*)

Involuntary Insolvency of Stochecker v. Ramirez
44 Phil. 933

A half-interest in a drugstore business, being capable of appropriation, but not included in the enumeration of real properties under Art. 415, should be considered personal property, and may thus be the subject of a chattel mortgage.

(3) Three Tests to Determine whether Property Is Movable or Immovable

Manresa mentions three tests:

- (a) If the property is capable of being carried from place to place (test by *description*);
- (b) If such change in location can be made without injuring the real property to which it may in the meantime be attached (test by *description*); and
- (c) If finally, the object is not one of those enumerated or included in Art. 415 (test by *exclusion*).

Then the inevitable conclusion is that the property is personal property. (*3 Manresa 46-47*).

[NOTE: Test by exclusion is *superior* to the test by *description*.]

(4) Other Incorporeal Movables

A patent, a copyright, the right to an invention — these are intellectual properties which should be considered as personal property.

(5) Personal Effects

“*Personal effects*” are personal property, but not all personal property are “personal effects.” “Personal effects” include

only such tangible property as applied to a person and cannot include *automobiles*, although they indeed are personal property. (*Hemnani v. Export Control Committee, L-8414, Feb. 28, 1957*).

(6) ‘Order of Demolition’

City of Baguio v. Niño 487 SCRA 211 (2006)

FACTS: The requirement of Sec. 10(d) of Rule 39 of the Rules of Court that the executing officer shall not destroy, demolish, or remove improvements except upon special order of the court, issued upon motion and after due hearing, echoes the constitutional provision that “no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied of equal protection of the laws.” *Issue:* What is the extent to which an administrative entity may exercise process depend largely on?

HELD: Such depend largely, if not wholly, on the provisions of the statute creating or empowering such agency. There is, however, no explicit provision granting the Bureau of Lands (now the Land Management Bureau) or the Department of Environment and Natural Resources (DENR) — which exercises control over the Land Management Bureau (LMB) — the authority to issue an *order of demolition*.

Art. 417. The following are also considered as personal property:

- (1) Obligations and actions which have for their object movables or demandable sums; and**
- (2) Shares of stock of agricultural, commercial and industrial entities, although they may have real estate.**

COMMENT:

Other Kinds of Personal Property

(1) Paragraph 1: “Obligations and actions which have for their object movables or demandable sums.”

- (a) *Examples:* If somebody steals my car, my right to bring an action to recover the automobile is *personal property by itself*. If my debtor owes me P1 million, my credit as well as my right to collect by judicial action is also personal property. This is because, although the law uses the term “obligations,” same really refers to rights or credits. If my credit has not yet matured, my right to collect it eventually is considered personal property, even if in the meantime, the money is *not* yet due. Of course, till the debt matures, I have no right yet to actually collect; but a right to *collect in the future* exists *already* (now); and this is why I am allowed to bring in the meantime, actions to preserve my right. If the object is *illegal*, it is not considered demandable and therefore no right exists. Note, however, that a right to recover possession for instance of a piece of land is considered real, and not personal property. This is because the object of my right is an immovable.
- (b) A promissory note is personal property; the right to collect it is also personal property; but a mortgage on real estate is real property by analogy. (*Par. 10, Art. 415; see also Hilado v. Register of Deeds, 49 Phil. 542; Hongkong and Shanghai Bank v. Aldecoa and Co., 30 Phil. 255*).

(2) Paragraph 2: “Shares of stock of agricultural, commercial, and industrial entities, although they may have real estate.”

- (a) *Examples:*

A share of stock in a gold mining corporation is personal property; but the gold mine itself, as well as any land of the corporation, is regarded as real property by the law. The certificate itself evidencing ownership of the share, as well as the share itself, is regarded as personal property. Being personal, it may be the object of a chattel mortgage. (*See Chua Guan v. Samahang Magsasaka, Inc.,*

62 Phil. 472; see also *Bachrach Motor Co. v. Ledesma*, 64 Phil. 681).

[NOTE: Even if the sole property of a corporation should consist only of real property, a share of stock in said corporation is considered personal property. (*Cedman v. Winslow*, 10 Mass. 145).J.

- (b) *Query*: Is a share in a partnership considered personal property? It is submitted that the answer is yes; as a matter of fact, all shares in *all* juridical persons should be considered personal property for there is no reason to discriminate between shares in a corporation, and shares in other juridical persons. This is true even if the law apparently refers only to a corporation in view of the use of the term “stock.” It is believed, however, that the term “stock” should be understood not in its technical sense of being categorized under *securities* (which include options, warrants, derivatives, swaps, swaptions, bonds, asset-backed securities, etc.) but in its generic meaning of “participation.” As a matter of fact, the Supreme Court has held that a half-interest in a *drugstore business* is personal property, capable of being the subject of a chattel mortgage. (*Involuntary Insolvency of Stochecker v. Ramirez*, 44 Phil. 933). However, a half-interest in a drugstore, considered as a *building* (and not a business) is a real right in real property and is, therefore, by itself *real property*.

- (c) *Enforcement of Property Rights in Shares of Stock* —

“Shares of stock are a peculiar kind of personal property, and are unlike other classes of personal property in that the property right of shares of stock can only be exercised or enforced *where the corporation is organized and has its place of business*, and can exist only as an incident to and connected with the corporation, and this class of property is inseparable from the domicile of the corporation itself.” (*Black Eagle Mining Co. v. Conroy, et al.*, 221 Pac. 425, 426). If, however, the suit is directed not against the corporation itself but involves the commission of a crime — one element of which may be the ownership

of shares of stock — the domicile of the corporation is *not* an important factor, as long as any other element of the crime is committed elsewhere, for instance, the place where the criminal case is brought. (See *Hernandez v. Albano, et al.*, L-19272, Jan. 25, 1967).

(3) Is Money Merchandise?

When it is in domestic circulation, money is *legal tender* and is, therefore, NOT merchandise. When, however, it is attempted to be exported or smuggled, it is deemed to be taken out of domestic circulation and may be, therefore, now considered as merchandise or commodity subject to forfeiture pursuant to Central Bank Circular 37 in relation to Section 1363(f) of the Revised Administrative Code. (*Com. of Customs v. Capistrano*, L-11075, June 30, 1960). It should be noted, however, that whether money is legal tender or not, whether it is merchandise or not, it still is PERSONAL property.

Art. 418. Movable property is either consumable or non-consumable. To the first class belong those movables which cannot be used in a manner appropriate to their nature without their being consumed; to the second class belong all the others.

COMMENT:

(1) Consumable and Non-Consumable Properties

Consumable — this cannot be used according to its nature without its being consumed.

Non-consumable — any other kind of movable property.

(2) Classification and Examples

- (a) According to their *nature*: consumable and non-consumable.
- (b) According to the *intention* of the parties: fungible and non-fungible (*res fungibles* and *res nec fungibles*).

Explanation:

- 1) If it is agreed that the identical thing be returned, it is non-fungible, even though by nature it is consumable. Hence, if I borrow a sack of rice, not for consumption but for display or exhibition merely (*ad ostentationem*), the rice is considered *non-fungible*.
- 2) If it is agreed that the equivalent be returned, the property is fungible. Hence, if I borrow vinegar (to consume) and promise to return an equivalent amount of the same quality, the property is not only consumable; it is also fungible. (*See also Arnott v. Kansas Pac. Ry. Co., 19 Kansas 95*).
- 3) In the law of credit transactions, a loan of rice for consumption is considered a simple loan or *mutuum*; while a loan of rice for exhibition is a *commodatum*.

[NOTE: The Civil Code, in many instances, uses the words “consumable” and “fungible” interchangeably.]

[NOTE: It is evident, however, that *fungibles* are those *replaceable* by an equal quality and quantity, either by the nature of things, or by common agreement. If *irreplaceable*, because the *identical* objects must be returned, they are referred to as *non-fungibles*.]

Chapter 3

PROPERTY IN RELATION TO THE PERSON TO WHOM IT BELONGS

Art. 419. Property is either of public dominion or of private ownership.

COMMENT:

Property Classified According to Ownership

This article expressly provides that properties are owned either:

- (a) in a *public capacity (dominio publico)*

**Heirs of Proceso Bautista
v. Sps. Barza
GR 79167, May 7, 1992**

The function of administering and disposing of lands of the public domain in the manner prescribed by law is not entrusted to the courts but to executive officials.

- (b) or in a *private capacity (propiedad privado)*

Regarding the state, it may own properties both in its public capacity (properties of public dominion) and in its private capacity (patrimonial property).

Art. 420. The following things are property of public dominion:

- (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;**

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

COMMENT:

(1) 'Public Dominion' Defined

In a sense, *public dominion* means ownership by the State in that the State has control and administration; in *another* sense, public dominion means ownership by the *public in general*, in that not even the State or subdivisions thereof may make them the object of commerce as long as they remain properties for public use. Such is the case, for example, of a river or a town plaza.

**Republic of the Phils. v.
Lat Vda. De Castillo, et al.
GR 69002, June 30, 1988**

Mere possession of land does not by itself automatically divest the land of its public character.

**Mendoza v. Navarette
214 SCRA 337
(1992)**

A homestead patent, once registered under the Registration Act, becomes as indefeasible as a Torrens Title, is only true and correct if the parcel of agricultural land patented or granted by homestead by the Government, after the requirements of the law had been complied with, was a part of public domain.

(2) Three Kinds of Property of Public Dominion

- (a) For *public use* — like roads, canals (may be used by ANYBODY).
- (b) For *public service* — like national government buildings, army rifles, army vessels (may be used only by duly authorized persons).

- (c) For the *development of national wealth* — like our natural resources.

(3) Paragraph 1 states “and others of similar character.”

Examples are the *following*:

- (a) public streams. (*Com. v. Meneses*, 38 O.G. No. 123, p. 2839).
- (b) natural beds of rivers. (*Meneses v. Commonwealth*, 69 Phil. 647).
- (c) river channels. (*Meneses v. Commonwealth*, *supra*).
- (d) waters of rivers. (*Meneses v. Commonwealth*, *supra*).
- (e) creeks — because “a creek is no other than an arm extending from a river.” (*Mercado v. Mun. Pres. of Macabebe*, 59 Phil. 592; *Samson v. Dionisio*, 11 Phil. 538).

**Maneclang, et al. v. IAC
GR 66575, Sep. 30, 1986**

A *creek* is a recess or arm extending from a river and participating in the ebb and flow of the sea. It is a property belonging to the public domain. It is not susceptible to private appropriation and acquisitive prescription. As a public water, it cannot be registered under the Torrens System in the name of any individual. Neither the mere construction of irrigation dikes by the National Irrigation Administration which prevents the water from flowing in and out of a fishpond, nor its conversion into a fishpond, alter or change the nature of the creek as a property of the public domain. Hence, a compromise agreement adjudicating the ownership of such property in favor of an individual is null and void. It has no legal effect. It is contrary to law and public policy.

- (f) all lands thrown up by the sea and formed by accretion upon the shore by the action of the water, together with the adjacent shore. (*Art. 4 of the Spanish Law of Waters of Aug. 3, 1866*; *Insular Gov't. v. Aldecoa*, 19 Phil. 505; *Ker and Co. v. Laudén*, 6 Phil. 732).

- (g) lands reclaimed from the sea by the Government. (*Gov't. v. Cabangis*, 53 Phil. 112). "Only the executive and possibly the legislative department have the right and the power to make the declaration that the lands so gained by action of the sea is not necessary for purposes of public utility or for the establishment of special industries or for coast guard services." (*Monteverde, et al. v. Director of Lands*, L-4628, May 25, 1953; interpreting Art. 4 of the Spanish Law of Waters of Aug. 3, 1866).
- (h) the Manila Bay area or coastal area inasmuch as it belongs to the state, and is used as a waterway. (*Vda. de Villongco v. Moreno, et al.*, L-17240, Jan. 31, 1962).
- (i) private lands which have been invaded by the waters or waves of the sea and converted into portions of the shore or beach. (*Natividad v. Director of Lands*, CA 37 O.G., p. 2905). [NOTE: Since the private owner here loses his property in favor of the state without any compensation, the occurrence has been referred to as a case of "natural expropriation" (*Ibid.*) or a DE FACTO CASE of eminent domain. (See *Gov't. of the Phil. Islands v. Cabangis*, 53 Phil. 112).].
- (j) streets, even when planted by persons with coconut trees. (*Li Seng Giap v. Mun. Council of Daet, CA, O.G. Sup.*, Nov. 1, 1941, p. 217).

[NOTE: Some definitions:

- 1) *Shore* — that space alternately covered and uncovered by the movement of the tide. (*Art. 1, Sec. 3, The Law of Waters*).].

**Republic of the Phils. v.
Lat Vda. De Castillo, et al.
GR 69002, June 30, 1988**

Does a decision of the Land Registration Court involving shore land constitute *res judicata* in an action instituted by the Republic for the annulment of title?

No. Shores are properties of the public domain intended for public use (*Art. 420, Civil Code*), and

therefore not registerable. Thus, it has long been settled that portion of the foreshore or of the territorial waters and beaches cannot be registered. Their inclusion in a certificate of title does not convert the same into properties of private ownership or confer title upon the registrant.

A lot which always formed part of a lake, washed and inundated by the waters thereof are not subject to registration, being outside the commerce of men. If the lots in litigation are of public domain (*Art. 502, par. 4, Civil Code*), the registration court does not have jurisdiction to adjudicate the lands as private property. Hence, *res judicata* does not apply.

[NOTE: RA 1899 applies only to foreshore lands, not to submerged lands. (*Chavez v. Public Lands Authority, 415 SCRA 403 {2003}*).].

- 2) *Torrent* — that amount of water which in case of heavy rains gathers in deep places or canals where it is supposed to flow afterwards. (*See Ricci*).

[NOTE: The amounts given by students to a *government school*, to answer in the future for the value of materials and equipment destroyed by them, are PUBLIC FUNDS. The relationship between the students and the college is *not* one of depositors and depository but one of creditors and debtors. This is so because the identical bills given are not necessarily the same ones to be returned. (*People v. Montemayor, et al., L-17449, Aug. 30, 1962*).].

Santos v. Moreno
L-15829, Dec. 4, 1967

FACTS: Ayala y Cia owned a big tract of land in Macabebe, Pampanga, the Hacienda San Esteban. To provide access to different parts of the property, the Company dug interlinking canals, which through erosion, gradually acquired the characteristics of rivers. The company sold part of the Hacienda to Santos, who closed some of the canals and converted them into fishponds. The residents

of the surrounding barrios (now barangays) complained that the closure deprived them of their means of transportation, as well as of their fishing grounds. *Issue*: May the canals be ordered open?

HELD: No, because said canals are of private ownership. *Reason*: "The said streams, considered as canals of which they originally were are of private ownership. Under Art. 420, canals constructed by the State and devoted to use are of public ownership. Conversely, canals constructed by private persons within private lands and devoted exclusively for private use must be of private ownership."

(4) Are rivers whether navigable or not, properties of public dominion?

ANS.: It would seem that Art. 420 makes no distinction.

However:

- (a) It should be noted that in *Commonwealth v. Meneses*, 38 O.G. No. 123, p. 2389, the Court mentioned only "navigable river" instead of "river" merely.
- (b) In the case of *Commonwealth v. Palanca*, 39 O.G. No. 8, p. 161, the court seemed to imply that had the rivers been "non-navigable" they would not have been properties of public dominion.
- (c) In the case of *Palanca v. Commonwealth*, 40 O.G. (6th S) No. 10, p. 148, the Supreme Court said: "The river Viray and the estero Sapang Sedoria, being *navigable*, useful for commerce, for navigation, and fishing, have the character of public domain (or ownership)." Besides, in that case, the government lawyers proved that the rivers were *navigable*. (All this would seem to imply that non-navigable rivers are not of public dominion, otherwise, why did the government have to prove that the rivers were navigable, and why did the Supreme Court use the participial phrase "being navigable"?) In a decision, the Supreme Court has held that if a river is navigable, it is of *public dominion*.

- (d) In the case of *People v. Jacobo*, L-14151, Apr. 28, 1960, the Supreme Court distinguished between *public* and *private streams*; and held that a stream, generally, is only a creek, and *not a river* as contemplated under Art. 420 of the Civil Code. It concluded that it is only after the stream has been declared a PUBLIC STREAM by the COURTS, that a private person, claiming ownership thereof, may be held liable for maintaining an obstruction thereon.
- (e) In the case of *Lovina v. Moreno*, L-17821, Nov. 29, 1963, the Court ruled that the ownership of a *navigable* stream or of its bed is not acquired by prescription.
- (f) In *Taleon v. Secretary of Public Works*, L-24281, May 16, 1967, it was held that if a river is capable in its natural state of being used for commerce, it is navigable in fact, and therefore becomes a public river.

Hilario v. City of Manila
L-19570, Apr. 27, 1967

FACTS: Sand and gravel were extracted by agencies of the City of Manila from the San Mateo River banks of the Hilario Estate in the province of Rizal. When Hilario sued for indemnity, it was alleged that river banks are of public ownership.

Issue: Are they really of public ownership?

HELD: River banks are of public ownership, hence *no indemnity need be given*. *Reason:* The bed of a river is of *public dominion*, hence also the banks since they are part of the bed. While it is true that in Art. 638 on easements on river banks, the law speaks of both *public* and *private* river banks, still these private river banks refer to those already existing prior to the Law of Waters of Aug. 3, 1866.

Martinez v. Court of Appeals
L-31271, Apr. 29, 1974, 56 SCRA 647

- 1) Navigable rivers are outside the commerce of man and therefore cannot be registered under the Land

Registration Law. If converted into fishponds, the latter can be demolished notwithstanding the Title, for said Title cannot convert the streams into private ones.

- 2) Void land decisions like the present one can be attacked collaterally.
- 3) The action of the State for reversion (of the rivers) does not prescribe.

(5) Characteristics of Properties of Public Dominion

- (a) They are outside the commerce of man, and cannot be leased, donated, sold, or be the object of any contract (*Mun. of Cavite v. Rojas*, 30 Phil. 602), except insofar as they may be the object of repairs or improvements and other incidental things of similar character.
- (b) They cannot be acquired by prescription; no matter how long the possession of the properties has been, “there can be no prescription against the State regarding property of the public domain.” (*Palanca v. Commonwealth*, 40 O.G. 6th S, No. 10, p. 148; *Meneses v. Commonwealth*, 69 Phil. 505). “Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.” (*Art. 1113*). Even a city or a municipality cannot acquire them by prescription as against the State. (*See City of Manila v. Ins. Gov’t.*, 10 Phil. 327).
- (c) They cannot be registered under the Land Registration Law and be the subject of a Torrens Title; if erroneously included in a Torrens Title, the land involved remains property of public dominion. (*See Palanca v. Commonwealth*, 69 Phil. 449; *see also Bishop of Calbayog v. Director of Lands*, L-23481, June 29, 1972, 45 SCRA 418).
- (d) They, as well as their usufruct, cannot be levied upon by execution, nor can they be attached. (*Tufexis v. Olaguera*, 32 Phil. 654; *Tan Toco v. Mun. Council of Iloilo*, 49 Phil. 52).
- (e) In general, they can be used by everybody.

- (f) They may be either real or personal property, for it will be noted that the law here makes no distinction.

(6) Cases

Mun. of Cavite v. Rojas **30 Phil. 602**

FACTS: The Municipal Council of Cavite in 1907 withdrew and excluded from public use a part of its plaza in order to lease same for the benefit of defendant Rojas. Issue was the validity of the lease.

HELD: The lease is null and void, because streets and plazas are outside the commerce of man, since they are properties for public use. In creating the lease, the municipality exceeded its authority because it did something it was not empowered to do. The lessee must therefore vacate the premises. In turn, the municipality must reimburse the rentals which had already been paid to it. (In this case, the lessee had not received any benefit, from the lease. If there had been such benefit there might have been no reimbursement of rent, as held in *Sanchez v. Mun. of Asingan, L-17635, Mar. 30, 1963*).

[*NOTE:* While in case of war or during an emergency, town plazas may be temporarily occupied by private individuals, still, when the emergency ceases, the temporary occupation or use must also cease. Indeed, a town plaza cannot be used for the construction of market stalls or of residences. Such structures constitute a nuisance subject to abatement according to law. (*Espiritu, et al. v. Mun. Council of Pozorrubio, Pangasinan, L-11014, Jan. 21, 1958*). Neither may a town plaza be donated to the Roman Catholic Church. (*Harty v. Mun. of Victoria, 13 Phil. 152*).].

Commonwealth v. Meneses **38 O.G. 123, p. 2389**

FACTS: A fishery was constructed on a river. For many years, the constructor of the fishery remained in its possession. *Issue:* whether or not the constructor has acquired ownership over said river.

HELD: Rivers are not subject to private appropriation. The law of prescription does not apply to them.

Gobierno Insular v. Naval
(CA) 40 O.G. (11th S) 15, p. 59

FACTS: A registered some esteros in his name under the Torrens system. Now, under that system, registration is effective against everybody. When the government sought to get the properties, A pleaded in defense the fact of its registration; and that although certain properties of public dominion could not really be registered under that system, still there was no prohibition in the Land Registration Law regarding rivers and esteros. *Issue:* Validity of A's defense.

HELD: A's defense will not prosper. Although it is true that rivers and esteros are not specifically included in the list of those that could not be registered; still the intention of the law is plainly to prevent a usurpation of any part of public dominion, rivers and esteros included. It is evident therefore that the registry obtained by A does *not* confer any right of ownership over the portions of the properties of public dominion usurped, since said usurpation cannot be done under the law.

[NOTE: Portions of the territorial waters of the public domain not being capable of registration, their inclusion in a certificate of title does *not* convert the same into properties of private ownership or confer title on the registrant. (*Republic v. Ayala Cia, et al., L-20950, May 31, 1965*).].

Republic v. Reyes
L-36610, June 18, 1976

FACTS: An applicant for registration of some 23,000 square meters of land won in the CFI (now RTC) in a default judgment. Later, the government presented a motion for reconsideration, asking for a chance to prove that the land was public land. When the motion was denied, appeal was made, but since this was done beyond the reglementary period, the appeal was considered not perfected. Is there any remedy left for the Government?

HELD: The remedy is to ask for the reversion of inalienable public lands which are erroneously registered in the name of private individuals. The action is, of course, subject to defenses that may properly be set up. The Torrens system of registration is not a means of acquiring ownership over private or public land; it merely confirms and registers whatever right or title may already be possessed or had by the applicant.

Republic v. Animas
L-37682, Mar. 29, 1974

Forest lands as such cannot be registered. The mere fact that a person has a certificate of title over them is unavailing. Indeed, the doctrine of indefeasibility does not apply here.

Tufexis v. Olaguera
32 Phil. 654

FACTS: During the Spanish regime, *A* was allowed by the Spanish government to have the usufruct of a public market for 40 years. *A* died, and the usufruct was inherited by *B*, his son. When *B* became indebted, his properties were sold at an auction sale, and the usufruct was bought by *C*. Then a fire destroyed the market. The Council granted *B* the right to reconstruct the building and continue the usufruct. *C* complained on the ground that he had bought at the auction sale *B*'s usufruct. *Issue:* Whether or not *C* can be given the usufruct and administration of the market.

HELD: *C* cannot be given the right because the right is of public character and could not be bought at an auction sale. What he should have done before the building was burned was to attach the income already received by *B*, but *C* did not do this. For *C* now to take *B*'s place would be contrary to law, for this would be allowing a stranger who had not been selected by the government, to take over a public function. On the other hand, the terms of the concession given to *A* (*B*'s father) were personal and transferable only (by its terms) by inheritance. *C*, not being an heir of *A*, cannot therefore exercise the right.

Insular Government v. Aldecoa
19 Phil. 505

FACTS: In 1907, the government demanded from Aldecoa and Co., the possession of a piece of land which had been formed by the action of the sea. Aldecoa and company claimed ownership on the ground that the adjacent land was theirs, and that their erection of a wall was responsible for the forming of the new parcel of land.

HELD: The land produced by the action of the sea is of public ownership and cannot therefore be acquired by any private person or entity inasmuch as same belongs to the state. Furthermore, the company did not ask government permission to set up the wall.

Government v. Cabangis
53 Phil. 112

FACTS: In 1896, A owned a parcel of land, but because of the action of the waves of Manila Bay, part of said land was gradually submerged in the sea. It remained submerged until 1912 when the government decided to make the necessary dredging to reclaim the land from the sea. As soon as the land had been recovered A took possession of it. *Issue:* the ownership of the reclaimed land.

HELD: The government owns the reclaimed land in the sense that it has become property of public dominion, because in letting it remain submerged, A may be said to have abandoned the same. Having become part of the sea or the seashore, it became property for public use. When the government took steps to make it land again, its status as public dominion remained unchanged; therefore, A is not entitled to the land.

Mercado v. Mun. Pres. of Macabebe
59 Phil. 592

FACTS: A owned a hacienda in which a river and a creek flowed. (Both the river and the creek are of course of public dominion.) A constructed a canal connecting the two bodies of water, and many people used the canal. One day, 22 years later, A closed the two openings of the canals, converted same into a

fish pond, and prevented the people from using the erstwhile (former) canal. The government now wants the canal opened so that same may be used by the general public. A objects.

HELD: The canal should be opened. While the use and enjoyment of the waters could have been acquired by prescription, still when he allowed others to use the canal, he lost the exclusive right to use the same. Moreover, although the hacienda is registered under his name under the Torrens System, this does not confer upon him any right to the river or creek since these are properties of public dominion, and cannot be registered.

**Clemencia B. Vda. de Villongco, et al. v.
Florencio Moreno, et al.
L-17240, Jan. 31, 1962**

FACTS: Mrs. Villongco of Pampanga was accused by Senator Rogelio de la Rosa of having included as part of her fishpond in Macabebe, Pampanga, a portion of the *coastal* waters of Pampanga and of Manila Bay; and so the Secretary of Public Works and Communications, Mr. Florencio Moreno, ordered her to remove said *intruding* fishpond works and other constructions. Mrs. Villongco, instead of appealing to the President, directly brought the case before the courts. She alleged among other things that under Sec. 2 of Republic Act No. 2056, constructions made in *good faith* on navigable rivers could NOT be ordered removed.

HELD: *Firstly*, what Mrs. Villongco should have done was to appeal the administrative decision to the President of the Philippines, in view of the doctrine of “exhaustion of administrative remedies” before recourse to the courts. (However, to promptly dispose of the case, the Court decided to dispose of it on the merits). *Secondly*, while it is true that under Republic Act 2056, the Secretary of Public Works and Communications can order the removal of constructions on navigable rivers or streams EXCEPT those which had been constructed in GOOD FAITH and would *not* impede free passage on the river or cause the inundation of agricultural areas, still the constructions in this case although made in GOOD FAITH cannot be considered as falling under the exception because said constructions were

made on COASTAL WATERS. There is *no* navigable river or stream in coastal waters, neither may there be inundations therein. Hence, the constructions may be properly removed or demolished.

City of Manila v. Garcia
L-26053, Feb. 21, 1967

FACTS: Squatters entered land belonging to the City of Manila, and constructed dwellings thereon. The lot was a public lot intended for school purposes. When their occupancy was officially brought to the attention of the city authorities, some of the squatters were given “lease contracts” by then Mayor Fugoso. Others received “permits” from Mayor de la Fuente. The squatters were then charged nominal rentals. When the city decided to use the lot for the expansion of the Epifanio de los Santos Elementary School, it asked the squatters to vacate the premises and to remove the improvements. The squatters refused. The City then sued to recover possession of the lot. *Issue:* May the squatters be ejected?

HELD: Yes, for they never really became tenants. The property being a public one, the Manila mayors did not have the authority to give permits, written or oral, to the squatters. The permits granted are, therefore, considered null and void.

C & M Timber Corp. (CMTC) v. Alcala
83 SCAD 346
(1997)

[E]xecutive evaluation of timber licenses and their consequent cancellation in the process of formulating policies with regard to the utilization of timber lands is a prerogative of the executive department and in the absence of evidence showing grave abuse of discretion courts will not interfere with the exercise of that discretion.

Villarico v. CA
309 SCRA 193
(1999)

Land within which the unclassified forest zone is incapable of private appropriation, a forest land cannot be owned by

private persons, and possession thereof, no matter how long, does not ripen into a registrable title.

**Manila International Airport Authority (MIAA) v. CA
495 SCRA 591 (2006)**

FACTS: The term “ports” under Art. 420(1) of the Civil Code includes seaports and airports.

HELD: The MIAA Airport Lands and Buildings constitute a “port,” constructed by the State.

(7) Public Lands

(a) *Definition*

“In acts of Congress of the U.S., the term ‘public lands’ is uniformly used to describe so much of the national domain under the Legislative Power of Congress as has not been subjected to private right or devoted to public use ... They are that part of government lands which are thrown open to private appropriation and settlement by homestead and other like general laws.” (*Montano v. Insular Gov’t.*, 12 Phil. 570). Among the public lands are mining, forest, and agricultural lands.

[NOTE: While agricultural lands may be sold to or acquired by private individuals or entities, ownership over mining and forest lands cannot be transferred, but leases for them may be had.].

(b) *Classification of Public Lands*

It is believed that forest and mining lands are properties of public dominion of the third class, *i.e.*, properties for the development of the national wealth. Upon the other hand, the public agricultural lands before being made available to the general public should also be properties of public dominion for the development of the national wealth (and as such may not be acquired by prescription); but after being made so *available*, they become *patrimonial* property of the State, and therefore subject to prescription. Moreover, once already acquired by private

individuals, they become private property. (*See U.S. v. Scurz, 102 U.S. 278*).

Nota Bene: “Public agricultural lands” may be defined as those alienable portions of the public domain which are neither timber nor mineral lands. (*Alba Vda. de Raz v. CA, 314 SCRA 36*).

[NOTE: When a homestead entry has been permitted by the Director of Lands, the homestead is segregated from the “public domain” and the Director is divested of the control and possession thereof except if the application is finally disapproved and the entry is annulled or revoked. (*Diaz v. Macalinao, et al., L-10747, Jan. 31, 1958*).]

[NOTE: Where a license is issued for the taking of forest products, and a person other than the licensee unlawfully operates without license and cuts or removes any forest products, the same may be seized and delivered to the proper licensee, upon the payment of the regular charges thereon. (*Cotabato Timberland Co., Inc. v. Plaridel Lumber Co., Inc., L-19432, Feb. 26, 1965*).]

Bureau of Forestry, et al. v. CA
GR 37995, Aug. 31, 1987

Can the classification of lands of the public domain by the executive branch of the government into agricultural, forest, or mineral be changed or varied by the court depending upon the evidence adduced before it?

Whether a particular parcel of land is more valuable for forestry purposes than for agricultural purposes, or vice versa, is a fact which must be established during the trial of a cause. Whether the particular land is agricultural, forestry or mineral is a question to be settled in each particular case unless the Bureau of Forestry has, under the authority conferred upon it by law, prior to the intervention of private interest, set aside said land for forestry or mineral resources.

It is the Bureau of Forestry that has the jurisdiction and authority over the demarcation, protection, manage-

ment, reproduction, occupancy and use of all public forests and forest reservations and over the granting of licenses for the taking of products therefrom, including stone and earth. (*Sec. 1816, Revised Administrative Code*).

As provided for under Section 6 of Commonwealth Act 141, which was lifted from Act 2874, the classification or reclassification of public lands into alienable or disposable, mineral or forest lands is now a prerogative of the executive department of the government and not of the courts.

There should be no room for doubt that it is not the court which determines the classification of lands of the public domain into agricultural, forest or mineral but the executive branch of the government, thru the Office of the President. It is grave error and/or abuse of discretion for a trial court to ignore the uncontroverted facts that (1) the disputed area is within the timberland block, and (2) as certified to by the Director of Forestry, the area is needed for forest purposes.

One cannot claim to have obtained his title by prescription if the application filed by him necessarily implied an admission that the portion applied for is part of the public domain which cannot be acquired by prescription, unless the law expressly permits it. Possession of forest land, however long, cannot ripen into private ownership.

Republic v. CA
GR 40402, Mar. 16, 1987

Section 48(b) of Commonwealth Act 141, as amended, applies exclusively to public agricultural lands. Forest lands or areas covered with forests are excluded. They are incapable of registration and their inclusion in a title, whether such title be one issued during the Spanish sovereignty or under the present Torrens System of registration, nullifies the title. Thus, possession of forest lands, however long, cannot ripen into private ownership. A parcel of forest land is within the exclusive jurisdiction of the Bureau of Forestry and beyond the power and

jurisdiction of the cadastral court to register under the Torrens System.

Alvarez v. PICOP Resources, Inc.
508 SCRA 498 (2006)

FACTS: Licenses concerning the harvesting of timber, in the country's forests cannot be considered contracts that would bind the Government regardless of changes in policies and the demands of public interest and welfare. *Issue:* When the licenses, concessions, and the like entail government infrastructure projects, should the provisions of RA 8975 be deemed to apply?

HELD: Yes. RA 8975 prohibits lower courts from issuing temporary restraining orders (TROs), preliminary injunctions and preliminary mandatory injunctions in connection with the implementation of government infrastructure projects, while PD 605 prohibits the issuance of the sum in any case involving licenses, concessions, and the like in connection with the natural resources of the Philippines.

QUERY

Are "public forests" inalienable public lands?

ANS.: Yes. (*Heirs of the Late Spouses Pedro S. Palanca and Soterranea Rafols Vda. De Palanca v. Republic, 500 SCRA 209 [2006]*).

Exploration Permits are Strictly Granted to Entities or Individuals Possessing the Resources and Capability to Undertake Mining Operations

**Apex Mining Co., Inc. v. Southeast Mindanao
Gold Mining Corp.**
492 SCRA 355 (2006)

FACTS: Mining operations in the Diwalwal Mineral Reservation are within the full control of the State thru the Executive Branch — pursuant to Sec. 5 of RA 7942. Here, the State can either directly undertake the

exploration, development, and utilization of the area or it can enter into agreements with qualified entities. *Issue:* What is the extent or scope of power of administration, over mineral lands and minerals vested on the Director of Mines and Geo-Sciences?

HELD: This includes the power to prescribe terms and conditions in granting exploration permits to qualified entities. Exploration permits are strictly granted to entities or individuals possessing the resources and capability to undertake mining operations. Nonetheless, the State may not be precluded from considering a direct takeover of the mines, if it is only plausible remedy in sight to the gnawing complexities generated by the so-called “gold rush.”

[*NOTE:* By providing a 5-day period within which to file an appeal on the decision of the Director of Mines and Geo-Sciences, PD 463 unquestionably repealed Sec. 61 of Commonwealth Act 137. (*PNO Energy Development Corp. {PNO-EDC} v. Veneracion, Jr., 509 SCRA 93 {2006}*).].

[*NOTE:* Sec. 18 of RA 7942 allows mining even in timberland or forestry subject to existing rights and reservations. (*PICOP Resources, Inc. v. Base Metal Mineral Resources Corp., 510 SCRA 400 {2006}*).].

(c) *Governing Law*

Public lands may be disposed of in accordance with Commonwealth Act 141. The disposition of public lands is lodged exclusively in the Director of Lands, subject only to the control of the Secretary of Agriculture. Preference of tenants in their acquisition is in accord with the policy of the government of permitting tenants of public agricultural lands to acquire by purchase or by homestead their respective landholdings. (*Pindangan Agricultural Co., Inc. v. Dans, et al., L-14591, Apr. 25, 1962*).

Sec. 64(e) of the Revised Administrative Code empowers the President to reserve alienable public lands for a specific public purpose or service, and under the Public Land Act, to release those reserved. (*Republic v. Oct., L-18867, Apr. 30, 1966*).

[NOTE: The word "Government lands" is not synonymous with "Public lands." The first is broader in scope, and may be said to include also those lands devoted to public use or public service, as well as public lands "before and after they are made available for private appropriation," and also patrimonial lands. Upon the other hand, as has already been seen "public lands" are merely a part of "government lands."].

(d) *Non-Conversion Into Private Property*

If a portion of the public land either is needed for river bank protection or forms part of a permanent timberland, possession thereof, however long *cannot* convert it into private property. Such portion falls within the exclusive jurisdiction of the Bureau of Forestry, and beyond the jurisdiction of the cadastral court to register under the Torrens system. (*Adorable, et al. v. Director of Forestry, L-13663, Mar. 25, 1960*).

(e) *Disposition by Public Bidding*

When the Public Land Law decreed that public lands shall be sold to the highest bidder, it does *not* necessarily follow that the Government is thereby engaged in profit-making; it is getting money in *exchange for its property*. Upon the other hand, knowingly to sell public property at 1/20 of its price is not selling; it is donating. Such sale is invalid because the land officer, in donating, has exceeded his power to sell. In every public bidding the winner prejudices the loser; yet this is *no* reason to disqualify him; that in itself is NOT bad faith, for he is merely exercising the right to buy. (*Ladrera v. Secretary of Agriculture and National Resources, L-13385, Apr. 28, 1960*).

(8) Ownership of Roman Catholic Churches

There is no question that Roman Catholic churches constructed after the Spanish occupation are owned by the Catholic Church itself, which incidentally is a juridical person. But the churches constructed during the Spanish regime, and built with "forced labor" were considered outside the com-

merce of man because they were sacred, devoted as they were to the worship of God (there was then a union of Church and State). Said churches therefore did not belong to the public in general, nor to the State, nor to any private individual, nor to the priests, nor to the Church itself. But certainly, the *Church* had the possession and control of the *churches*. And it is *not* necessary or important to give any name to this right of possession and control exercised by the Roman Catholic Church in the church buildings of the Philippines prior to 1898. (*See Barlin v. Ramirez, 7 Phil. 41*).

(9) The Ecclesiastical Provinces

The naked ownership of the ecclesiastical provinces donated to the Church belongs to the Roman Catholic Church; the use is for the worshippers. (*Trinidad v. Roman Catholic Archbishop of Manila, 63 Phil. 881*).

(10) Effect of the Separation of Church and State in the Philippines

One important effect of the separation of Church and State in the Philippines, insofar as ownership of things is concerned, is that now, there is nothing that will prohibit the churches from alienating any of the properties denominated in canon law as holy or sacred.

(11) Public Land Act

Bracewell v. CA
GR 107427, Jan. 25, 2000
119 SCAD 47

The Public Land Act requires that the applicant must prove: (a) that the land is alienable public land; and (b) that his open, continuous, exclusive and notorious possession and occupation of the same must be since time immemorial or for the period prescribed in the Public Land Act.

When the conditions set by law are complied with, the possessor of the lands, by operation of law, acquires a right to a grant, a government grant, without the necessity of a certifi-

cate of title being issued. The adverse possession which may be the basis of a grant of title or confirmation of an imperfect title refers only to alienable or disposable portions of the public domain.

(12) Parity Rights Amendment of 1946

**Ancheta v. Guersey-Dalayyon
490 SCRA 140 (2006)**

As it now stands, Art. XII, Secs. 7 and 8 of the 1987 Philippine Constitution explicitly prohibits non-Filipinos from acquiring or holding title to private lands or to lands of the public domain.

Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

COMMENT:

(1) 'Patrimonial Property' Defined

Patrimonial property of the State is the property it owns but which is not devoted to public use, public service, or the development of the national wealth. It is wealth owned by the State in its private, as distinguished from its public, capacity.

**Sanchez v. Mun. of Asingan
L-17635, Mar. 30, 1963**

FACTS: On a municipal *patrimonial* lot, plaintiff constructed in 1952 temporary stores and buildings, with the knowledge and implied consent of the municipality. In 1959, however, the municipal council passed a resolution calling for the ejectment of the plaintiff. The plaintiff refused to be ejected and in the alternative, asked the court that in case he is ejected, he must be reimbursed for the rents already paid. Plaintiff relied on the case of *Mun. of Cavite v. Rojas* (30 Phil. 602), where the court had declared the lease of the public plaza void, and ordered the reimbursement of the rentals. *Issue:* Should the rents be reimbursed?

HELD: There should be NO reimbursement. *Firstly*, the case of Rojas CANNOT apply for there, the lot was *public*, here, it is *patrimonial*. *Secondly*, assuming that the lot is public, and that therefore the lease is void, still there will be *no reimbursement* because the plaintiff had received *some benefit* from the land.

(2) Other Examples of Patrimonial Property

- (a) Friar lands. (*Jacinto v. Director of Lands*, 49 Phil. 853). They may be disposed of in accordance with the provisions of Act 1120.

[NOTE: Under the Friar Lands Act (Act 1120), conveyance executed in favor of a purchaser, or the so-called certificate of title is a conveyance of the ownership of the property, subject only to the *resolatory* condition that the sale may be cancelled if the price agreed upon is not paid in full. Thus, if a husband has purchased said land, on his death, the certificate may be issued in favor of his *widow*. In default of the widow, the assignment must be made in favor of the *successional heirs*. It should be noted, however, that the issuance of the title to the wife does NOT make the friar lands purchased by the deceased husband the paraphernal property of the wife. The lands continue to be the conjugal property of her deceased husband and herself. (*Pugeda v. Trias*, L-16925, July 24, 1962). In the case, however, of a sale of PUBLIC LANDS under the Public Land Act, there would seem to be no vested right on the property purchased by the mere fact of application therefor. This is because aside from the purchase, there are requirements for *cultivation and improvement*. Hence, if the applicant dies before fulfillment of said requisites, and the *widow and her second husband* should comply with the requirements, the certificate is issued to *said wife and her second husband*, each of them having equal rights on the land. (*Pugeda v. Trias, et al., supra*).]

Dela Torre v. CA GR 113095, Feb. 8, 2000

Jurisprudence has consistently held that under Act 1120, the equitable and beneficial title to the land passes

to the purchaser the moment the first installment is paid and a certificate of sale is issued.

In order that a transfer of the rights of a holder of a certificate of sale of friar lands may be legally effective, it is necessary that a formal certificate of transfer be drawn up and submitted to the Chief of the Bureau of Public Lands for his approval and registration. The law authorizes no other way of transferring the rights of a holder of a certificate of sale of friar lands.

- (b) The San Lazaro Estate. (*Tipton v. Andueza*, 5 Phil. 477). This may be disposed of, and is governed by Act 2360 as amended by Act 2478.
- (c) Properties obtained by the Government in escheat proceedings (as when there is no other legal heir of a decedent), or those inherited by or donated to the Government. Rents of buildings owned by the State would also come under this classification. (*See 3 Manresa 96*).
- (d) A municipal-owned waterworks system is *patrimonial* in character, for while such a system is open to the public (in this sense, it is public service), still the system serves only those who pay the charges or rentals (thus, the system is PROPRIETARY). Therefore, Republic Act 1383 which vests on the NAWASA, ownership of municipal water system *without compensation* (to the municipality) cannot be sustained as valid. (*City of Cebu v. NAWASA*, L-12892, Apr. 30, 1960; *Municipality of Lucban v. National Waterworks and Sewerage Authority*, L-15525, Oct. 11, 1960; *Board of Assessment Appeals, Prov. of Laguna v. Court of Tax Appeals*, L-18125, May 31, 1963).

(3) Acquisition of Patrimonial Properties thru Prescription

Patrimonial properties may be acquired by private individuals or corporations thru prescription. (*Art. 1113*). However, if a municipality has been taking the products of a certain parcel of land, and planting thereon certain other crops, this is *not* proof of ownership, but only of the USUFRUCT thereof. (*See Mun. of Tigbawan v. Dir. of Lands*, 35 Phil. 798).

Art. 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

COMMENT:

(1) Conversion of Property of Public Dominion to Patrimonial Property: Entities that may Effect the Change

In *Faustino Ignacio v. Dir. of Lands, L-12958, May 30, 1960*, the Supreme Court, citing *Natividad v. Dir. of Lands (CA) (37 O.G., p. 2905)*, said that only the executive and possibly the legislative departments have the authority and power to make the declaration that any land so gained by the sea is not necessary for purposes of public utility, or for the establishment of special industries or for Coast Guard Service. If no such declaration has been made by said departments, the lot in question forms part of the public domain. Consequently, until there is made a formal declaration on the part of the Government thru the executive department or the legislature, the parcel in question continues to be part of the public domain, and *cannot* be subject to acquisitive prescription.

[NOTE: This case involved *lands gained by the sea* which thus are considered properties of the public dominion under Art. 4 of the *Spanish Law of Waters of Aug. 3, 1866*.]

(2) Cases

**Municipality of Oas v. Roa
7 Phil. 20**

When a municipality no longer uses a public plaza as such, and instead constructs buildings thereon for storage of government property, or for housing purposes, it is clear that the property has become patrimonial. Being patrimonial, same may, from that moment on, be sold to a private individual.

**Cebu Oxygen and Acetylene Co., Inc.
v. Bercilles
L-40474, Aug. 29, 1975**

FACTS: The City Council of Cebu, in 1968, considered as an abandoned road, the terminal portion of one of its streets.

Later it authorized the sale thru public bidding of the property. The Cebu Oxygen and Acetylene Co. was able to purchase the same. It then petitioned the RTC of Cebu for the registration of the land. The petition was opposed by the Provincial Fiscal (Prosecutor) who argued that the lot is still part of the public domain, and cannot therefore be registered. *Issue*: May the lot be registered in the name of the buyer?

HELD: Yes, the land can be registered in the name of the buyer, because the street has already been withdrawn from public use, and accordingly has become patrimonial property. The lot's sale was therefore valid.

Mun. of Hinunang v. Director of Lands
24 Phil. 125

Although a fortress as such is property of public dominion because it is for public service, still when it is no longer used as such, it does not necessarily follow that the State has lost ownership over the same inasmuch as the property is now considered *patrimonial*, and therefore still belongs to the state. What is true of the fortress is also true of the land on which it has been built.

Francisco Chavez v. NHA, et al.
GR 164527, Aug. 15, 2007

FACTS: Presidential Proclamation Nos. 39 and 465 jointly with the special patents have classified the reclaimed lands as alienable and disposable and open to disposition or concession as they would be devoted to units for Smokey Mountain beneficiaries. *Issue*: Because said lands are no longer intended for public use or service, shall those lands form part of the patrimonial properties of the State?

HELD: Yes, under Art. 422 of the new Civil Code. The lands are classified as patrimonial parties of the NHA in the case at bar, and ready for disposition when the titles are registered in its name by the Register of Deeds.

(3) Different Rule for Abandoned River Beds

Although, as a rule, property of public dominion when no longer used for public service, shall form part of the patrimo-

nial property of the State (*Art. 422*), it should be remembered that under *Art. 461*, an abandoned river bed belongs not to the State, but to the private land owner whose land is now occupied by the changed course, in proportion to the area lost.

Art. 423. The property of provinces, cities, and municipalities is divided into property for public use and patrimonial property.

COMMENT:

(1) ‘Reclaimed Lands’

These are not plain and simple patches of the earth as agricultural, timber, or mineral lands are, in the full sense of being products of nature, but are the result of the intervention of man just like in the extraction of mineral resources, *i.e.*, gold, oil, petroleum, etc. (*Chavez v. PEA, 403 SCRA 1 [2003]*). In terms of the long-range development of the country, its fundamental law vests the State with the concomitant authority to draw on the resources of the private sector, to aid it in such an awesome endeavor as land reclamation. (*Chavez v. PEA, 415 SCRA 403 [2003]*). For “reclaimed land” does not fall under the category of natural resources which under the Constitution are inalienable; it is statutory law which determines the status of reclaimed land. (*Ibid.*)

[NOTE: “Submerged lands” are owned by the State and are inalienable; *submerged lands*, like the waters (sea or bay) above them, are part of the State’s inalienable natural resources. (*Chavez v. PEA, supra*).].

Case

**Chavez v. Public Lands Authority
415 SCRA 403
(2003)**

FACTS: Contracts of individuals who, not being personally disqualified to hold alienable lands of the public domain,

have been able to acquire in good faith, reclaimed portions of the subject property from AMARI Coastal Bay Development Corporation. *Issue*: Should said contracts be duly-respected and upheld?

HELD: Yes. In instances where the successor-in-interest is itself a corporate entity, the constitutional proscription would stand, but if the corporation has introduced structures or permanent improvements thereon, such structures or improvements, when so viewed, as having been made in good faith, could very well be governed by the new Civil Code.

The approval of the contracts, in the case at bar, clearly and unambiguously attested to the fact that the lands in question were no longer intended for “public use” or “public service.” When the conversion activity such as co-production, joint venture or production-sharing agreements is authorized by the Government thru a law, the qualified party to the agreement may own the converted product or part of it, when so provided in the agreement. If there is *any* doubt as “to the object of the prestation in this case, the Supreme Court opined that the ‘interpretation which would render the contract valid is to be favored.’”

(2) Properties of Political Subdivisions

- (a) property for public use
- (b) patrimonial property

(3) Alienation of the Properties

- (a) Properties of a political subdivision for public use cannot be alienated as such, and may not be acquired by prescription. (*Mun. of Oas v. Roa, 7 Phil. 20*).
- (b) Properties of a political subdivision which are *patrimonial* in character may be alienated, and may be acquired by others thru prescription. (*Mun. of Oas v. Roa, supra; Art. 1113*).

(4) Donation by the National Government to a Political Subdivision

The National Government may donate its patrimonial property to a municipality, and the latter may own the same. (*Mun. of Catbalogan v. Dir. of Lands, 17 Phil. 216*). This is because a municipality is a juridical person capable of acquiring properties. When thus donated, the property becomes either property for public use or patrimonial property, depending on the use given to the property. When for example, the municipality devotes donated land to the erection thereon of the municipal building, courthouse, public school, or public market, the property is for public use. When, however, it allows private persons to build on it, and merely collects for example, the rentals on the land, the property is patrimonial in character. (*Mun. of Hinunang v. Director of Lands, 24 Phil. 125*). The acquisition by a city of portions of public lands is subject to the rules and regulations issued by the proper governmental authorities, as well as the subsequent approval of such acquisition by the Director of Lands. (*City of Cebu v. Padilla, et al., L-20393, Jan. 30, 1965*).

**Central Bank of the Philippines
v. Court of Appeals and Ablaza Construction
and Finance Corporation
L-33022, Apr. 22, 1975**

ISSUE: Are the terms “National Government of the Philippines” and “Government of the Philippines” synonymous?

HELD: No, because the first term “National Government of the Philippines” is more restrictive and does not include local governments or other governmental entities. Under the Administrative Code itself, the term “National Government” refers only to the *Central Government* (consisting of the legislative, executive, and judicial departments of the government), as distinguished from local governments and other governmental entities. The Central Bank (*Bangko Sentral*) is, therefore, not included in the term “National Government,” but is included in the term “Government of the Philippines.”

(5) Conversion to Patrimonial

Of course, by analogy, and applying Art. 422, when a municipality's properties for public use are no longer intended for such use, the properties become patrimonial, and may now be the subject of a common contract. (*See 3 Manresa 111*).

Art. 424. Property for public use, in the provinces, cities and municipalities consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.

All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws.

COMMENT:**(1) Properties in Political Subdivisions**

Art. 424 enumerates the various kinds of properties of political subdivisions, and classifies them into:

- (a) property for *public use*

Dacanay v. Asistio, Jr.
208 SCRA 404
(1992)

A public street is property for public use, hence, outside the commerce of man and may not be the subject of lease or of any other contract. The right of the public to use the city streets may not be bargained away thru a contract. Thus, Mayor Robles' Executive Order may not infringe upon the vested right of the public to use city streets for the purpose they were intended to serve, *i.e.*, as arteries of travel for vehicles and pedestrians.

- (b) *patrimonial* property

[NOTE: In the case of STATE properties, properties for *public service* are of public dominion; this is not so in

the case of provinces, cities, etc., said properties for *public service* are *patrimonial* (since they are not for *public use*). (*Prov. of Zamboanga del Norte v. City of Zamboanga, et al.*, L-24440, Mar. 28, 1968).].

**Province of Zamboanga Del Norte v.
City of Zamboanga, et al.
L-24440, Mar. 28, 1968**

FACTS: After Zamboanga Province was divided into two (Zamboanga del Norte and Zamboanga del Sur), Republic Act 3039 was passed providing that —

“All buildings, properties, and assets belonging to the former province of Zamboanga and located within the City of Zamboanga are hereby transferred free of charge in favor of the City of Zamboanga.”

Suit was brought alleging that this grant without just compensation was unconstitutional because it deprived the province of property without due process. Included in the properties were the capital site and capitol building, certain school sites, hospital and leprosarium sites, and high school playgrounds.

Issues: a) Are the properties mentioned, properties for public use or *patrimonial*? b) Should the city pay for said properties?

HELD: a) If we follow the Civil Code classification, only the high school playgrounds are for *public use* (in the sense that generally, they are available to the general public), and *all the rest* are *PATRIMONIAL* (since they are not devoted to *public use* but to *public service*; since they are *not for public use*, under Art. 424 of the Civil Code, they are *patrimonial*. [*NOTE:* For *public use* if ANYBODY can use; for *public service* if only AUTHORIZED persons can use.]

[*NOTE:* Had they been owned by the STATE, they would not have been *patrimonial* but would have been *properties of public dominion* — for this would include *public service*, conformably with Art. 420, par. 2.]

BUT if we follow the law of Municipal Corporations (and not the Civil Code), as long as the purpose is for a *public service* (governmental service like public education, public health, local administration), the property should be considered for PUBLIC USE.

b) If the Civil Code classification is used, since almost all the properties involved are *patrimonial*, the law would be unconstitutional since the province would be deprived of its own property without just compensation.

If the law on Municipal Corporations would be followed, the properties would be of public dominion, and therefore NO COMPENSATION would be required.

It is this law on Municipal Corporations that should be followed. *Firstly*, while the Civil Code may classify them as patrimonial, they should *not* be regarded as ordinary private property. They should fall under the control of the State, otherwise certain governmental activities would be impaired. *Secondly*, Art. 424, 2nd paragraph itself says “without prejudice to the provisions (or PRINCIPLES) of special laws.”

(2) Basis of the Classification

Apparently under Art. 424, the basis of the classification would be the *use*, however, in *Salas v. Jarencio, L-29788, Aug. 30, 1972*, the Supreme Court ruled that the National Government *still controls* the disposition of properties of political subdivisions (*regardless* of the use to which they are devoted) provided that the properties CAME FROM THE STATE. The Court further said that in the absence of proof that the province, city, or municipality acquired the properties with their own funds, we should PRESUME that they really had come from the State.

Thus, it can be said that properties of provinces, cities, and municipalities may also be classified into the following:

- (a) those acquired *with their own funds* (in their private or corporate capacity) — here the political subdivision has ownership and control.

- (b) those which do not fall under (a) — these are subject to the control and supervision of the state. In fact, they are held by the political subdivision *in trust for the state for the benefit of the inhabitants* (whether the purpose of the property is governmental or proprietary). Reason the political subdivision owes its creation to the State. It is the State's agents, or subdivision, or instrumentality for the purposes of local administration.

Salas v. Jarencio
L-29788, Aug. 30, 1972

FACTS: The City of Manila had a Torrens Title over a 7,490-square-meter lot. The municipal board of Manila requested the President of the Philippines to have the lot declared as patrimonial property of the City so that it could be *sold by the City* to the actual occupants of the lot. In 1964, Congress enacted Republic Act 4118 whereby the lot was made disposable or alienable land of the State (not of the City), and its disposal was given to a national governmental entity, the Land Tenure Administration.

Issue: Can this be lawfully done by the National Government?

HELD: Yes. There being no proof that the lot had been acquired by the City with its own funds, the presumption is that it was given to it by the State IN TRUST for the benefit of the inhabitants. Residual control remained in the State, and therefore the STATE can lawfully dispose of the lot. Thus, Republic Act 4118 is valid and constitutional and this is so even if the City of Manila will receive NO COMPENSATION from the State.

(3) Rules With Respect to Properties for Public Use

Properties for public use may not be leased to private individuals. If possession has already been given, the lessee must return the possession to the municipality, which in turn must reimburse him for whatever advanced rentals had been given. (*Mun. of Cavite v. Rojas, 30 Phil. 602*). If a plaza is illegally leased to private individuals, the lease is void, and any

building on said plaza built by the “lessee” such as a restaurant, may be demolished. (*Capistrano, et al. v. Mayor, et al., CA 44 O.G. 2798*). Properties used by a municipal corporation in the exercise of its governmental powers cannot be attached or levied upon. (*Viuda de Tan Toco v. Mun. Council of Iloilo, 49 Phil. 52*). The right to settle boundary disputes between municipalities is vested by law on the provincial board of the province concerned, from the decision of which board, appeal may be taken by the municipality aggrieved to the Executive Secretary, now Office of the President, whose decision shall be final. Until the matter is resolved by such official (now office), judicial recourse would be premature. If the provincial board fails to settle the boundary dispute, the action if at all, would be one against said board, not an action for declaratory relief. (*Municipality of Hinabangan, et al. v. Mun. of Wright, et al., L-12603, Mar. 25, 1960*).

Viuda de Tan Toco v. Mun. Council of Iloilo
49 Phil. 52

FACTS: The municipality of Iloilo bought from the widow of Tan Toco a parcel of land for P42,966.40 which was used for street purposes. For failure of the municipality to pay the debt, the widow obtained a writ of execution against the municipal properties, and by virtue of such writ was able to obtain the attachment of two auto trucks used for street sprinkling, one police patrol automobile, two police stations, and two markets, including the lots on which they had been constructed. The issue is the validity of the attachment.

HELD: The attachment is not proper because municipal-owned real and personal properties devoted to *public or governmental purposes* may not be attached and sold for the payment of a judgment against a municipality. Just as it is essential to exempt certain properties of individuals (like the bare essentials) from execution, so it is also essential and justifiable to exempt property for public use from execution, otherwise governmental service would be jeopardized.

[*NOTE:* Had the properties been patrimonial, they could have been levied upon or attached. (*See Mun. of Pasay v. Manaois, et al., L-3485, June 30, 1950*).]

(4) Effect if Private Land is Donated to a Town and Made into a Plaza

Private land donated to a town for use as a plaza becomes property for public use, and may not in turn be donated by the town to the church, nor can the church acquire ownership over it by prescription, for a town plaza is outside the commerce of man. (*Harty v. Mun. of Victoria*, 13 Phil. 152). Such a plaza cannot be deemed patrimonial property of a municipal government. (*Mun. of San Carlos v. Morfe*, L-17990, July 24, 1962).

**Harty v. Municipality of Victoria
13 Phil. 152**

FACTS: A parcel of land alleged to originally belong to a person named Tanedo was *in part* donated by him to the church. The remaining part was kept open as a plaza. For many years, the people of the town were allowed by Tanedo to use the said remainder as a “public plaza.” Later, the church claimed ownership over said “plaza” on the ground that the same had been donated to it by the municipality. It was proved that the curates and the town heads (the *gobernadorcillos*) used to plant fruit trees on the plaza. *Issue:* May the church now be considered as the owner of the plaza?

HELD: No, the Church cannot be regarded as the owner of the plaza. Assuming that Tanedo was its original owner, still when he allowed the people of the town to use same as a public plaza, he was in effect waiving his right thereto for the benefit of the town folks. Being property for public use, the municipality cannot be said to have validly donated it in favor of the Church. Then again, because of its being for “public use,” the plaza could not have been acquired by the Church thru prescription. Incidentally, the act of planting fruit trees on the plaza cannot be regarded as an act of private ownership. It was simply an act intended to enhance the beauty of the plaza for the benefit of the people in the community.

(5) National Properties May Not Be Registered by a Municipality Under its Own Name

Properties of public dominion, owned by the national government, even if planted upon with trees by a municipal-

ity for a number of years, do not become municipal properties, and may not therefore be registered by a municipality under its name. (*Mun. of Tigbawan v. Dir. of Lands*, 35 Phil. 798).

(6) Patrimonial Property of a Municipal Corporation

The town's *patrimonial property* is *administered*, at least insofar as liability to third persons is concerned, in the same way as property of a *private corporation*. Hence, the town is not immune to suits involving this kind of property. (*Dillon, Mun. Corp.*, 5th Ed., Sec. 1610). The municipal council serves as a sort of Board of Directors, with the municipal mayor or provincial governor as general manager. (See *Mendoza v. De Leon*, 33 Phil. 508; *People v. Fernandez, et al.*, [CA] 1128-R, May 29, 1948).

(7) Case

Alonso v. Cebu Country Club, Inc.

417 SCRA 115

(2003)

Possession of patrimonial property of the Government, whether spanning decades, or centuries, cannot *ipso facto* ripen into ownership.

In the instant controversy, however, the majority DECISION *actually* awarded to the Government ownership of the disputed property, without notice to both parties and without giving them an opportunity to be heard and submit their opposition.

Art. 425. Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.

COMMENT:

(1) Private Properties Other than Patrimonial

Other private properties are those that belong to private persons: *individually* or *collectively*. Incidentally, by virtue of Art. 425, the Code recognizes the rights to private property.

(2) Collective Ownership

“Collectively” refers to ownership by private individuals as co-owners; or by corporations, partnerships, or other juridical persons (such as foundations) who are allowed by the Civil Code to possess and acquire properties. (*Arts. 44-47*).

(3) Effect of Possession by Private Persons

Possession by private persons since time immemorial carries the presumption that the land had never been part of the public domain, or that it had been private property even before the Spanish conquest. An allegation to this effect is a sufficient averment of private ownership. (*Nalayan, et al. v. Nalayan, et al., L-14518, Aug. 29, 1960; Oh Cho v. Dir. of Lands, 75 Phil. 890; Cariño v. Insular Gov't., 212 U.S. 449*).

(4) Ownership of Roads

Roads may be either public or private property; hence, if a person constructs on his own land a road, it is a private one. This is particularly true when the government spent nothing for the construction of the road. (*See Cuaycong v. Benedicto, 37 Phil. 781*).

(5) Private Lands Within a Military Zone

If private lands of a person should lie within a military zone, said lands do not necessarily become property of public dominion (*public service*). (*Inchausti and Co. v. Commanding General, 6 Phil. 556*).

[NOTE: If there be fortified places in said zone, Art. 667 applies. “No construction can be built or plantings made near fortified places or fortresses without compliance with the conditions required in special laws, ordinances, and regulations relating thereto.” (*Art. 667*). This restriction does not mean that the private person is deprived of the ownership of said private land.]

(6) Improvements Introduced by the Japanese Occupation Forces on Private Lands

Improvements constructed during the Japanese occupation by the Japanese army on private lands do not belong to the private owner but to the Philippine government which emerged as victor in the last world war. Such improvements may refer to railroad tracks or to passageways for airplanes. On the other hand, an automobile seized by the Japanese army from a Filipino during the war, and later turned over to the Philippine government, does not become government property, and when sold by the Philippine government to another private person, the true owner of the car may recover same from the buyer. (*See Saavedra v. Pecson, L-260, Mar. 25, 1944*).

(7) Ownership Evidenced by a Torrens Title

If there is any error in the Torrens title of a person in the sense that it includes lands belonging to the government, it is only the government which can properly question that fact, and a judicial pronouncement is necessary in order to have the portion excluded from the Torrens title. (*Zobel v. Mercado, L-14515, May 25, 1960*).

**Salamat Vda. de Medina v. Cruz
GR 39272, May 4, 1988**

A Torrens title is generally a conclusive evidence of the ownership of the land referred to therein. (*Sec. 49, Act 496*). A strong presumption exists that Torrens titles are regularly issued and that they are valid. A Torrens title is incontrovertible against any *informacion posesoria* or title existing prior to the issuance thereof not annotated on the title. All persons dealing with property covered by Torrens Certificate of Title are not required to go beyond what appears on the face of the title.

Payment of land tax is not an evidence of ownership of a parcel of land for which payment is made, especially when the parcel of land is covered by a Torrens title in the name of another.

**Metropolitan Waterworks & Sewerage
System v. CA
215 SCRA 783
(1992)**

A certificate is not conclusive evidence of title if it is shown that the same land had already been registered and an earlier certificate for the same is in existence.

(8) Acquisition by Aliens

An alien has had no right to acquire since the date of effectivity of the Philippine Constitution, any public or private agricultural, commercial, or residential lands (except by hereditary succession). (*Krivenko v. Register of Deeds*). The same rule applies to a foreign corporation, even if it be a religious and non-stock foreign corporation. (*See Art. XII, Sec. 3 of the 1987 Phil. Constitution*). This is not contrary to religious freedom because the ownership of real estate is not essential for the exercise of religious worship. (*Ung Sui Si Temple v. Reg. of Deeds, L-6776, May 21, 1955*).

The constitutional prohibition against the acquisition of land by aliens (save Americans by virtue of the Parity Amendment) is ABSOLUTE. Thus, the transfer of *ownership* over land in favor of aliens is not permissible in view of the constitutional prohibition. (*Reg. of Deeds of Manila v. China Banking Corporation, L-11964, Apr. 28, 1962; See Art. XII, Sec. 3 of the 1987 Phil. Constitution*).

Paragraph (c), Sec. 25 of Republic Act 337 allows a commercial bank to purchase and hold such real estate as shall be conveyed to it in satisfaction of *debts previously* contracted in the course of its dealings. The debts referred to are only those resulting from *previous loans* and other similar transactions, *not* those conveyed to it by reason of “civil liability” arising from a criminal offense against it, even if the acquisition of ownership by the bank is merely TEMPORARY. (*Ibid.*).

(9) Query

What should an applicant establish to prove that the land subject of an application for registration is alienable?

ANS.: An applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Lands investigators, and a legislative act or statute. The applicant may also secure a certification from the government that the lands applied for are alienable and disposable. In *Republic v. Tri-Plus Corp.*, 505 SCRA 41 (2006), the Supreme Court held that applicants for confirmation of imperfect title must prove the following:

1. that the land forms part of the alienable and disposable agricultural lands of the public domain; and
2. that they have been in open, continuous exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership either since time immemorial or since June 12, 1945.

In *Republic v. Southside Homeowners Assn., Inc.* (502 SCRA 587 [2006]), the Supreme Court informed:

the President, upon the recommendation of the Secretary of Environment and Natural Resources, may designate by proclamation any tract/s of land of the public domain as reservations for the use of the Republic or any of its branches, or for quasi-public uses or purposes.

In the same decision, the Court posited that —

lands of the public domain classified as a military reservation remains as such until, by presidential fiat or congressional act, the same is released from such classification, and declared open to disposition. Art. XII, Sec. 3 of the 1987 Constitution forbids private corporations from acquiring any kind of alienable land of the public domain, except thru lease for a limited period.

PROVISIONS COMMON TO THE THREE PRECEDING CHAPTERS

Art. 426. Whenever by provision of the law, or an individual declaration, the expression “immovable things or property,” or “movable things or property,” is used, it shall

be deemed to include, respectively, the things enumerated in Chapter 1 and in Chapter 2.

Whenever the word “muebles,” or “furniture,” is used alone, it shall not be deemed to include money, credits, commercial securities, stocks, and bonds, jewelry, scientific or artistic collections, books, medals, arms, clothing, horses or carriages and their accessories, grains, liquids and merchandise, or other things which do not have as their principal object the furnishing or ornamenting of a building, except where from the context of the law, or the individual declaration, the contrary clearly appears.

COMMENT:

(1) What the Expression ‘Immovable Things’ and ‘Movable Things’ Include

The first paragraph of the Article explains itself.

(2) Use of the Word ‘Muebles’

This word is used synonymously with “furniture.” Note that furniture has *generally* for its *principal object* the furnishing or ornamenting of a building. Found in the old Code, the use of “muebles” was retained by the Code Commission, evidently because many people are acquainted with its meaning. (*See I Capistrano, Civil Code, p. 371*). Note the enumerations of things which are not included in the term “furniture.”

(3) Some Questions

- (a) A told B, “I’ll give you my furniture.” Does this include books and bookcases?

ANS.: The books, no; the bookcases, yes. (*Art. 426, 2nd par.*).

- (b) A told B, “I’ll give you my furniture, including my stocks and horses.” Are the stocks and horses included?

ANS.: Yes, in view of the express declaration to that effect. (*Art. 426*).

Title II. — OWNERSHIP

Chapter 1

OWNERSHIP IN GENERAL

Art. 427. Ownership may be exercised over things or rights.

COMMENT:

(1) 'Ownership' Defined

Ownership is the independent and general right of a person to control a thing particularly in his possession, enjoyment, disposition, and recovery, subject to no restrictions except those imposed by the state or private persons, without prejudice to the provisions of the law.

**Philippine Suburban Development Corporation
v. The Auditor-General, Pedro M. Gimenez
L-19545, Apr. 18, 1975**

FACTS: Petitioner Corporation sold to the Government a parcel of land to be used by the latter in connection with the relocation of squatters. The Government occupied the land at once, although it had given only the down payment of its price, the balance to be paid in the future after the seller shall have first caused the registration of the property in its name. In the meantime, is the seller (who has not been completely paid, but who has already delivered the land) required to pay the real estate taxes thereon?

HELD: No, the seller is not required to pay the real estate taxes on the lot sold, because after all, it has already delivered

the land to the Government. Ownership has therefore been transferred to the government by virtue of said delivery. Be it noted that generally, payment of the purchase price is not essential to effectuate the transfer of ownership. Not being the owner anymore, the Corporation had no duty to pay said taxes. Since payment has already been made "under protest," a refund must be made in favor of the Corporation. Incidentally, the fact that the condition regarding registration, has not yet been complied with is of no significance, insofar as the payment of said taxes is concerned.

Republic v. CA
208 SCRA 428
(1992)

Forest lands or forest reserves are not capable of private appropriation, and possession thereof cannot ripen into private ownership, unless such lands are classified and considered disposable and alienable. Nonetheless, forest lands can be appropriated by private ownership.

PNB v. CA
84 SCAD 209
(1997)

Under Art. 428, the owner has the right to dispose of a thing without other limitations than those established by law. As an incident of ownership, therefore, there is nothing to prevent a landowner from donating his naked title to the land. However, the new owner must respect the rights of the tenant. Sec. 7 of RA 3844, as amended (Code of Agrarian Reforms of the Philippines) gives the agricultural lessee the right to work on the landholding once the leasehold relationship is established. [S]ecurity of tenure is a legal concession to agricultural lessees which they value as life itself and deprivation of their landholdings is tantamount to deprivation of their only means of livelihood. Also, under Sec. 10 of the same Act, the law explicitly provides that *the leasehold relation is not extinguished by the alienation or transfer of legal possession of the landholding.*

Marcos' Alleged 'Ill-gotten Wealth'**Republic of the Phils. v. Sandiganbayan
406 SCRA 190
(2003)**

The Philippine Supreme Court adduced the following points in adjudicating that the reported Swiss banks' accounts reportedly under the names of foreign foundations — and, thus, rightfully belonging to the Philippine Government thus:

1. the following facts must be established in order that forfeiture or seizure of this Swiss deposits may be effected:
 - a. ownership by the public officer of money or property acquired during his incumbency, whether it be in his name or otherwise, and
 - b. the extent to which the amount of that money or property exceeds, *i.e.*, is grossly disproportionate to, the legitimate income of the public officer.
2. respondent's willingness to agree to an amicable settlement with the Republic of the Phils. only affirmed their ownership of the Swiss deposits for the simple reason that no persons would acquiesce to any concession over such huge dollar deposits if he did not, in fact, own them;
3. the reasons relied upon by the Supreme Court in declaring the nullity of the agreements entered into by the Marcoses with the Republic never in the least bit even touched on the veracity and truthfulness of the Marcoses' admission with respect to their ownership of the Swiss funds; and
4. inasmuch as the OWNERSHIP of the foreign foundations in the assets was repudiated by Imelda Marcos, they could no longer be considered as indispensable parties and their participation in the proceedings became unnecessary.

(2) Kinds of Ownership

- (a) *Full ownership (dominium or jus in re propria)* — this includes all the rights of an owner.

- (b) *Naked ownership (nuda proprietas)* — this is ownership where the right to the use and the *fruits* has been denied.

[NOTE: 1) Naked ownership plus usufruct equals *full ownership*.

2) Usufruct equals *full ownership* minus naked ownership.

3) Naked ownership equals *full ownership* minus usufruct.]

[NOTE: A usufructuary's right may be called *jus in re aliena* because he possesses a right over a thing owned by another.]

- (c) *Sole ownership* — where the ownership is vested in only one person.
- (d) *Co-ownership* (or Tenancy in Common) — when the ownership is vested in two or more owners. *Manresa* says: "The concept of co-ownership is unity of the property, and plurality of the subjects. Each co-owner, together with the other co-owners, is the owner of the whole, and at the *same time*, the owner of an undivided aliquot part thereof." (3 *Manresa* 368-387; *Sison v. Fetalino*, 47 *O.G. No. 1*, 300).

(3) Where Questions of Ownership Should be Decided

Questions relating to ownership or even to the validity or discharge of a mortgage should generally be ventilated in an ordinary civil action or proceeding, and NOT under the proceedings provided in the Land Registration Act, inasmuch as the latter proceedings are summary in nature, and more or less inadequate. (*RFC v. Alto Surety and Ins. Co.*, L-14303, Mar. 24, 1960). There are, of course, exceptions, as when both parties concerned, are given full opportunity to present their sides, and the court is able to obtain sufficient evidence to guide the Land Registration Court in formulating its decision. This, however, naturally falls within the sound discretion of the Court. (*Aglipay v. De los Reyes*, L-12776, Mar. 23, 1960).

(4) Possessory Information**Querubin v. Alconcel
L-23050, Sep. 18, 1975**

An *informacion posesoria* (possessory information) duly recorded in the Registry of Property is *prima facie* evidence that the registered possessor is also the owner of the land involved.

Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

COMMENT:**(1) Rights of an Owner Under the Civil Code**

Under Art. 428, the owner has:

- (a) the right to *enjoy*
- (b) the right to *dispose*
- (c) the right to *recover* or *vindicate*.

The right to *enjoy* includes:

- (a) the right to possess
- (b) the right to use
- (c) the right to the fruits.

The right to *dispose* includes:

- (a) the right to consume or destroy or abuse
- (b) the right to encumber or alienate.

(2) Rights of an Owner Under Roman Law

- (a) *jus possidendi* — the right to possess
- (b) *jus utendi* — the right to use

- (c) *jus fruendi* — the right to the fruits
- (d) *jus abutendi* — the right to consume (and also to transform or abuse)
- (e) *jus disponendi* — the right to dispose
- (f) *jus vindicandi* — the right to recover.

**Distilleria Washington, Inc. v.
La Tondeña Distillers, Inc.
87 SCAD 613
(1997)**

The general rule on ownership must apply and petitioner be allowed to enjoy all the rights of an owner in regard the bottles in question, to wit: the *jus utendi* or the right to receive from the thing what it produces; the *jus abutendi* or the right to consume the thing by its use; the *jus disponendi* or the power of the owner to alienate, encumber, transform and even destroy the thing owned; and the *jus vindicandi* or the right to exclude from the possession of the thing owned any other person to whom the owner has not transmitted such thing. What is proscribed is the use of the bottles in infringement of another's trademark or incorporeal rights.

(3) Example

If I am the owner of a *house*, I can:

- (a) live in it
- (b) use it
- (c) receive rentals from a tenant in case I lease it
- (d) destroy it
- (e) sell or mortgage or donate or alter it
- (f) recover it from anyone who has deprived me of its rightful possession.

(4) Jus Possidendi

- (a) The right to possess means the right to hold a thing or to enjoy a right. In either case, it means that the thing

or right is subject to the control of *my* will. (*Arts. 1495, 1496, 1497*).

- (b) If I sell what I own, I am duty bound to transfer its possession, actually or constructively, to the buyer. (*Arts. 1495, 1496, 1497*).
- (c) If I buy a house from *X*, and *X* is renting it to *Y*, I can ask *Y* to leave the premises so that I may possess the same *unless* the lease is still unexpired and *duly recorded* in the Registry of Property, or unless at the time of sale, I already knew of the existence and duration of the lease. The reason for the general rule is that the right to use the house is one of the rights transferred as a consequence of the change of ownership. (*Art. 1676; see also Saul v. Hawkins, 1 Phil. 275*). The right I can exercise even if there is an acute housing shortage and *Y* does not have any place to go to, except of course if some law expressly and directly prohibits me from doing so. (*See Villanueva v. Canlas, L-5229, Sep. 18, 1946*).
- (d) If I lease my house to *L*, *L* has the right to physically possess my house for the duration of the lease as long as he complies with the conditions of the contract, otherwise, if I should eject him forcibly from the house, he may bring an action of *forcible entry* against me, even if I am the owner. (*Masallo v. Cesar, 39 Phil. 134*).

(5) Jus Utendi

The right to use includes the right to exclude any person, as a rule, from the enjoyment and disposal thereof. For this purpose, the owner-possessor may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of the property. (*Art. 429*). Upon the other hand, the owner of a thing cannot make use thereof in such manner as to injure the rights of a third person. (*Art. 431*). Otherwise, he may be held liable for damages, and if his property is a nuisance, it may even be destroyed. Also as a consequence of ownership, it has been held that when a person using his brother's land, with the latter's permission, is sued by a stranger who claims to be the owner

thereof, the owner is entitled to *intervene* in the action so that he can adequately protect his rights. If he be not allowed to intervene, a judgment against the brother-possessor would generally not be binding on the brother-owner. (*Mansa v. Judge, et al.*, L-7830, Apr. 30, 1955).

(6) Jus Fruendi

The right to the fruits includes the right to three kinds of fruits — natural, industrial and civil fruits (such as rents from buildings). The right to natural fruits extends to the young of animals. (*Art. 441*). It has been held that only owners, and not mortgagees, can claim damages for injury to the fruits of a piece of land and for injury caused by the deprivation of possession. The recovery of these damages is indeed an attribute of ownership. (*Calo v. Prov. Sheriff of Laguna, [CA] L-214-R, Mar. 5, 1954*).

(7) Jus Abutendi

In Roman law, *jus abutendi* did not really mean the right to abuse, but the right to consume. However, modern terminology allows both meanings. A person can indeed burn his own house if in an isolated place, but not where the burning would endanger the properties of others. A person can dispose of his wealth, but he must leave enough for his own support and for those whom he is obliged to support. (*Art. 750*). If a person wastes his money for the purpose of depriving his compulsory heirs of their rightful legitime, he may be declared a spendthrift or prodigal. (*Martinez v. Martinez, 1 Phil. 182*).

(8) Jus Disponendi

The right to dispose includes the right to donate, to sell, to pledge or mortgage. However, a seller need not be the owner at the time of perfection of the contract of sale. It is sufficient that he be the owner at the time of delivery. (*Art. 1459*). It is essential in the contract of mortgage or pledge that the mortgagor or the pledgor be the owner of the thing mortgaged or pledged, otherwise the contract is null and void. (*Art. 2085; see also Contreras v. China Banking Corp., [CA] GR 74, May 25, 1946*). A mortgage, whether registered or not, is binding

between the parties, registration being necessary only to make the same valid as against third persons. (*Samanillo v. Cajucom, et al.*, L-13683, Mar. 28, 1960). A husband cannot ordinarily donate property of considerable value to his wife as long as the marriage lasts. Such a donation is considered null and void. (*Art. 133; Uy Coque v. Navas, 45 Phil. 430*). The same rule is applicable to a donation between a common-law husband and a common-law wife, according to a decision promulgated by the Court of Appeals.

(9) Jus Vindicandi

The right to recover is given expressly in Art. 428 which provides that “the owner has also a right of action against the holder and possessor of the thing in order to recover it.” Moreover “every possessor has a right to be respected in his possession; and should he be disturbed therein, he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.” (*Art. 539, par. 1*). Thus, *jus vindicandi* is transmissible to the heirs or assignees of the person entitled to it. (*See Waite v. Peterson, et al.*, 8 *Phil. 449*). If somebody actually possesses a piece of property, and claims to be the owner thereof, the law raises a disputable presumption of ownership. The true owner must then resort to judicial process for the recovery of the property. (*Art. 433*). In other words, the true owner must not take the law into his own hands.

(10) Actions to Recover

(a) Recovery of Personal Property

The proper action to recover personal property is *replevin*, governed by Rule 60, Rules of Court.

(b) Recovery of Real Property

There are three usual actions to recover the possession of real property:

- 1) *Forcible entry or unlawful detainer* (either action was formerly referred to as *accion interdical*).

- 2) *Accion publiciana* (or the plenary action to recover the better right of possession).
- 3) *Accion reivindicatoria* (or a reivindicatory action). (*Roman Catholic Bishop of Cebu v. Mangaron*, 6 *Phil.* 286; see also *Emilia v. Bado*, L-23685, Apr. 25, 1968, 23 *SCRA* 183).

[ADDITIONALLY, we can also make use in certain cases of the:

- 1) writ of preliminary mandatory injunction; and
- 2) writ of possession.]

(11) *Nota Bene*

Oliveras, et al. v. Lopez, et al.
L-29727, Dec. 14, 1988

A “move in the premises” resolution is not a license to occupy or enter the premises subject of litigation especially in cases involving real property. A “move in the premises” resolution simply means what is stated therein: the parties are obliged to inform the Court of developments pertinent to the case which may be of help to the Court in its immediate disposition. In other words, this phrase must not be interpreted in its literal sense.

Tabora v. Velio
L-60367, Sep. 30, 1982

In case of disputes involving real property, the proper barangay court is where the property is situated, even if the parties reside somewhere else in the same municipality or city. If this is not followed, the Lupong Barangay (under PD 1508) would have no jurisdiction.

(12) *Replevin*

- (a) *Replevin* is defined as an action or provisional remedy where the complainant prays for the recovery of the pos-

session of personal property. (*Sec. 1, Rule 60, Rules of Court*).

[NOTE: Machinery and equipment used for an industry and indispensable for the carrying on of such industry, *cannot* be the subject of *replevin*, because under the premises, they are *real*, and *not* personal property. (*Machinery and Engineering Supplies, Inc. v. Court of Appeals, 96 Phil. 70*).].

- (b) At the commencement of the action, or at any time before the other party answers, the applicant may apply for an order of the delivery of such property to him. (*See Sec. 1, Rule 60, Rules of Court*).
- (c) When he applies for the order, he must show by his own affidavit or that of some other person who personally knows of the facts —
 - 1) that the applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;
 - 2) that the property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to his best knowledge, information and belief;
 - 3) that it has not been distrained or taken for a tax assessment or fine pursuant to law or seized under a writ of execution or preliminary attachment or otherwise placed under *custodia legis* or if so seized, that it is exempt from such seizure or custody; and
 - 4) the actual market value of the property. (*Sec. 2, Rule 60, Rules of Court*).
- (d) The applicant must also give a bond, executed to the adverse party in double the value of the property as stated in the affidavit aforementioned, for the return of the property to the adverse party if such return thereof be adjudged, and for the payment to the adverse party of such sum as he may recover from the applicant in the action. (*Sec. 2, Rule 60, Rules of Court*).

- (e) The *court* then orders the sheriff to take such property into his custody. (*See Sec. 3, Rule 60, Rules of Court*). Under the old law, it was the clerk of court who made the order. (*Sec. 263, Act 190*).
- (f) If the property or any part thereof be concealed in a building or enclosure, and not delivered upon demand, the sheriff must cause the building or enclosure to be broken open. He then takes the property. (*See Sec. 4, Rule 60, Rules of Court*).

Northern Motors, Inc. v. Herrera
L-32674, Feb. 22, 1973

FACTS: If a purchaser on the installment plan of personal property, secured by a chattel mortgage, fails to pay as stipulated in the contract, may the mortgagee immediately sue for replevin to obtain possession of the mortgaged property, or is it essential for him to first foreclose on the mortgage?

HELD: The chattel mortgagee has the right to obtain immediate possession of the mortgaged chattel upon breach of contract by the chattel mortgagors. If possession is not transferred or delivered, replevin may be availed of.

Stronghold Insurance Co., Inc. v. CA
208 SCRA 336
(1992)

Leisure's Club, Inc.'s act of filing a replevin suit without the intention of prosecuting the same, constitutes a wanton, fraudulent, reckless, oppressive and malevolent breach of contract which justifies the award of exemplary damages under Art. 2232 of the Civil Code.

La Tondeña Distillers, Inc. v. CA
209 SCRA 544
(1992)

If a defendant in a replevin action wishes to have the property taken by the sheriff restored to him, he should,

within 5 days from such taking: (1) post a counterbond in double the value of said property; and (2) serve plaintiff with a copy thereof — both requirements, as well as compliance therewith within the 5-day period mentioned, being mandatory.

The remedy of a stranger to the action for replevin is a third-party claim under Sec. 7, Rule 60 of the Rules of Court. To avail of the remedy of intervention, prior determination of whether one is a proper party defendant or a stranger to the action is necessary.

Arabesque Industrial Phils. v. CA
216 SCRA 602
(1992)

A writ of replevin cannot be directed against the lawful possessor.

Chua v. CA
41 SCAD 298
(1993)

Replevin will not lie for property in *custodia legis*.

Navarro v. CA
41 SCAD 859
(1993)

As to the properties sought to be removed, the court sustains the possession by plaintiff of all equipment and chattels recovered by virtue of a *writ of replevin*.

Sebastian v. Valina
43 SCAD 71
(1993)

Under the Rules of Court, the property seized under a *writ of replevin* is not to be delivered immediately to the plaintiff.

Tan v. CA
46 SCAD 435
(1993)

Although a replevin action is primarily one for possession of personalty, yet it is sufficiently flexible to authorize a settlement of all equities between the parties, arising from or growing out of the main controversy.

Filinvest Credit Corp. v. CA
64 SCAD 598
(1995)

A party is held liable for damages not because it commenced an action for replevin to recover possession of a truck prior to its foreclosure but because of the manner it carried out the seizure of the vehicle, using its own employees who misrepresented themselves as deputy sheriffs to seize the truck without having been authorized by the court to do so.

For employing subterfuge in seizing the truck by misrepresenting its employees as deputy sheriffs, and then hiding and cannibalizing it, the petitioners committed bad faith in violation of Art. 19 of the Civil Code.

Citibank, N.A. v. CA
104 SCAD 614, 304 SCRA 679

There is substantial compliance with the rule requiring that an affidavit of merit to support the complaint for replevin if the complaint itself contains a statement of every fact required to be stated in the affidavit of merit and the complaint is verified like an affidavit.

Elisco Tool Manufacturing
Corp. v. CA
307 SCRA 731

The condition that the lessor has deprived the lessee of possession or enjoyment of the thing for the purpose of applying Art. 1485 of the Civil Code was fulfilled in

this case by the filing by petitioners of the complaint for replevin to recover possession of movable property.

Fernandez v. International Corporate Bank
316 SCRA 326

A writ of replevin may be served anywhere in the Philippines.

Movers-Baseco Integrated Port Services, Inc. v. Cyborg Leasing Corp.
317 SCRA 327

Actual damages in the form of unpaid rentals are not mere incident of the action for the return of a forklift where the plaintiff specifically sought in the complaint not only the seizure of the forklift but likewise the payment of unpaid and outstanding rentals.

Servicewide Specialists, Inc. v. CA
318 SCRA 493

An adverse possessor, who is not the mortgagor cannot just be deprived of his possession, let alone be bound by the terms of the chattel mortgage contract, simply because the mortgagee brings up an action for replevin.

Factoran, Jr. v. CA
320 SCRA 530

When a thing is in official custody of a judicial or executive officer in pursuance of his execution of a legal writ, replevin will not lie to recover it.

Property Already Placed Under Legal Custody May Not be a Proper Subject of Replevin

Basic is this rule; *moreso*, the time periods set by law, and which are not to be treated lightly. In this respect, a judge cannot defer action indefinitely on a preliminary investigation pending in his action. (*Vda. de Danao v. Ginete*, 395 SCRA 542 [2003]).

(13) Forcible Entry (*Detentacion*)**(a) *Definition***

Forcible entry is a summary action to recover material or physical possession of real property when a person originally in possession was deprived thereof by force, intimidation, strategy, threat, or stealth. (Keyword is FISTS). (See *Rule 70, Sec. 1, Rules of Court*).

(b) *Prescriptive Period*

The action must be brought within one year from the dispossession. However, in case of strategy or stealth, it would seem that the better rule would be to count the period of one year from the time of DISCOVERY of such strategy or stealth.

(c) *Issue Involved*

The issue involved is mere physical possession (*possession de facto*) and not juridical possession (*possession de jure*) nor ownership. (See *Maddammu v. Court*, 74 Phil. 230; *Mercado v. Go Bio*, 78 Phil. 279; *Masallo v. Cesar*, 39 Phil. 134).

(d) *Cases*

Masallo v. Cesar
39 Phil. 134

If an owner deprives a person lawfully entitled to possession (such as, for example, a tenant who has complied with all his obligations) thru FISTS, said tenant may bring an action of forcible entry *even as against* the owner. This is because the owner in the example presented had surrendered material possession to the tenant by virtue of the lease contract. The fact that he is the owner is immaterial.

Monteblanco v. Hinigaran Sugar
Plantation and Coruna
63 Phil. 794

The law insists that an action for forcible entry must be filed within one year because *public interest* is involved,

and therefore the case must be tried and decided as soon as possible.

Supia and Batioco v. Quintero and Ayala
59 Phil. 312

Purpose of forcible entry — “The purpose is that, regardless of the actual condition of the title to property, the party, in peaceable and quiet possession shall not be turned out by strong hand, violence, or terror ... In affording this remedy, breaches of the peace and criminal disorder would be minimized. A party out of possession must respect and resort to the law alone to obtain what he claims is his.”

Gumiran v. Gumiran
21 Phil. 174

Facts to be stated in the complaint for forcible entry — The complaint must allege that one in physical possession of a land or building has been deprived of said possession by another thru:

- a) force, or
- b) intimidation, or
- c) threat, or
- d) strategy, or
- e) stealth.

Sps. Benitez v. CA
77 SCAD 793
(1997)

In forcible entry, the plaintiff is deprived of physical possession of his land or building by means of force, intimidation, threat, strategy or stealth. Thus, he must allege and prove prior possession.

[NOTE: If the forcible entry was not accomplished thru any of the above-mentioned means, “forcible entry is not the proper action.” (*Gumiran v. Gumiran, supra*).]

[NOTE: It is not essential to set forth in the complaint for forcible entry the exact language of the law. It

is sufficient if stated substantially, or if facts are alleged showing that the dispossession took place thru any of the means set up by the law. (*Gumiran v. Gumiran, supra*).]

[NOTE: A, in a complaint for forcible entry stated in the complaint that he had been “deprived” of the land he owned. Is this sufficient?

HELD: No, this is not sufficient for he did not state in what way he had been deprived. (*Gumiran v. Gumiran, supra*).]

[NOTE: A, in a complaint for forcible entry stated in the complaint that the defendant had “unlawfully turned the plaintiff out of the possession” of land or building. Is this sufficient?

HELD: Yes, this is sufficient. It is true that prior physical possession must be alleged. But this can be implied from the fact that the complaint states that the plaintiff had unlawfully been deprived of his possession. (*Co Tiamco v. Diaz, et al., 42 O.G. 1169; Maddammu v. Court, 74 Phil. 230*).]

[NOTE: Is it essential in the complaint for forcible entry or detainer to state that the action is being brought within the one-year period or is it sufficient to just *prove* this in court without the necessity of alleging the same in the complaint?

HELD: This fact need not be alleged in the complaint, but must be proved during the trial. (*Co Tiamco v. Diaz, et al., 42 O.G. 1169*).]

City of Manila v. Gerardo Garcia, et al.
L-26053, Feb. 21, 1967

FACTS: The City of Manila is the owner of parcels of land forming one area in Malate, Manila. Shortly after liberation, several persons entered upon these premises without the City’s knowledge and consent, built houses of second class materials, and continued to live there till action was instituted against them. In 1947, the presence of the squatters having been discovered, they were then

given by then Mayor Valeriano Fugoso written permits each labelled a "lease contract." For their occupancy, they were charged nominal rentals. In 1961, the premises were needed by the City to expand the Epifanio de los Santos Elementary School. When after due notice the squatters refused to vacate, this suit was instituted to recover possession. Defense was that they were "tenants."

HELD: They are squatters, not tenants. The mayor cannot legalize forcible entry into public property by the simple expedient of giving permits, or for that matter, executing leases. Squatting is unlawful and the grant of the permits fosters moral decadence. The houses are public nuisances *per se* and they can be summarily abated, even without the aid of the courts. The squatters can therefore be ousted.

Villaluz v. CA
210 SCRA 540
(1992)

One in possession of public land may file an action for forcible entry.

Sen Po Ek Marketing Corp. v. CA
212 SCRA 154
(1992)

While the pendency of a suit for declaration of the inefficiency of a deed of sale does not constitute a compelling reason to delay the termination of an ejectment case, a judgment of annulment may be a ground for ordering the reconveyance of the disputed property to the original lessees.

Allegation of Ownership by Defendant in Forcible Entry Cases

Ganadin v. Ramos
L-23547, Sep. 11, 1980

If what is prayed for is ejectment or recovery of possession, it does not matter if ownership is claimed by

either party. The municipal court will still have jurisdiction.

Aquino v. Dealá
63 Phil. 582

Under the law, justice of the peace courts and municipal judges have jurisdiction over cases involving forcible entry and unlawful detainer but have no jurisdiction to pronounce judgments regarding ownership. Now then, *A* brings an action of forcible entry against *B* in the justice of the peace court. *B*, however, alleges his ownership over the property in question. Does *B*'s allegation deprive the court of its jurisdiction?

HELD: No, otherwise the jurisdiction of a court can be changed by the mere allegation by the defendant, and the ends of justice would be easily frustrated. Of course, if the question of ownership *really* becomes *essential* in determining the question of possession, the justice of the peace court would no longer have jurisdiction, for the issue has changed. Thus, the Supreme Court has said, "if in the course of the hearing and in the presentation of evidence it is found that the question of possession cannot be resolved without first determining the title to the property, its jurisdiction is lost, and the case should be dismissed." (*Torres v. Peña*, 4 O.G. 8, p. 2699; *Peñalosa v. Garcia*, 44 O.G. 8, 2709, decided Apr. 1, 1947).

[*NOTE:* The amendment to the Judiciary Act, already referred to with respect to city courts (*not* municipal courts) and CFI's having concurrent jurisdiction in cases where possession cannot be determined unless the issue of ownership is also resolved.].

[*NOTE:* If a court without jurisdiction decides a case, the judgment is completely null and void, and may be attacked at any time, directly or collaterally. This is true even if no appeal has been made. Indeed, there would be no *res judicata* on the issue of ownership. (*Mediran v. Villanueva*, 37 Phil. 752).].

[*NOTE:* The Rules of Court provides: "The judgment rendered in an action for forcible entry or detainer shall be

conclusive with respect to the possession only, and shall *in no wise bind the title or affect ownership of the land or building*. Such judgment shall not bar an action between the same parties respecting title to the land or building.” (Sec. 18, Rule 70, Rules of Court).].

**Patricio S. Cunanan v.
Court of Appeals and Basaran
L-25511, Sep. 28, 1968**

FACTS: In a forcible entry case, a judgment by *compromise* was given stating that according to the terms of the compromise, each *party* admitted the *ownership and possession by the other*, of half of the land. *Issue:* What is the effect of the pronouncement of this “ownership”?

HELD: The judicial pronouncement did not amount to an adjudication of the title of the land involved. The ownership thereof was mentioned in said agreement merely as a BASIS for the right of possession therein acknowledged by both parties. Such right of possession was the only question sought to be settled and actually decided therefore by the inferior court.

[*NOTE:* Incidentally in the above case, defendant was a Muslim. The compromise agreement was attacked as void under Secs. 145 and 146 of the Administrative Code of Mindanao and Sulu on the ground that the same did not have the approval of the Provincial Governor or his duly authorized representative. The court held that such approval is needed only in *ordinary contracts*, not in agreements for the settlement of judicial proceedings, approved by the court before which the same are pending. The approval by the governor or his representative cannot be given greater weight than that given by a court of justice — a court which can properly hear both sides.].

**Pabico v. Ong Pauco
43 Phil. 572**

FACTS: Land owned by A was sold at public auction. Now under the law, the owner is entitled to redeem said

property within a period of one year. Before the expiration of said period, the sheriff put the purchaser forcibly in possession of the land. May A file an action of forcible entry against both the sheriff and the purchaser?

HELD: Yes, because here, the sheriff and the purchaser had no right to eject A since the period of redemption had not yet expired.

**Ines Sapong Caseñas, et al. v.
Ricardo Jandayan
L-17593, May 24, 1962**

FACTS: In June, 1959, the defendant forcibly entered a *portion* of a two-hectare land of the plaintiffs. The latter sued for forcible entry. *Later*, defendant threatened to usurp *another* portion of the same land. Then plaintiffs sued for INJUNCTION to prevent this new deprivation.

HELD: The remedy is *not a separate* action in connection with the original case of forcible entry. (*See Sec. 3 [now Sec. 15], of Rule 70 of the Rules of Court*). To permit the separate suit for injunction would militate against the rule prohibiting multiplicity of suits.

**Saturnino A. Tanhueco v.
Hon. Andres Aguilar, et al.
L-30369, May 29, 1970**

FACTS: During the *pendency* of an ejectment case, the defendant DIED, and his heirs *vacated* the property. *Issue:* Can the recovery of the damages proceed despite the *death* and the *leaving* of the premises or should the claim now be instituted in the estate proceedings of the deceased?

HELD: The claim for damages here can continue. In a case of ejectment or unlawful detainer, the main issue is possession of the property, to which the right to damages for the withholding of possession is merely INCIDENTAL. The case must continue until final judgment.

(14) Unlawful Detainer (Desahucio)**(a) Definition**

Unlawful detainer is the action that must be brought when possession by a landlord, vendor, vendee or other person of *any land or building* is being unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied. In such a case, prior physical possession IS NOT required. (*Sps. Benitez v. CA, 77 SCAD 793 [1997]*). It is, however, not the proper remedy if the purpose is *not* to recover possession but to exact specific performance of a contract. (*Municipality of Batangas v. Santos, et al., L-4012, June 30, 1952*).

[NOTE: To make out a case of unlawful detainer, the complaint must show that the withholding of possession, or the refusal to vacate, is UNLAWFUL. Thus, where the complaint shows prior possession by the defendant, but does NOT allege that the right of possession had terminated, and that occupancy was being unlawfully withheld from the plaintiff, there is NO case of unlawful detainer. However, the precise terminology of the law does *not* necessarily have to be employed. (*Valderrama Lumber Manufacturers' Co. v. L.S. Sarmiento Co., L-18535, May 30, 1962*).]

[NOTE: A person or squatter who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon *demand*, failing which, a summary action for ejectment or unlawful detainer is the proper remedy against him. (*Yu v. De Lara, et al., L-16084, Nov. 30, 1962*).]

Pharma Industries, Inc. v. Pajarillaga
L-53788, Oct. 17, 1980

S sold a lot to *B* *retro*. *S* failed to redeem within the stipulated period of repurchase, and *B* was able to consolidate his ownership over the property. However, despite demand on *S*, he failed to surrender the land. What

is *B's* remedy? An action for unlawful detainer because of the withholding of possession.

Villamin v. Echiverri
L-44377, Dec. 15, 1982

If there is no legal ground for ejection of a tenant of an apartment, the suit cannot prosper. Under PD 20, increase of rent is not allowed if the monthly rental is P300 or less.

Ganadin v. Ramos
L-23547, Sep. 11, 1980

If in an unlawful detainer case the lessor wins, he is entitled to the fair market value of the property.

Cañiza v. CA
79 SCAD 863
(1997)

In an action for unlawful detainer, it suffices to allege that the defendant is unlawfully withholding possession from the plaintiff and a complaint for unlawful detainer is sufficient if it alleges that the withholding of possession or the refusal to vacate is unlawful without necessarily employing the terminology of the law.

Chua v. CA
81 SCAD 907
(1997)

Public policy dictates that unlawful detainer cases be resolved with the least possible delay and judgments in favor of plaintiff are executed immediately. Sole issue in an action for unlawful detainer is *physical* OR *material* possession.

The pendency of an action for quieting of title before the RTC does not divest the city or municipal trial court of its jurisdiction to proceed with the ejection case over the same property. The subsequent acquisition of ownership by any person is not a supervening event that will bar the execution of the judgment in the unlawful detainer case.

Lao v. CA
84 SCAD 341
(1997)

Although an action for unlawful detainer is inadequate for the ventilation of issues involving title or ownership of controverted real property, it is more in keeping with procedural due process that where issues of title or ownership are raised in the summary proceedings for unlawful detainer, said proceeding should be **DISMISSED FOR LACK OF JURISDICTION**, unless, in the case of an appeal from the inferior court to the Court of First Instance (CFI) (now Regional Trial Court [RTC]), the parties agree to the latter court hearing the case in its jurisdiction in accordance with Rule 40, Sec. 11 of the Rules of Court.

Villaluz v. CA
86 SCAD 589
(1997)

Anent the ejectment case, the 1-year reglementary period under Rule 70, Sec. 1 of the Rules of Court for filing an unlawful detainer case is counted from the time of the “unlawful deprivation or withholding of possession.” Such unlawful deprivation occurs upon expiration or termination of the right to hold possession. And such right legally expires or terminates upon receipt of the last demand to vacate.

Nueva Vizcaya Chamber of Commerce
v. Court of Appeals
L-49059, May 29, 1980

It is the nature of the suit alleged in an ejectment complaint that will determine if an inferior court has jurisdiction over the same. Now then, if an ejectment case is decided by the CFI (now RTC) in the exercise of its original (not appellate) jurisdiction, the parties are *estopped* to question the jurisdiction of the court. Ordinarily however, jurisdiction over the subject matter cannot be waived, and the lack of jurisdiction may be raised any time.

Buenavente v. Melchor
L-33145, Mar. 30, 1979

A “squatter” is one who settles on the land of another without any lawful authority. The term is particularly applied to a person who settles on “public land.” But even if the land is private, the unlawful settler may still be regarded as a squatter.

[NOTE: If before the ejectment case is filed, the defendant had previously filed an action against the plaintiff to annul the sale of the land, the ejectment suit should be held in abeyance until after the question of title is decided. (*Maristela, et al. v. Pastor Reyes and Valero, L-11537, Oct. 31, 1958*).]

Where the consideration has been paid for the purchase of land, but the sale has *not* been actually completed due to the inability of the vendor to furnish title deeds, an action for ejectment will not lie, the remedy in such cases being *fulfillment of the contract* (specific performance), or for damages if fulfillment be impossible. But if the complaint is for possession and a declaration of ownership, plaintiff is entitled to a *judgment for possession*, even though he fails to establish his right of ownership. (*Siojo v. Diaz, 5 Phil. 614*).

People v. Echavez
L-47757-61, Jan. 28, 1980

Squatting in an *urban* community is penalized under PD 722. This decree does not apply to squatting in pasture lands.

[NOTA BENE: It is RA 947 that punishes squatting on public agricultural lands; squatting has now been decriminalized.]

Central Bank v. Bichara
GR 131074, Mar. 27, 2000

FACTS: The deed of sale provided, among other things, that the sellers “shall convey the property *free*

from all liens and encumbrances.” The buyers delayed the payment of the purchase price due to the presence of squatters who were not evicted by the sellers.

Moreover, the deed of sale contains a clause saying the seller shall pay the capital gains tax, documentary stamps tax, and other transfer fees. The seller failed to pay the said taxes and fees.

ISSUES: (1) *Was the delay in payment justified;* and

(2) *May the buyer retain the purchase price in view of this failure?*

HELD: *On the first issue, the answer is no. The squatters’ illegal occupation cannot be deemed a lien or encumbrance. By the express terms of Art. 1590 of the Civil Code, a mere act of trespass will not authorize the suspension of payment of the price.*

On the second issue, the answer is again no. The clause is a standard one in most contracts of sale and is nothing more than a specification as to which party shall bear such fees and taxes.

(b) *Prescriptive Period*

The action must be brought within one year from the time possession becomes unlawful, thus —

- 1) if there is a fixed period for the termination of the lease, the lease ends automatically without need of any demand; hence, the one-year period begins from the expiration of the lease.
- 2) if the reason for ejectment is non-payment of rent or the non-fulfillment of the conditions of the lease, then the one-year period must be counted from the *date of demand to vacate*.

(Thus, if the demand to vacate comes only 3 years from the time tenant had begun not to pay the rents, the landlord still has a period of one year to be counted from the date of such demand.)

[NOTE: The demand to vacate must be *absolute*, not conditional. Moreover, the complaint must state WHEN the demand was made, and the fact that such demand had been served *personally*, or by *-serving written notice*, or by *posting such notice*. (*Gallarde v. Moran, L-19572, July 30, 1965*). The demand must be made at least 5 days (building) or 15 days (land) *before* the action is brought. (*Ibid., citing Sec. 2, Rule 70, Rules of Court*).]

[NOTE: If several demands had been made, the period of one year must be counted 5 days or 15 days as the case may be from the time of the LATEST demand, unless in the meantime an *accion publiciana* has been brought. (*Calubayan v. Pascual, L-22645, Sep. 18, 1967*).]

Bormaheco, Inc. v. Abanes
L-28087, July 13, 1973

ISSUES:

- 1) If a squatter is sought to be ejected, from what time should we compute his unlawful possession of the premises?
- 2) If an ejectment suit is dismissed on a certain ground, may another ejectment suit prosper, this time, based on *other* grounds?

HELD:

- 1) A squatter's possession is by tolerance. This kind of possession becomes unlawful from the time the owner makes a demand on the squatter to vacate the premises.
- 2) Yes, the latter ejectment case, based as it is, on *another* ground, may prosper.

[NOTE: From the time the lessee begins paying monthly rentals LESS than the stipulated amount, he is in DEFAULT, and can be considered as illegally possessing the property, where despite demands he refuses to pay or to vacate the property. (*Uichanco v. Laurilla, L-13935, June 30, 1960; Richards v. Gonzales, L-14939, Sep. 26, 1960*).]

(c) *Issue*

The issue is possession *de facto* (material possession), not possession *de jure* nor ownership. (See *Reyes v. Villaflor, et al.*, L-15755, May 30, 1961, where the Court held that if a lease contract expires and the lessee refuses to vacate, a case of unlawful or illegal detainer is present).

[NOTE: If the defendants in a case are evidently possessors and sales applicants in good faith of public land, and the case does not involve the failure of a tenant to pay rent, the action is one involving the right of ownership and possession, and is not one of unlawful detainer. (*Garcia v. Muñoz*, L-11613, 1958).].

Tiu v. Court of Appeals
L-32626, Jan. 28, 1971

FACTS: Tenant persists in remaining on the premises, alleging that lessor is *not* the owner, and is not a Filipino citizen. He, however, admits the existence of the lease contract, and its expiration. *Issue*: Has tenant a proper defense?

HELD: No, because ownership is not the issue involved in an unlawful detainer or ejectment case. His appeal to the Supreme Court on the grounds stated may even be considered frivolous and made solely for delay.

Cantillana v. Vda. de Scott
L-39450, Aug. 29, 1950

If an adverse judgment concerning land registration or any ordinary case is rendered against a person, the buyers or successors-in-interest from said person are likewise bound by said judgment.

Tayag, et al. v. Yuseco, et al.
L-8139, Oct. 24, 1955

FACTS: An attorney leased the land of X but because of the attorney's legal services to X, X made him understand that

he *need not pay* rents, and that the attorney could use the land *gratis* as long as she (*X*) lives. So, the attorney constructed a very big house on the land thinking he had a right to do so in view of the intended donation. Just before *X* died, she sold it to her daughter *Y*, who thenceforth demanded rent from the attorney from the very beginning. When the attorney did not pay, *Y* brought this action for unlawful detainer.

ISSUES:

- 1) Was the intended donation really a donation?

HELD: No, since the formalities of a donation (public instrument, etc.) had not been complied with.

- 2) Should the attorney pay rent?

HELD: Yes, but only from the time *X* sold the property to *Y*, because insofar as *X* was concerned, the lease was gratuitous, *i.e.*, rent payment had been waived or remitted.

- 3) Is the attorney a builder in *good* faith of the house?

HELD: Yes, since he thought (even though erroneously) that the land was already his by donation.

- 4) In an action for unlawful detainer, can the trial court pass upon the rights of the tenant regarding the house built during the existence of the lease?

HELD: In ordinary ejectment (forcible entry or unlawful detainer) cases, where the lessee or occupant has not built anything on the premises, the only judgment that may be rendered therein, under Rule 72, Sec. 7 (now Rule 70, Sec. 6, Rules of Court), is for the defendant (lessee) to recover costs, in the event the complaint is *not true*; or if the court finds the complaint to be true, to render judgment for the plaintiff for the *restitution* of the premises, for the payment of *reasonable rent*, and for costs. However, where the lessee has constructed a substantial and

valuable building on the land, the courts are bound to take cognizance of said fact, and when they find that the construction had been effected in good faith, the courts instead of dismissing the complaint, may apply the provisions of the Civil Code relative to *builders*, especially if the *ownership* of the land and building is not *disputed* (and where, therefore, questions of title would not be in issue).

- 5) Should the action for unlawful detainer prosper?

HELD: Yes, for non-payment of rental, without prejudice to the determination of the right of each, particularly regarding the building.

- (d) *Cases*

Marciano Songahid v. Benito Cinco
L-14341, Jan. 29, 1960

FACTS: The Bishop of Zamboanga brought an action for unlawful detainer against Marciano Songahid, alleging non-payment of rent. Songahid pleaded ownership over the land, stating that he had asserted an adverse interest over the property long ago. Incidentally, the Bishop alleged rightful possession by virtue of a lease application with the Bureau of Lands. Songahid on the other hand claims ownership by virtue of a *homestead* application long pending action. *Issue*: Does the Justice of the Peace Court (now referred to as municipal trial court) have jurisdiction over the unlawful detainer case?

HELD: No jurisdiction, because here, the issue of possession is directly interwoven with the claim of ownership. The recourse of the parties is with the Bureau of Lands which under the law (*Com. Act 141*) is charged with the disposition and alienation of disposable portions of the public domain to qualified applicants. This administrative remedy must first be exhausted before the powers of the Court may be invoked.

[*NOTE*: A violation by a party of any of the stipulations of a contract or agreement to sell real

property would entitle the other party to resolve or to rescind it. An allegation of such violation in a detainer suit may be proved, but the justice of the peace court *cannot* declare the contract resolved or rescinded. It is beyond its power to do so. Indeed, a stipulation entitling one party to take possession of the land and building, if the other party violates the contract, does NOT *ex proprio vigore* (of its own force) confer upon the former the right to take possession thereof, if objected to, without judicial intervention and determination. (*Nera v. Vacante, L-15725, Nov. 29, 1961*).].

Cesario M. Clemente v. Court of Appeals, et al.
L-18686, Jan. 24, 1967

FACTS: Lourdes Puigcerver owned a residential house built on a piece of public land in Masbate. On Sept. 1, 1950, she *leased* the house to Cesario M. Clemente. On Mar. 3, 1951, Puigcerver *sold conditionally* to Clemente both the house and whatever *rights she had over the land* — for the sum of P7,800. A down payment of P2,800 was supposed to be given; the balance would be due as soon as Clemente's application with the Government for the sale of the land to him was approved. It was further agreed that should the government sale be disapproved, the sale would be converted to a mere lease retroactive to the date of perfection. Rentals would then be charged against the down payment. Instead of paying the down payment of P2,800, Clemente was able to pay only P1,000. On Dec. 10, 1951, Clemente's application with the Bureau of Lands was disapproved. As a result, Puigcerver demanded rentals. After the P1,000 down payment had been applied to the rents, Clemente refused to pay further rents. Instead, he asked for a *reconsideration* of the government's disapproval of the sale. Reconsideration was denied. In view of Clemente's refusal to pay rent, Puigcerver sued him in the Justice of the Peace Court (now municipal trial court), for recovery of possession of the premises. In his answer, Clemente alleged that since the execution of the contract of conditional sale, he had been occupying the house in

question as absolute owner; and that consequently, the Justice of the Peace Court had *no jurisdiction*, the question of ownership being necessarily and indispensably involved therein. *Issue*: Does said inferior court have jurisdiction?

HELD: Yes. Upon the pleadings filed, the only question before said court was the *recovery of physical possession of the land and house*, subject matter of the conditional sale. The mere fact that in his answer, Clemente alleged that he considered himself as the exclusive owner of the aforementioned house by virtue of the contract of sale — did *not* deprive the court of jurisdiction to try the ejectment case. The sale being conditional, *it became ineffective in accordance with its own terms, upon the disapproval of Clemente's sales application.*

(e) *To What Lands Applicable*

The action can apply to all kinds of land, whether agricultural, residential, or mineral, since the law does not distinguish. (*Teodoro v. Sabala, et al., L-11522, Jan. 31, 1958*).

(f) *Distinguished from Forcible Entry*

In forcible entry, the possession was unlawful from the very beginning; in unlawful detainer, the possession was lawful in the beginning, but became unlawful afterwards (as in the case where a lease contract has already expired). In both, however, ownership is not involved, but only the right to the material possession of the premises. Evidence showing ownership may indeed be given, not for the purpose of proving ownership, but merely to show proof that material possession had been lost. (*Baguiro v. Barrios, GR L-277, 43 O.G. 2031*). Also, both are proceedings *in personam* (binding only on the parties, and privies) and not proceedings or actions *in rem* (binding upon the whole world). (*See Vda. de Sengbengco, et al. v. Arellano, et al., L-16269, Mar. 8, 1961*). However, since they involve real property, they are also termed “actions *quasi in rem*” which are really actions *in personam*, involving real property.

De Guzman v. CA
82 SCAD 152
(1997)

Forcible entry and unlawful detainer are QUIETING PROCESSES and the 1-year time bar to the suit is in pursuance of the summary nature of the action. The 1-year period is counted from the time the entry by stealth was made by the defendant. After the lapse of the 1-year period, the remedy of the party disposed of a land is to file an *accion publiciana*.

Villanueva v. Mosqueda
GR 58287, Aug. 19, 1982

The *venue* of ejectment cases may be agreed upon by the parties, for the same is *not* jurisdictional in character.

(g) *Cases*

Pharma Industries, Inc. v. Hon. Pajarillaga
L-53788, Oct. 17, 1980

- 1) In forcible entry, defendant's possession is illegal *ab initio*; in unlawful detainer, his possession was originally lawful.
- 2) In forcible entry, prior possession of plaintiff is essential; in unlawful detainer (as when vendor *a retro* fails to deliver the property to vendee *a retro* despite failure of the former to repurchase the same and after title had been consolidated in the latter) said prior possession is not always essential or a condition *sine qua non*.

Cruz, et al. v. Roxas, et al.
L-160, 42 O.G. No. 3, p. 458

FACTS: A, the owner of a house was renting the same to B, who was occupying said house. B had a guest, C, who was staying at the house. A brought an action

of unlawful detainer against *B*, who was not paying his rentals. *A* won, and *B* was ejected. *C* however, wanted to remain on the premises, alleging that the action had been brought only against *B*, not against both *B* and *C*. Is *C* correct in alleging that he should not be ejected?

HELD: No. *C* is not correct. Guests, friends, and relatives (staying on the premises) are privies to an action against the tenant (from whom their right to stay is derived), and are therefore *not entitled to separate* independent legal process of ejectment. Once *B* was ordered to go away, this meant that *C* (the guest of *B*) *should also go away*. *It is wrong to say that C* has been deprived of the constitutional protection of due process of law.

Ariem v. De los Angeles
L-32164, Jan. 31, 1973

ISSUE: If a person by final judgment is ejected from a building, can his *parent-in-law* (who also occupies the building, but who claims to be the *owner* thereof) be ejected also even if he claims he was never made a defendant in the ejectment case?

HELD: Yes, said parent-in-law can be ejected. After all, it is presumed that he was notified by his son-in-law of the suit for ejectment against the latter.

Torres v. Peña
44 O.G. No. 8, p. 2699

A filed an action for unlawful detainer against *B*. *B* alleged that the property had been sold to him by *A*. *A* answered back that the supposed sale was fictitious and fraudulent. No circumstances showed that the claim was unfounded. Can the Justice of the Peace decide the case?

HELD: The Justice of the Peace Court has no jurisdiction here because the question of possession cannot be determined without first deciding the question of ownership. (*See also Peñalosa v. Garcia, 44 O.G. No. 8, p. 2709*).

Quimson v. Suarez
45 Phil. 101

A new tenant entitled to possess may bring, in lieu of the landlord, an action of unlawful detainer against the old tenant whose right to possess has already expired.

Supia, et al. v. Quintero, et al.
59 Phil. 312

FACTS: A sold his land to B in a *pacto de retro* transaction, but he (A) continued in possession thereof. At the termination of the right to repurchase, since A had so far failed to make the redemption, but continuing to possess, may B file an action for unlawful detainer against A?

HELD: Yes, because A's right to possess has already expired, and any claim of A regarding ownership should be considered immaterial.

Rantael v. Court of Appeals
L-47519, Apr. 30, 1980

If a lease is on a "month to month basis" this is a lease for a *definite period*, and therefore PD 20 on the non-ejection of lessees (with a monthly rent of P300) will *not* apply. Ejection can prosper. (This must be distinguished from a case where all that has been agreed upon is *payment monthly*. This is *not* a lease with a definite period.)

Torrecampo v. Vitero
20 Phil. 221

FACTS: R mortgaged a certain land to T. Later, the lands were sold to satisfy a judgment against a third party. The record does not clearly disclose what were the rights of the third party in the lands.

HELD: That T's remedy was an action upon his mortgage, and *not* an action of ejection to recover the lands.

MRR Co. v. Paredes
32 Phil. 534

If a railroad company has the power of eminent domain and occupies land without exercising it, but with the express or implied consent of the owner, ejectment or injunction will *not* lie, only an action for damages for the value of the property taken. This is not only on the ground primarily of public policy, but also of estoppel and the power eventually to expropriate.

Hilario v. Paulist Congregation
27 Phil. 593

A judgment of dispossession against a third party in favor of a lessee, will *bar* a suit against the lessor by the person dispossessed.

Pascual v. Pascual
33 Phil. 603

An action for ejectment brought primarily to recover damages, wherein the right to damages, is *not* insisted on, will be a bar to a subsequent action for damages where the facts upon which the parties rely are exactly the same as in the prior action.

(h) *Right to Damages in Forcible Entry and Unlawful Detainer Cases*

The plaintiff in forcible entry or unlawful detainer cases is entitled to damages, not for those caused to the property (like destruction) but for those caused by his *being deprived* of the use or possession of the premises, such as the use and collection of fruits. Damages caused the property itself can only be recovered in an ordinary action, because the plaintiff in such a case should be the owner. (*Santos v. Santiago*, 38 Phil. 575; *Dy, et al. v. Kuzon*, L-16654, Nov. 30, 1961). In the *Santos* case (*supra*), the plaintiff was able to recover the value of the fruits of the trees produced, but not the value of the trees that were

destroyed or cut down. In the case, it was held that a fair rental value for the time when plaintiff was deprived of possession could be recovered as damages. (*Sparrevohn v. Fisher*, 2 Phil. 676). In the *Dy* case, the value of the *bangus fry* which disappeared was recovered.

- (i) *Effect of No Demand to Vacate, in Case Demand is Essential*

If demand to vacate is essential (as in non-payment of rents) but demand is not made, the case should be brought before the Court of First Instance (now Regional Trial Court) and not the justice of the peace or the municipal court. Error on this point is jurisdictional. (*Dorado v. Virina*, 34 Phil. 264).

[NOTE: The demand to vacate is essential only if the tenant detains possession (except if the cause is expiration of the period), but is *not essential* if detention is made by a buyer, seller, or some other person. (See Sec. 2, Rule 70, Rules of Court).]

Pharma Industries, Inc. v. Pajarillaga
L-53788, Oct. 17, 1980

In an action for unlawful detainer, prior possession by the plaintiff or petitioner is not always a condition precedent.

Base v. Leviste
L-52762, Aug. 29, 1980

If after the filing of a motion for execution pending appeal, the accrued rentals are paid, said payment cannot prevent execution.

Caminong v. Ubay
L-37900, Feb. 14, 1980

If the judgment in an ejectment case is already final, writ of execution and a writ of demolition may already be issued.

Base v. Leviste
L-52762, Aug. 29, 1980

If a defeated lessee is unable to comply with the requisites for the stay or suspension of execution, and the lessor asks for execution of the decision pending appeal, it is the ministerial duty of the municipal court to grant such execution.

- (j) *When Judgment Is Executed*
- 1) If the Justice of the Peace or municipal trial court decides in favor of the *plaintiff* (and against the tenant), execution shall issue immediately, unless an appeal has been perfected, and the defendant, to stay execution, files a sufficient bond (supersedeas bond) approved by the Justice of the Peace or municipal trial court, and executed to the plaintiff to enter the action in the Court of First Instance (now Regional Trial Court) and to pay the *rents, damages and costs* down to the time of the final judgment in the action; and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance (now RTC) the amount of rent due from time to time under the contract, if any, as found by the judgment of the Justice of the Peace or municipal trial court to exist, or in the absence of a contract, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment. (*Sec. 19, Rule 70, Rules of Court*). The *supersedeas* bond answers only for BACK RENTALS however, and not for those that may accrue during the pendency of the appeal, which are guaranteed by the periodical deposits to be made by the defendant. (*Sison v. Bayona, L-13446, Sep. 30, 1960*).
 - 2) If the judgment is in favor of the *defendant*, there is no judgment for possession that may be executed, because he is entitled to continue in his possession.

(k) *Intervention of Mortgagee*

A mortgagee does not have any right to intervene in an ejectment case involving only possession, which is completely foreign to his claim that the subject matter of the litigation has been mortgaged to him to secure payment of a loan. If he wants to have his mortgage declared superior to the claim of possession, his remedy is to bring a separate action for that purpose, but certainly not by intervention in the ejectment case. This is because this matter is beyond the jurisdiction of the Municipal Court. (*De los Santos v. Gorospe, et al.*, L-12023, Apr. 29, 1959).

(l) *Right to Interpret*

**Nueva Vizcaya Chamber of Commerce v.
Court of Appeals
L-49059, May 29, 1980**

A municipal court has jurisdiction to interpret the meaning of a renewal clause in a lease contract.

**Dayao v. Shell Co. of the Philippines
L-32475, Apr. 30, 1980**

A lessor, in an action for unlawful detainer, may sue for both *ejectment* and *rescission* of the lease contract.

(15) The ‘Accion Publiciana’

- (a) The *accion publiciana* is intended for the recovery of the better right to possess, and is a *plenary* action in an ordinary civil proceeding before a Court of First Instance (now Regional Trial Court) (*Roman Catholic Bishop of Cebu v. Mangaron*, 6 *Phil.* 286), and must be brought within a period of ten years, otherwise, the real right of possession is lost. (See Art. 555, No. 4). The issue is not possession *de facto* but possession *de jure*. (*Rodriguez v. Taino*, 16 *Phil.* 301). The 1948 Judiciary Act did not introduce any modification to the well-established principle that when deprivation of possession has lasted more than

one year, the action to recover falls within the jurisdiction of the CFI (now RTC). (*Firmeza v. David*, 92 Phil. 733). Commonwealth Act 538 which provides for the automatic suspension of an action for ejectment against tenants occupying lands which the government desires to acquire thru purchase or expropriation proceedings, applies only to forcible entry and unlawful detainer cases, and NOT to ‘*accion publiciana*.’ (*Miranda v. Legaspi, et al.*, 92 Phil. 290).

Reyes v. Hon. Sta. Maria
L-33213, June 29, 1979

Petitioner sued to recover property (land) which respondent refused to deliver on the ground that he (respondent) was the owner thereof, having purchased the same from a third person. Is this a case of unlawful detainer?

HELD: No. It is a case of *accion publiciana*, for the claim is for possession *de jure* (not *de facto*). Thus, the CFI (now RTC) had jurisdiction. It should not have dismissed the case on the theory that the matter involved an “unlawful detainer” which should have been filed with the municipal court.

- (b) Kinds of Plenary Actions to Recover Possession (*Accion Publiciana*)

There are two (2) kinds of *accion publiciana*:

- 1) That where the entry was not obtained thru FISTS (fraud, intimidation, stealth, threat, or strategy). (This can be brought as soon as the dispossession takes place, *without* waiting for the lapse of one year). (*Gutierrez v. Rosario*, 15 Phil. 116). Failure to state that “deprivation” was caused by FISTS would make the action not one of forcible entry but *accion publiciana*. (*Gumiran v. Gumiran*, 21 Phil. 17). Thus, where the complaint not only shows prior possession by the defendant but also fails to allege that the plaintiff was deprived by FISTS, no case of forcible entry is made out, and the justice of

the peace court has NO jurisdiction over the case. (*Valderrama Lumber Manufacturers Co. v. L.S. Sarmiento, et al., L-18535, May 30, 1962*).

- 2) That where the one (1)-year period for bringing forcible entry or unlawful detainer has already expired. [Here the action may still be brought *after* the one-year period as *accion publiciana*, in the Court of First Instance (now Regional Trial Court); hence, if brought before the CFI (now RTC) before the expiration of the one-year period, the action would still be either forcible entry or unlawful detainer, and, therefore, the CFI (now RTC) would not have jurisdiction.] If forcible entry or unlawful detainer has already been brought or decided upon by the justice of the peace or municipal trial court, may the subject be again threshed out in an *accion publiciana* brought *after* the expiration of the one-year period? The Supreme Court, on this point, has answered in the *negative*, on the ground that this would present a real case of *res judicata*. (*Del Rosario v. Celosia, 26 Phil. 404*).

[NOTE: An *accion publiciana*, which naturally is *res judicata* only insofar as one of the parties is held to have the better right of possession, does *NOT* bar a subsequent action between the same parties where one seeks to compel the other to execute a formal *deed of sale* over the same property to enable him to obtain a transfer certificate of title in his name, and to quiet title over the same. (*Cabanero v. Tesoro, L-12802, Feb. 11, 1960*)].

Patricio S. Cunanan v. Court of Appeals
L-25511, Sep. 28, 1968

FACTS: Cunanan, in an *accion publiciana* sued in the CFI (now RTC) a certain Basaran, alleging that the latter had usurped the former's property for *over a year* before Cunanan instituted the action. On the basis of this allegation in the complaint, does the CFI (now RTC) have jurisdiction over the case?

HELD: Yes, for more than one year had elapsed since the usurpation. If only one year or less had elapsed, the action should have been instituted in the municipal court (as a forcible entry or as an unlawful detainer case depending on the facts alleged).

Venancia Magay v. Eugenio Estiandian
L-28975, Feb. 27, 1976

FACTS: Magay, on the strength of a Torrens title, brought an *accion publiciana* (plenary action for the better right of possession) against Estiandian, who in defense, stated that Magay's Torrens title was invalid because she (defendant Estiandian) had a pending application for a sales patent, and that therefore the property was still part of the public domain. Will said defense be considered?

HELD: No, the defense will not be considered. *Firstly*, Magay's Torrens title cannot be collaterally attacked. Such validity of title can be threshed out only in an action expressly filed for the purpose. *Secondly*, assuming that the lot is still part of the public domain, the suit must be instigated by the Republic (thru the Solicitor General), and not by Estiandian.

Cruz v. Torres
316 SCRA 193
(1999)

Accion publiciana or *plenaria de posesion* is also used to refer to an ejectment suit filed after the expiration of 1 year from the accrual of the cause of action or from the unlawful withholding of possession of the realty.

Siguan v. Lim
115 SCAD 833, 318 SCRA 725
(1999)

The action to rescind contracts in fraud of creditors is known as *accion pauliana*.

While it is necessary that the credit of the plaintiff in an *accion pauliana* must exist prior to the fraudulent alienation, the date of the judgment enforcing it is immaterial — even

if the judgment be subsequent to the alienation, it is merely declaratory with retroactive effect to the date when the credit was constituted.

(16) The ‘Accion Reivindicatoria’

- (a) The *accion reivindicatoria* or reivindicatory action is defined as an action to recover ownership over real property. The action must be brought in the Court of First Instance (now Regional Trial Court) where the real estate is situated. (*Roman Catholic Bishop of Cebu v. Mangaron*, 6 Phil. 286). The fact that the value of the improvements on the land is less than the jurisdictional amount does not deprive the Court of First Instance (now RTC) of its authority to take cognizance of an *accion reivindicatoria*. (*Carpena v. Manalo, et al.*, L-13143, Apr. 26, 1961). Of course, if there are pending title proceedings over the *public land* involved (pending in the Bureau of Lands), and the *attention* of the Court of First Instance (RTC) is *called* on this point, the said court must dismiss the suit, NOT for lack of jurisdiction, but for lack of cause of action. If the attention of the CFI (RTC) is not called on this matter, it can still proceed to hear the case. (*Pineda v. Court of First Instance of Davao, et al.*, L-12602, Apr. 25, 1961). It must be brought within 10 years or 30 years as the case may be (depending on whether the other party seeks to obtain ownership by *ordinary* or *extraordinary prescription*).

[NOTE: Insofar as real property is concerned, *ordinary* prescription which requires, aside from other requirements for prescription, *good faith* and *just title* runs for 10 years; *extraordinary* prescription, which does not require *good faith* or *just title*, runs for 30 years.]

[NOTE: When brothers, thru fraudulent representations have been able to succeed in obtaining title in their names of a parcel of land, thereby depriving their sister of her rightful share in the inheritance, a *constructive trust* is created in favor of said sister. She has therefore the right to vindicate the property REGARDLESS OF LAPSE OF TIME. (*Eustaquio Jan, et al. v. Vicente Zuñiga, et al.*,

L-17044, Apr. 28, 1962; see Jacinto v. Jacinto, L-17955, L-17957, May 31, 1962 and Sevilla v. Angeles, L-7745, Nov. 18, 1955). It should be observed, however, that this doctrine of imprescriptibility of an implied trust would seem to be directly at VARIANCE with the rule stated in *J.M. Tuason and Co. v. Magdangal, L-15539, Jan. 30, 1962,* and *Cornelio Alzona, et al. v. Gregorio Capunitan, et al., L-10228, Feb. 28, 1962* that an action for reconveyance based on an implied or constructive trust prescribes in *ten (10) years.*]

[NOTE: One of the actions which does not lapse by death is that for the recovery of title or possession of real estate. (*Sison and Azarraga v. Balgos, 34 Phil. 885*).]

- (b) In the reivindicatory action, the issue involved is *ownership*, and for this purpose, evidence of title or mode may be introduced. On this point of ownership, the action differs from *accion publiciana* where the issue is the better right of possession (possession *de jure*); and from “forcible entry” or “unlawful detainer,” where the issue is material possession (possession *de facto*). All three actions however, though involving real property, are actions in personam, and are therefore binding only upon the parties and privies thereto. (*See Javier, et al. v. Osmeña, et al., 40 O.G. 11, p. 2277; see also Del Rosario v. Celosia, 26 Phil. 404*). Just as a defendant in a forcible entry or unlawful detainer case in a justice of the peace court (municipal trial court) may not quash it and convert the suit to one of reivindicacion cognizable only by the Court of First Instance (now RTC), by claiming in his motion or answer that the case involves ownership or title, so also may a defendant, in a case involving title to property, NOT convert it into a suit for ejectment or illegal detainer by merely asking for possession of the property by means of a counterclaim. (*Feldman v. Encarnacion, et al., L-4494, Sep. 24, 1952*).

Armamento v. Guerrero
L-34328, Feb. 21, 1980

It is true that the basic rule is that after the lapse of one year, a decree of registration is no longer open to

review or attack although its issuance is attended with fraud. (*Sec. 38, Act 496*). This does not mean however that the aggrieved party is without remedy at law. If the property has not yet passed to an innocent purchaser for value, an action for reconveyance is still available. (*Sec. 55, Act 496; Clemente v. Lukban, 53 Phil. 931*). If the property has already passed to an innocent purchaser for value, the action is one for damages (*Dir. of Lands v. Reg. of Deeds of Rizal, 92 Phil. 826*), not one to set aside the decree. (*Ibid.*).

Cruz v. Court of Appeals
L-40880, Oct. 23, 1979

FACTS: Respondents sought to recover a parcel of land from the petitioners 26 years after they had abandoned the property, and during which time the petitioners had constructed their residences on the land. Should the complaint in the trial court be an accion publiciana or an accion reivindicatoria?

HELD: The action can be either, subject of course to the rules on prescription, and depending on what is desired by the action. However, because of the abandonment, the respondents will not be allowed to recover, otherwise stated, the law, justice, and equity will not allow them "to lie in wait and spring as in an ambush."

Cristeta L. Vda. de Sengbengco, et al. v.
the Hon. Francisco Arellano, et al.
L-16260, Mar. 8, 1961

FACTS: In Civil Case 3222, an ejectment case was filed by Sengbengco, et al. against Arturo Piccio, lessee of an Hacienda allegedly owned by Cuaycong. Cuaycong was not made a party in said case. The Court ejected Piccio and declared Sengbengco, et al., as the OWNER of the Hacienda entitled not only to the possession of the property but also to the fruits thereof, including some sugar quedans. When the Sheriff was about to proceed with a public auction sale of the quedans, Cuaycong, alleging ownership over the Hacienda and its fruits including the

sugar quedans, asked the Court to restrain by injunction the Sheriff from proceeding with the auction sale until after the question of ownership had been thoroughly threshed out in another case, Civil Case No. 5404.

HELD: The Court can properly grant the injunction since Civil Case 3222 was one of ejectment. Moreover, the declaration of ownership over the Hacienda did not bind Cuaycong, who was not a party thereto. Finally, the title over the land, far from being settled, is still the subject of further cadastral proceedings.

- (c) It is permissible to file *both* an action for ownership (*reivindicatoria*) and for detainer over the same land, and between the same parties, because the issues involved are different. Moreover, execution on the detainer can issue as soon as the judgment thereon becomes final. This is true even if the reivindicatory action is still pending. (*Alejandro v. Court of First Instance of Bulacan*, 40 O.G. [9s] No. 13, p. 128).

Alejandro v. CFI of Bulacan
40 O.G. (9s) 13, p. 128

FACTS: *T* filed in the Justice of the Peace Court (now Municipal Trial Court) an action for detainer against *A*. *A* lost but appealed the case to the Court of First Instance (now Regional Trial Court) where *A* also lost. The judgment became final, but *A* filed an action to recover ownership against *T*. Meantime, the Court of First Instance (RTC) *executed* the judgment in the detainer case. *A* claims that this is improper inasmuch as the ownership case is still pending. Hence, this action in the Supreme Court. *Issue:* Was the Court of First Instance (RTC) correct in ordering the execution of the final judgment in the detainer case?

HELD: Yes, the CFI (RTC) was correct. An action for detainer is after all different from an action to recover ownership. Said the Supreme Court: "The Court of First Instance (now RTC) of Bulacan had jurisdiction to order the execution of its final judgment rendered in the case

for detainer.” The fact that the petitioner (*A*) had filed over the same land another action involving title is no bar thereto because the latter is compatible with an action for detainer, and both can co-exist and can be filed at the same time so long as they pursue different purposes and are regulated by different procedure. (To the same effect, *De Jesus v. Manzano*, 29 *Phil.* 368, which held that a judgment in forcible entry or unlawful detainer is *not conclusive* proof in another action between the same parties arising out of a different cause of action, nor will it bar an action between the same parties respecting title to the land or building.)

Javier, et al. v. Osmeña, et al.
40 O.G. 11, p. 2277

FACTS: *A* brought an action to recover the ownership of a piece of land against *B*. *A* was declared the lawful owner. *A* then proceeded to the land, where he found *C* and *D* possessing the same. With the help of the sheriff, *A* succeeded in ejecting *C* and *D* from the land. *C* and *D* now complain that in the action filed by *A* and *B*, *C* and *D* were not made parties in the proceedings, and that therefore the ruling made by the court should not be enforced against them. Are *C* and *D* correct?

HELD: Yes, *C* and *D* are correct. A reivindicatory action is not an action *in rem*, but an action *in personam*. It should therefore bind merely those who had been made parties to the action. Judgments rendered in actions *in personam* are enforceable only between the parties and their successors in interest, but not against strangers thereto. (*Sec. 306, par. 2, Act 190; now Rule 39, Sec. 47, Rules of Court*).

Latigay v. Lebiga
(CA) 40 O.G. (4th S), 8, p. 291

FACTS: *A* wanted to evict *B*, a tenant, from *A*'s properties. *B* said he owned the properties. Although one year had *not yet lapsed*, *A* brought an *accion reivindicatoria*. The other party claimed that since the principal intention

here is to eject *B*, the lessor *A* should have waited one year before bringing the case to the Court of First Instance (now RTC). *A* countered by stating that since his action was a reivindicatory one (with the consequent right to recover possession as an *incident of ownership*), he was justified in bringing the case to the CFI (RTC). *Issue*: Does the CFI (now RTC) have jurisdiction over the case?

HELD: Yes, *A*'s action was properly brought to the CFI (now RTC) which has jurisdiction over the case, because after all, he was raising the question of ownership. Said the Court of Appeals: "When, on the occasion of an ejectment, the question of title is raised (by the plaintiff) at the same time, it is not necessary to wait for the lapse of one year to maintain an action for recovery of property before the Court of First Instance (now RTC). In other words, the question of title may be raised at any time before the CFI (now RTC), even if the cause of action should also constitute acts of ejectment."

[*NOTE*: When each of the contending parties seriously asserts his right to ownership to certain property, in order to decide the question, it is enough to determine who of the two is the owner. It is true that to be respected in the possession of a thing, ordinarily, mere possession is enough, unless a better right is established by another individual. Still, from the time it is shown that such possession is unlawful and to the prejudice of the real owner who has proved his claim by means of a lawful title, the property usurped must, in justice, be restored to the true owner. An action for recovery is indeed a right pertaining to the owner, the ownership being duly proven, and lies against any person in possession who, without title, unlawfully detains the property of the plaintiff. (*Puruganan v. Martin*, 8 *Phil.* 519; *Lubrico v. Arbado*, 12 *Phil.* 391).]

Vda. de Catchuela v. Francisco
L-31985, June 25, 1980

If a squatter files an action for reconveyance of land, his complaint can be dismissed for "lack of a cause of action."

Armamento v. Guerrero
L-34328, Feb. 21, 1980

An action for reconveyance based on an implied trust, prescribes in ten (10) years. If based on fraud, the action prescribes in four (4) years, counted from the discovery of the fraud.

- (d) *Effect of Denial of Petition for Registration under the Torrens System*

The *denial* of a petition for the registration of land, under the Torrens system, is not *res judicata* to another action brought, either for registration of the same land, or to any action of ejectment. While an alleged owner of land may have a right sufficient to justify an action of ejectment, he may not have titles sufficient to justify a registration of his land under the Torrens system. While his title may indeed be defective, still the title of the adversary might still be more defective. (*See Ramento v. Sablaya, 38 Phil. 528*).

- (e) *Judgment for Ownership Usually Carries with It the Right to Possession*

Cesareo Perez, et al. v. Vicente Evite, et al.
L-16003, Mar. 29, 1961

FACTS: Vicente Evite, *et al.*, were declared in a civil case as owners of a certain parcel of land. The writ of execution ordered the sheriff to deliver the land to them, but the possessors (Cesareo Perez, *et al.*) refused on the theory that while the judgment spoke of *ownership*, it did NOT mention anything concerning *possession*. Upon the other hand, said possessors did NOT give any other reason why they wanted to retain possession.

ISSUE: Should the possessors surrender their possession?

HELD: Yes, for under Sec. 45 of Rule 39 of the Rules of Court (now Sec. 47[c], Rule 39, Rules of Court), a judgment is NOT confined to what appears upon the face of

the decision, but also to those necessarily included therein or necessary thereto. Thus, in a land registration case (*Marcelo v. Mencias, L-15609, April 29, 1960*) wherein ownership was adjudged, the Supreme Court allowed the issuance of a writ of demolition (to remove the improvements existing on the land) because said demolition is deemed necessarily included in the judgment.

In support of their theory that the adjudication of ownership does *not* include possession of the property, the possessors rely on the cases of *Telena v. Garcia (87 Phil. 173)* and *Jabon, et al. v. Alo, et al. (L-5094, Aug. 7, 1952)*. Said decisions however, cannot apply because in both of them, the Supreme Court underscored the possibility that the actual possessor therein *had some rights which had to be respected and defined*. Thus, the pronouncement that ownership does not necessarily include possession — was made in said cases, having in mind instances where the actual possessor has a valid right (such as that of a tenant or lessee) over the property, a right enforceable even against the owner thereof. In the present case, no such right for continued possession has been asserted. Therefore, the possessors must also surrender possession. Indeed, it would frustrate the ends of substantial justice were the owners are to be required to submit to a new litigation.

- (f) *Adjudication of Ownership Does Not Necessarily Include Possession*

Olejo v. Hon. A. Rebueno
L-39350, Oct. 29, 1975

The adjudication by the court of ownership in favor of one party does not necessarily include the adjudication of possession over the same. The exception is when the party defeated has not been able to show any right to possess independent of his claim of ownership. In such a case, what the declared owner should do, if he desires to enforce his right to possess the property, is to file a motion for a writ of execution.

- (g) *Deprivation of Ownership by Virtue of a Law*

**Oreng Igo (Bagobo), et al. v. National Abaca
and Other Fibers Corporation, et al.
L-13208, May 18, 1960**

An *ordinary accion reivindicatoria* does NOT exist when the plaintiff alleges that he has been deprived of his land by virtue of a *law*, such as the Trading with the Enemy Act, as amended, in relation to the Philippine Property Act of 1946 — statutes which transferred certain lands from the U.S. to the Philippine Republic.

- (h) *Value of a Torrens Title*

**Demasiado v. Velasco
L-27844, May 10, 1976**

A Torrens certificate prevails over unregistered Deeds of Sale.

- (i) *Torrens Title as Conclusive Evidence of Ownership*

**Salao v. Salao
L-26699, Mar. 16, 1976**

A Torrens Title is generally a conclusive evidence of the ownership of the land referred to therein. (*Sec. 47, Act 496*). A strong presumption exists that Torrens titles were regularly issued and that they are valid. In order to maintain an action for reconveyance, proof as to the fiduciary relation of the parties must be clear and convincing. (*Yumul v. Rivera & Dizon, 64 Phil. 13*).

**Victorias v. Leuenberger and CA
GR 31189, Mar. 31, 1987**

The Torrens System was not established as a means for the acquisition of title to private land. It is intended merely to confirm and register the title which one may already have on the land. Where the applicant possesses no title or ownership over the parcel of land, he cannot acquire one under the Torrens system of registration.

While an inherent defective Torrens title may not ordinarily be cancelled even after proof of its defect, the law nevertheless safeguards the rightful party's interest in the titled land from fraud and improper use of technicalities by allowing such party, in appropriate cases, to judicially seek reconveyance to him of whatever he has been deprived of as long as the land has not been transferred or conveyed to a purchaser in good faith. The Torrens system was never calculated to foment betrayal in the performance of a trust.

National Grains Authority v. IAC
GR 68741, Jan. 28, 1988

All persons dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. When there is nothing on the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrances thereon, the purchaser is not required to explore further than what the Torrens title upon its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto.

Santos v. Aquino
L-32949, Nov. 28, 1980

If registered land expands or increases in size, the determination of the ownership over such expansion or increase is lodged not with the original registration court but with a court of general jurisdiction. The petition for clarification of title over the registered land may be regarded as an action for declaratory relief or quieting of title. Hence, the same is within the competence of an ordinary civil court.

Talanan Development Corporation v.
Court of Appeals
GR 55771, Nov. 15, 1982

FACTS: A petition for the reconstitution of a Torrens Title was opposed on the ground that according to an al-

leged survey plan other people were the owners of the lot involved. It was further contended that the survey plan existed long before the original certificate of title was issued. The existence of the alleged survey plan was denied by the Director of Lands. It was proved that the title has already passed from hand to hand, all subsequent holders being innocent purchasers for value. Should the Torrens title be reconstituted?

HELD: Yes. *Firstly*, the existence of the survey plan is doubtful. *Secondly*, innocent purchasers rely on the indefeasibility of the Torrens title.

Alipoon v. CA
305 SCRA 118
(1999)

The purpose of the reconstitution of title or any document is to have the same reproduced, after proper proceedings in the same form they were when the loss or destruction occurred.

(17) Writ of Injunction

A person deprived of his possession of real or personal property is ordinarily *not allowed* to avail himself of the remedy of *preliminary preventive or prohibitory injunction*, the reason being that the defendant in actual possession is presumed disputably to have the better right. (*Devesa v. Arbes*, 13 Phil. 273; *Palafox v. Madamba*, 19 Phil. 444; *Evangelista v. Pedrenos*, 27 Phil. 648). Under the Civil Code, however, *under certain conditions*, and in view of the frequent *delays* in cases of this nature, the remedy of the *writ of preliminary mandatory injunction* may be availed of in the *original* case of forcible entry; and during *the appeal*, in the case of *unlawful detainer*.

(a) *Original Case of Forcible Entry*

“A possessor deprived of his possession thru *forcible entry* may within 10 days from the *filing of the complaint* present a motion to secure from the *competent court*, in the action for forcible entry, a *writ of preliminary man-*

datory injunction to restore him in possession. The court shall decide the motion within 30 days from the filing thereof.” (Art. 539, 2nd paragraph).

(b) *Appealed Case of Unlawful Detainer*

“In ejectment (unlawful detainer, as contemplated by this article, involving a *lease contract*) cases where an appeal is taken, the remedy granted in Art. 539, second paragraph, shall also apply, if the higher court is satisfied that the *lessee’s appeal is frivolous or dilatory*, or that the *lessor’s appeal is prima facie meritorious*. The period of *ten days* referred to in said article shall be counted from the time the appeal is perfected.” (Art. 1674). (Actually, the counting must be from the moment the attorneys are notified of the perfection of the appeal).

Even in the cases *not provided for* in Arts. 539 and 1674, the remedy of injunction is nevertheless *proper and allowed* in the following instances:

- (a) If an *owner*, still in *possession*, desires to prevent repeated or further intrusions into his property by a stranger who, for example, persists in entering and cutting off wood or other products of the land. (*Rustia v. Franco*, 41 Phil. 281). Upon the other hand, if the defendant has already entered into possession through FISTS, and threatens or is about to commit a new incursion and usurpation by the same means, a *continuing* usurpation is being committed, the remedy of the plaintiff is an action of forcible entry where he may obtain a writ of preliminary injunction, and NOT an independent action for injunction. (*Casenas, et al. v. Jandayan*, L-17593, May 31, 1962).
- (b) If a person in *possession* of the real property in *concepto de dueno for over a year (possessor de jure)* (although not the owner), is disturbed by acts similar to those referred to in (a). (*See Wemple v. Eastham*, 144 La. 957).

[NOTE: A decision denying injunction against defendants, prohibiting trespass and spoliation of plaintiff’s land, does not bar a suit in ejectment for the lands against said defendants. (*Garen v. Del Pilar*, 17 Phil. 132).].

(18) Writ of Possession

A *writ of possession* used in connection with the Land Registration Law is an order directing the sheriff to place a successful registrant under the Torrens system in *possession* of the property covered by a decree of the Court. (See *Sec. 17, Act 496 as amended by Sec. 6 of Act 680*). Thus, it is NOT essential for the successful litigant to institute another action for the precise purpose of obtaining possession of the land, otherwise there would be multiplicity of suits. (*Marcelo v. Mencias, L-15609, Apr. 29, 1960*). The writ of possession cannot be used either against the party in whose favor the land has been decreed to be registered, or against his representatives or successors-in-interest. It may be issued only against the person defeated in the registration case, and against anyone unlawfully and adversely occupying the land or any portion thereof, during the proceedings, up to the issuance of the final decree. (*Bishop of Legaspi v. Calleja, et al., L-14134, May 25, 1960*). The reason why the writ of possession can be issued against any such adverse possessor is clear: the issuance of the decree of registration is *part* of the registration proceedings. In fact, it is supposed to END the said proceedings. Consequently, any person unlawfully and adversely occupying said lot at any time up to the issuance of the final decree, may be subject to judicial ejectment by means of a writ of possession, and it is the *duty* of the registration court to issue said writ when asked for by the successful claimant. (*Demorar v. Ibañez, 97 Phil. 72; Julio Lucero v. Jaime L. Loot, et al., L-16995, Oct. 28, 1968*). And even if the decree of registration is attacked in another case as being fraudulent, the mere pendency of this ordinary action is *not* a bar to the issuance of the writ of possession applied for by the registered owner. (See *Sorongon v. Makalintal, 80 Phil. 259*). If the writ of possession cannot be issued to the successful registrant, and he would be compelled to institute other actions for the recovery of his property, we may well say that he cannot enjoy the fruits of his victory. (*Pasay Estate Co. v. Del Rosario, 11 Phil. 39; Manlapas v. Llorente, 48 Phil. 298*). If the writ of possession implies the delivery of possession of the land to the successful litigant therein, a writ of DEMOLITION must likewise issue, otherwise, the writ of possession may be

ineffective. (*Marcelo v. Mencias*, L-15609, Apr. 29, 1960). Indeed, a writ of demolition is merely a complement of a writ of possession. (*Lucero v. Loot*, L-16995, Oct. 28, 1968).

The right to demand the writ of possession never prescribes. The reason given by the court being the provision of Sec. 46 of Act 496 that lands with a Torrens title cannot be acquired by prescription (*Manlapas and Tolentino v. Dorente*, 48 Phil. 298), nor will laches or neglect defeat the right to recovery. (*J.M. Tuason and Co. v. Macalingdong*, L-15398, Dec. 29, 1962). If the writ of possession has been issued once, it will not be issued again. (*Locsin and De Guzman v. Diaz*, 42 Phil. 22). Nor will a writ of possession ever be issued against a person who began to possess the land only after the land had already been registered. (*Sorongon, et al. v. Makalintal, et al.*, 45 O.G. 9, p. 3820, Sep. 1, 1949). Indeed such subsequent possessors cannot be summarily ousted merely by a motion for a writ of possession, regardless of the title or right which they claim to have. (*Maglasang v. Maceren, et al.*, 46 O.G. 11, p. 90, Supp., Nov. 1950). The remedy for the registered owner would thus be only forcible entry, unlawful detainer, *accion publiciana* or *accion reivindicatoria*. (*Manuel v. Rosaura*, 56 Phil. 365).

NOTA BENE: The issuance of the writ of possession is SUMMARY IN NATURE, hence, the same cannot be considered a *judgment on the merits* which is defined as "one rendered after a determination of which party is RIGHT, as distinguished from a judgment rendered upon some preliminary or formal technical point." (*A.G. Development Corp. v. NLRC*, 88 SCAD 518 [1997]).

PNB v. Adil
GR 52823, Nov. 2, 1982

If as a result of an extrajudicial foreclosure sale of a real mortgage, the lot is purchased, and is *not* redeemed within the period of redemption, the buyer is entitled to a *writ of possession*. In fact, he is entitled to the writ *even before* the period of redemption expires as long as a proper motion for the purpose has been filed, a bond approved, and no third person is involved.

(19) Right of Ownership Not Absolute

The right of ownership is not absolute. There are limitations which are imposed for the benefit of humanity, and which are based on certain legal maxims, such as the following:

- (a) The welfare of the people is the supreme law of the land.
- (b) Use your property so as not to impair the rights of others. "*Sic utere tuo ut alienum non laedas.*" "*The owner of a thing cannot make use thereof in such a manner as to injure the rights of a third person.*" (Art. 431).

(20) The Limitations on Ownership

- (a) Those given by the State or the Law.
- (b) Those given by the owner (or grantee) himself.
- (c) Those given by the person (grantor) who gave the thing to its present owner.

(21) Examples

- (a) Limitations imposed by the State — police power, power of taxation, power of eminent domain.
- (b) Limitations imposed by the Law — the legal easement of waters, the legal easement of right of way.
- (c) Limitations imposed by the owner — when the owner leases his property to another, said owner in the meantime cannot physically occupy the premises; when the owner *pledges* his personal property, he has in the meantime to surrender its possession.
- (d) Limitations imposed by the grantor — the donor may prohibit the donees from partitioning the property for a period not exceeding twenty (20) years.

(22) The Limitation of 'Police Power'

Police power is the right of the State to regulate and restrict personal and property rights for the common weal.

(*Director of Lands v. Abella*, 54 Phil. 455). The Supreme Court has defined it as the power to prescribe regulations to promote the health, morals, education, good order or safety, and the general welfare of the people. (*Primicias v. Fugoso*, 80 Phil. 71; See also *Barbier v. Connolly*, 113 U.S. 27). Police power is a limitation on the right of ownership in the sense that property may be interfered with, even destroyed, if the welfare of the community so demands it. Sec. 2238 of the Revised Administrative Code requires that an ordinance enacted by a municipality under the “general welfare clause” should be to “provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein.” (*Pampanga Bus Co., Inc., et al. v. Mun. of Tarlac*, L-15759, Dec. 30, 1961).

Police power is based on the Latin maxim — *salus populi est suprema lex* (the welfare of the people is the supreme law) and *sic utere tuo ut alienum non laedas* (“so use your own as not to injure another’s property”). For the State to exercise police power, it is essential that —

- (a) the interests of the public in general, as distinguished from a particular class, require such interference;
- (b) the means should be reasonably necessary for the accomplishment of the purpose, and *not unduly oppressive* upon individuals. (*U.S. v. Toribio*, 15 Phil. 85).

Moreover, while the power to enact laws intended to promote the general welfare of society is inherent in every sovereign state, such power is *not without* limitations, notable among which is the prohibition against the taking of private property for public use without just compensation. (*Municipality of Lucban v. NAWASA*, L-15525, Oct. 11, 1961).

(23) Exercise of Police Power

Police power has been used:

- (a) to abate nuisances, whether public or private, whether *nuisances per se* or *nuisances per accidens*. (See *Iloilo Cold Storage Co. v. Council of Iloilo*, 24 Phil. 471).

- (b) to destroy a house so that fire would not spread.
- (c) to require tenements to be connected to city sewers. (*Case v. Board of Health*, 24 Phil. 165).
- (d) to prohibit the sale of fresh meat (not cold storage meat) outside public market. (*Co Kiam v. City of Manila*, L-6762, Feb. 28, 1955).
- (e) to regulate the killing for human consumption of large cattle still fit for work. (*U.S. v. Toribio*, 15 Phil. 85).
- (f) to remove billboards which are offensive to sight. (*Churchill and Tait v. Rafferty*, 32 Phil. 580).
- (g) to demand that buildings be constructed so as to abut a public street or alley or an approved private street or alley. (*Fabie v. City of Manila*, 21 Phil. 486).
- (h) to regulate interest rates and prohibit usury in any form. (*U.S. v. Constantino*, 39 Phil. 553).
- (i) to require permit before an owner of land bordering government property may fence off his land. (*People v. Maluzarte*, 40 O.G. No. 12 [8th S], p. 71).
- (j) to regulate the installation of gasoline stations so as to become reasonably distanced from one another to prevent both ruinous competition and any consequent danger to the public that may be occasioned by the presence of gasoline. (*Javier and Ozaeta v. Earnshaw*, 64 Phil. 626).
- (k) to prohibit structures offensive to sight (*Churchill and Tait v. Rafferty*, 32 Phil. 580) but not to prevent an owner from erecting on his own land a beautiful house simply because by doing so, the view of a public plaza from the highway would be impaired. What the municipality affected should do would be to expropriate the property and not merely prohibit the construction. (*People v. Fajardo*, L-12172, Aug. 29, 1958).
- (l) to declare by ordinance, market stalls held by aliens, as vacant, so that Filipino applicants, may be preferred. (*Chua Lao, et al. v. Raymundo, et al.*, L-12662, Aug. 18, 1958).

- (m) to enact the Social Security Law. (*Roman Cath. Archbishop of Manila v. Social Security Commission, L-15045, Jan. 20, 1961*).
- (n) to implement the Comprehensive Agrarian Reform Law (CARP). (*Roxas and Co., Inc. v. CA, 117 SCAD 589, 321 SCRA 106 [1999]*).

(24) No Financial Compensation in Police Power

When by police power, private property is impaired or destroyed in the interest of the public weal, financial compensation is not, unlike in eminent domain, given to the owner. (*U.S. v. Toribio, 15 Phil. 85*). What he gets in return, however, are the benefits arising from a healthy economic standard of society. (*See Churchill and Tait v. Rafferty, 32 Phil. 580*). In a sense, therefore, taking of property because of police power is “damage without injury” — *damnum absque injuria*. (*Ibid.*).

(25) Police Power in Whom is Vested

Police power is vested primarily in Congress of the Philippines, but its exercise may be delegated to municipal corporations (thru the “general welfare clause”), and *sometimes* to the President of the Philippines during periods of emergency. (*Lim v. Register of Deeds, 46 O.G. 3665*). Unless properly authorized by Congress, executive officials cannot ordinarily interfere with the property of an individual.

(26) The Power of Taxation and How It Limits Ownership

Taxation is the inherent power of a State to raise income or revenue to defray necessary governmental expenses for a public purpose. (*Gruen v. State Tax Com., 211 Pac. 2d. 651; see also Cooley, Taxation, 4th Ed., p. 72*). Thus, thru taxation, the cost of governing is apportioned among those who in some measure are privileged to enjoy benefits and must consequently bear the burdens of government. (*Welch v. Henry, 305 U.S. 134*). Indeed, it has been said that of all the powers of government, the power of taxation is the strongest, for as Chief Justice John Marshall would have it, it involves “the power to destroy.” (*See McCollough v. Maryland, 4 Wheat 316*). Congress has the

exclusive power to tax, although this right may be, as is often the case, delegated to municipal corporations. (*Spencer v. Merchant*, 125 U.S. 345). Real as well as personal property may be taxed, and unless the taxes are paid there is danger that the property may be seized and confiscated by the government. Taxation, in this sense, is a limitation on the right of ownership. The sale and forfeiture of the property to the Government in the absence of bidders operate to discharge tax claims up to *the value of the property* forfeited. The remedy by RESTRAINT and LEVY may be repeated if necessary until the full amount due, including all expenses, is collected. (*Castro v. Collector of Internal Revenue*, L-12174, Apr. 26, 1962). A city treasurer does not have to follow a fiscal's (now prosecutor) opinion on the legality of a tax — for said fiscal's (now prosecutor's) opinion is merely advisory. (*Phil. Match Co. v. City of Cebu*, L-30745, Jan. 18, 1978).

**Phil. Fiber Processing Co. v.
Commissioner of Internal Revenue
L-27212, Aug. 31, 1973**

ISSUE: If a person has a “deficiency income tax assessment,” but was able *in time* to avail himself of the tax amnesty under Presidential Decree No. 68, what happens to an APPEAL said taxpayer had previously made?

HELD: The appeal is rendered *moot and academic*, in view of the amnesty.

**Estate of the late Mercedes Jacob v. CA
89 SCAD 962
(1997)**

[O]ne who is no longer the lawful owner of the land cannot be considered the “present registered owner” because, apparently, he has already lost interest in the property, hence, is not expected to defend the property from the sale at auction. The purpose of PD 464 is to collect taxes from the *delinquent taxpayer* and, logically, one who is no longer the owner of the property cannot be considered the delinquent taxpayer.

Cenido v. Apacionado
318 SCRA 688
(1999)

Real property tax shall be assessed in the name of the person “owning or administering” the property on which the tax is levied, and a tax declaration in the name of a person who has NO SUCCESSIONAL or ADMINISTRATIVE rights to a decedent’s estate is null and void.

(27) ‘Taxation’ Distinguished from ‘Other Governmental Powers’

	TAXATION	EMINENT DOMAIN
(1) Compensation	(1) generally, a better government (with consequent protection to life, liberty, and property)	(1) financial or monetary compensation
(2) Persons involved	(2) operates on a class, according to some principle of apportionment	(2) operates on an individual (the owner of the property)
(3) Nature of the duty	(3) paid by citizen as his CONTRIBUTION to a public burden	(3) allowed by the citizen, but NOT as a contribution to a public burden
(4) Manner of exercise	(4) generally, no complaint is filed in court. It is the public that, in general, is required to pay	(4) a property owner is made a defendant in the complaint (expropriation is a forced sale)

(See People v. City of Brooklyn, 35 Am. Dec. 266).

	TAXATION	POLICE POWER
(1) Purpose (2) Compensation	(1) to raise revenue (2) taxpayer is compensated by obvious and apparent benefits	(1) to promote the public welfare by system of regulation (2) citizen's compensation is more or less <i>intangible</i> , an idealistic realization that society has in some way benefited
(3) Amount paid	(3) may be small or big (courts cannot decree the amount paid as unreasonable)	(3) fee paid is just enough to cover necessary expenses for regulation or inspection

(U.S. v. Toribio, 51 Phil. 85; Cu Unjieng v. Patstone, 42 Phil. 818).

Ereve v. Escaros
L-26993, Dec. 19, 1980

A tax declaration cannot generally prevail over adverse possession for a long period of the disputed lot nor over a private deed of sale.

Gesmundo v. CA
321 SCRA 487

While tax declarations and receipts are not conclusive evidence of ownership, yet, when coupled with proof of actual possession, tax declarations and receipts are strong evidence of ownership.

(28) Eminent Domain (*See Comments under Art. 435*)**(29) Burdens of Ownership**

While an owner has certain rights over his property, subject to the limitations hereinabove already discussed, he suffers also from certain disadvantages or consequences of said ownership. For example, we have the rule of “*res perit domino*” (the owner bears the loss of the property owned by him).

Warner, Barnes and Co., Ltd. v. Ramon Flores
L-12377, Mar. 29, 1961

FACTS: In 1940, Ramon Flores purchased from the plaintiff approximately P3,000 worth of fertilizer, due on or before Dec. 31, 1941, with interest compounded quarterly. Flores executed a chattel mortgage on 951 piculs of sugar owned by him to guarantee the obligation. In said deed of chattel mortgage, the mortgagee-plaintiff was authorized to sell the sugar in case of non-payment on the date of maturity, and to retain from the proceeds of such sale the value of the debt plus interest, and to turn over any surplus to Flores. Due to non-payment at maturity, the sugar was offered for sale, but unfortunately no sale could be made because of lack of shipping facilities and the eventual involvement of the Philippines in World War II. During the Japanese Occupation, all the sugar mortgaged were either burned or looted.

ISSUE: Who bears the loss of the sugar?

HELD: Flores bears the loss of the sugar because at the time of its loss, he was still the owner thereof. The deed of chattel mortgage did NOT transfer ownership to the mortgagee, for if the latter were already the owner thereof, there would have been no necessity for returning any surplus. Hence, Flores must still pay.

Art. 429. The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

COMMENT:**(1) Doctrine of ‘Self-Help’**

This Article speaks of the principle of *self-help*, namely, the right to counter, in certain cases, force with force.

(2) Examples

- (a) I have a car; I see a thief about to get it. I can use force in driving the thief away, provided that the means I resort to are reasonable. As a matter of fact, I can even chase him *immediately* and recover the car from him by force. If, however, I lose sight of him, and I see him only two or three days later, I will not be justified in taking the law into my own hands. I will have to resort to the courts of justice.
- (b) What has been said in the above example may also be said if the property involved is a house or some other form of real property. The person, however, against whom I have the right to use force should really be an “aggressor.” One has no right at all, thus, to prevent by force, a sheriff from lawfully levying on his property, or to prevent a policeman from confiscating evidence of a crime in his possession.
- (c) It has recently been held that if a person finds a neighbor’s pig among the plants on his land, the proper thing for him to do is to drive the pig away, and to file a civil action against the owner of the pig for damage to the plants. It would be wrong for him to shoot the pig to death for the purpose of vengeance — and for such an act, he can be convicted of the crime of malicious mischief. (*People v. Segovia, L-11748, May 28, 1958*).

(3) Self-Defense under the Law

Self-defense is treated of in Art. 11, par. 1 of the Revised Penal Code, and includes not only defense to a man’s person but also that of his rights, including the right to property. Although in a decision of May 7, 1913 of the Supreme Court of Spain, it was held that force could be used only when physical harm threatens the owner or protector of the property, under

Art. 429 of the Civil Code, force may be used even without such threatened bodily danger — provided that defense, and not vengeance, is involved.

Art. 430. Every owner may enclose or fence his land or tenements by means of walls, ditches, live or dead hedges, or by any other means without detriment to servitudes constituted thereon.

COMMENT:

Fencing of Land or Tenements

Example: A person may fence off his house and lot unless he denies others a right of way to which the latter may be entitled. In one case, the lands of *A* were being flooded because *B*, the owner of certain lands, in order to maintain a fish pond, closed his (*B*'s) estate, thus closing the outlet to the river of water on *A*'s property. The question was whether *B* had the right to so fence his estate.

HELD: No, *B* had no right to prevent the outflow of the water from *A*'s estate. While he had the right to fence his estate, still he should not impair the servitudes or burdens constituted thereon. (*Lunod v. Meneses, 11 Phil. 128*).

Art. 431. The owner of a thing cannot make use thereof in such manner as to injure the rights of a third person.

COMMENT:

(1) No Injury to Rights of Third Persons

This is one of the fundamental bases of police power, and constitutes a just restriction on the right of ownership.

(2) Examples

I cannot blow my saxophone in the middle of the night because I would unduly disturb the rights of others to a peaceful sleep. If Gloria owns a house on an isolated farm in Lucena,

she can burn said house; but if she owns one in Manila, in a busy district where there are many houses, she cannot burn the house in view of the possible harm to others. Nuisances may be abated judicially or extrajudicially, and one responsible for the existence or continuation of a nuisance can be held liable by those who may suffer injury thereby. (*See Arts. 694-707*).

Art. 432. The owner of a thing has no right to prohibit the interference of another with the same, if the interference is necessary to avert an imminent danger and the threatened damage, compared to the damage arising to the owner from the interference, is much greater. The owner may demand from the person benefited indemnity for the damage to him.

COMMENT:

(1) State of Necessity

This Article refers to a *state of necessity* as distinguished from the principle of self-help enunciated in Art. 429.

(2) Rule Under Criminal Law

Under the Revised Penal Code, the *state of necessity* is considered a justifying circumstance.

Any person who, in order to avoid an evil or injury, does an act which causes damage to another does not incur criminal liability provided that the following requisites are present:

- (a) that the evil sought to be avoided actually exists;
- (b) that the injury feared be greater than that done to avoid it;
- (c) that there be no other practical and less harmful means of preventing it. (*Art. 11, par. 4, Rev. Penal Code*).

(3) Examples

- (a) To prevent fire from spreading and thus burning valuable houses, firemen may dynamite or destroy *barong-barongs*

between the fire and the shacks so as to stop the fire. The owners of the *barong-barongs* have no right to interfere. However, the owners of the buildings saved will have to compensate the owners of the shacks destroyed. (*See also Viada,Codigo Penal, 166*).

- (b) While I am driving an automobile with *due care*, an animal stands right across my path rushing towards me. On either side of me is a precipice. I am thus forced to decide whose life I would save — mine or that of the animal. If I kill the animal by driving straight across, the owner of the animal, if he should happen to be nearby, has no right to interfere with the destruction of his animal.

Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

COMMENT:

(1) Disputable Presumption of Ownership

Two requirements to raise a *disputable* (rebuttable) *presumption of ownership*.

- (a) actual possession; and
- (b) claim of ownership.

Thus, a tenant, who admits his tenancy, cannot be presumed to be the owner. Moreover, just because a person works on a parcel of land does not necessarily mean that he is the owner thereof, particularly if he has not expressed the concept in which the land was being worked upon by him. (*Alano, et al. v. Ignacio, et al., L-16434, Feb. 28, 1962*).

(2) Applicability of the Article

Art. 433 applies to *both* immovable and movable property.

(3) Similarity to Art. 541

Art. 433 is similar to Art. 541 which provides that “a possessor in the concept of owner has in his favor the legal presumption that he possesses with a *just title* and he cannot be obliged to show or prove it.”

(4) Recourse to Judicial Process

The true owner has to resort to judicial process to recover his property, only if the possessor does not want to surrender the property to him, after proper request or demand has been made. Judicial process must then be had to prevent disturbances of the peace. (*Supia v. Quintero*, 59 *Phil.* 312).

Art. 434. In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant’s claim.

COMMENT:**(1) Requisites in an Action to Recover**

- (a) Property must be identified.
- (b) Reliance on title of the plaintiff (and not on the weakness of defendant’s title or claim). (This is because it is possible that neither the plaintiff nor the defendant is the true owner of the property in question.)

[NOTE: These requisites are based on the doctrines enunciated by our Supreme Court in *Del Valle v. Meralco*, 34 *Phil.* 963. These requisites in turn are based on the proposition that the burden of proof lies on the party who substantially asserts the *affirmative* of an issue. For he who relies upon the existence of a fact should be called upon to prove that fact. (See *Ramcar, Inc. v. Garcia*, L-16997, Apr. 25, 1962).]

[NOTE: One who desires to recover land as owner from another person upon the theory that the deeds held by the other party are null and void, must first ask that such alleged fraudulent deeds be *set aside*. He cannot have

such documents annulled in a subsidiary action. (*Dacer v. Muñoz, 12 Phil. 328*).].

(2) First Requisite: Identity of the Property

The boundaries of the land sought must be proved, so that if a person fails to specify which portion of a parcel of land is the portion he is supposed to have inherited, his action to recover the property will necessarily fail. (*Santiago v. Santos, 48 Phil. 567*). What is true in an ordinary action to recover property is also true in the case of an application for the registration of land under the Land Registration Act, because the claimant must also prove in an unquestionable manner, his ownership and identity of the property claimed. (*Oligan v. Mejia, 17 Phil. 494*). In cases of doubt as to the land's identity, the lower court should require each party to present plans prepared by some competent person. (*Baloloy v. Edu, 20 Phil. 360*). The description should be so definite that an officer of the court might go to the locality where the land is situated and definitely locate it. (*Sambrano v. Arzaga and Longboy, 22 Phil. 130*).

(3) Second Requisite: Strength of Plaintiff's Title

If the claims of both plaintiff and defendant are weak, judgment must be for the defendant, for the latter, being in possession, is presumed to be the owner, and cannot be obliged to show or prove a better title. (*Santos v. Espinosa, 26 Phil. 398*). Among the evidence which may be presented by plaintiff to show ownership are the following:

- (a) Torrens certificate. (*Reyes v. Borbon, 50 Phil. 791*).
- (b) Titles granted by the Spanish Government, like those effected by royal cedula (*Guido v. De Borja, 12 Phil. 718*) and "titulo de composicion." (*Escario v. Regis, 31 Phil. 618*).
- (c) Long and actual possession. (*Nolan v. Jalandoni, 23 Phil. 292*).
- (d) Occupation of a building for a long time without paying rentals therefor. (*Gatdula v. Santos, 29 Phil. 1*).
- (e) Testimony of adverse and exclusive possession of ownership corroborated by tax declaration of proper-

ties, payment of taxes, and deeds of mortgage (but not the mere fact of working over the land without expressing the concept in which the land was being worked). (*Consortia Alano, et al. v. Carmen Ignacio, et al.*, L-16434, Feb. 28, 1962).

[NOTE: These pieces of evidence, though admissible, do not necessarily mean that they are conclusive proof of ownership. They may therefore still be defeated or rebutted.]

[NOTE: It has been held that in the absence of evidence of ownership, the mere fact that a map in the city's possession showed that the property involved was a portion of a street does NOT prove *dominium* by the State. (*Acuña v. City of Manila*, 9 Phil. 225).]

[NOTE: If land is registered under the Land Registration Law in the name of "M.R. married to R.L.," it is evident that *prima facie* the land belongs to "M.R." (the wife), alone as her paraphernal property, for if it were conjugal, the title should have been issued in the name of both. The words "married to R.L.," written after the name of M.R., are *merely descriptive* of the civil status of M.R., the registered owner of the property covered by the title. (*Litam, et al. v. Espiritu, et al.*, L-7644-45, Nov. 27, 1956; *Florentina Mata de Stuart v. Hon. Nicasio Yatco, et al.*, L-16467, Apr. 27, 1962).]

Art. 435. No person shall be deprived of his property except by competent authority and for public use and always upon payment of just compensation.

Should this requirement be not first complied with, the courts shall protect and, in a proper case, restore the owner in his possession.

COMMENT:

(1) 'Eminent Domain': Definition and Purpose

Eminent domain, or the superior right of the State to own certain properties under certain conditions, is a limitation on

the right of ownership, and may be exercised even over private properties of cities and municipalities, and even over lands registered with a Torrens title. According to Cooley, it is the right of the State to acquire private property for public use upon payment of just compensation. (*Cooley's Constitutional Limitations, 8th Ed., p. 110*). Inherently possessed by the national legislature, the power of eminent domain may be validly delegated to local governments, other public entities and public utilities. (*Moday v. CA, 79 SCAD 816 [1997]*). Eminent domain or expropriation is based on the need for human progress and community welfare or development. The power of eminent domain is inseparable from sovereignty, being essential to the existence of the State and inherent in government even in its most primitive forms. No law, therefore, is even necessary to confer this right upon sovereignty, or upon any government exercising sovereign or quasi-sovereign powers. (*Visayan Refining Co. v. Camus and Paredes, 40 Phil. 550*).

De Knecht v. Bautista
L-51078, Oct. 30, 1980

The right of eminent domain must not be exercised capriciously or arbitrarily.

(2) 'Eminent Domain' Distinguished from 'Expropriation'

While eminent domain refers to the *right*, expropriation usually refers to the *procedure*, thru which the right is exercised.

(*See Rule 67, Rules of Court*).

(3) Essential Requisites of Eminent Domain

- (a) taking by *competent authority*
- (b) observance of *due process of law*
- (c) taking for *public use*
- (d) payment of *just compensation*. (*See Republic v. Juan, L-24740, July 30, 1979*).

**Republic v. La Orden De PP. Benedictinos
de Filipinas,
L-12792, Feb. 28, 1961**

FACTS: The government wanted to expropriate part of the land owned by the San Beda College on Mendiola Street to solve alleged traffic congestion. Instead of filing an answer, the college filed a motion to dismiss on the ground that the land “is already devoted to public use and that there is no necessity for the expropriation.” Without receiving evidence on the question of fact involved, the trial court dismissed the expropriation case on the ground of lack of extreme necessity.

HELD: The case should be remanded to the lower court for the presentation of evidence on the facts in dispute, such as the necessity for traffic relief. This is because courts have the power to inquire into the legality of the proceedings and to verify the existence of the legal requisites for the exercise of the right of eminent domain.

[NOTE: The collection by the owner of the land to be expropriated, of the amount deposited by the Government as provisional value of the land is a recognition not merely of the Government’s right to take possession of the land, which is perfected upon the making of such deposit, unless the Court fixes another amount as to the provisional value thereof, but also, of the compliance with the condition precedent, and thus renders such right, effective and executory. (Rep. of the Phils. v. Pasicolan, et al., L-17365, May 31, 1961).]

**Santos v. Director of Lands
22 Phil. 424**

FACTS: A landowner wanted a Torrens Title for his land, but in the registration proceedings in court, the Director of Lands opposed the petition, alleging that a certain portion of the land was essential for the proposed widening of a road.
ISSUE: Is the opposition tenable?

HELD: No, the opposition is *without merit* and is therefore *untenable*. Later the government can ask for expropriation, but in the meantime, the landowner must *not* be deprived of his rights over the land.

Ayala de Roxas v. City of Manila
9 Phil. 215

FACTS: An owner of a land bordering an estero applied for a license with which to construct a terrace on his land. The City of Manila refused to give the license, on the theory that a public easement of towpath was going to be established on a portion of the land. The owner petitioned for a writ of *mandamus*. *ISSUE:* Will the writ be granted?

HELD: Yes, otherwise the landowner will be deprived of his property without due process of law.

Pedro Arce and Carmen Barrica
de Arce v. Genato
L-40587, Feb. 27, 1976

FACTS: A CFI (now RTC) Judge, in an expropriation case, allowed the condemner (the Municipality of Baliangao of Misamis Oriental) to take (upon deposit with the PNB of an amount equivalent to the assessed value of the property) immediate possession of a parcel of land (sought to be condemned for the beautification of its town plaza). This was done without a prior hearing to determine the necessity for the exercise of eminent domain. Is the Judge allowed to do so?

HELD: Yes, the Judge is allowed to do so in view of Presidential Decree 42, issued on Nov. 9, 1972. PD 42 is entitled "Authorizing the Plaintiff in Eminent Domain Proceedings to take Possession of the Property Involved Upon Depositing the Assessed Value for Purposes of Taxation." Under said P.D., the deposit should be with the Philippine National Bank (in its main office or any of its branches or agencies). The bank will hold the deposit, subject to the orders and final disposition by the Court. Under the Decree, there is no need of prior showing of necessity for the condemnation. The *City of Manila v. Arellano Law Colleges* (85 Phil. 663), which enunciated the contrary doctrine is no longer controlling. The old doctrine requiring prior showing of necessity was the antiquarian view of Blackstone with its sanctification of the right to one's estate.

The present (1987) Constitution pays little heed to the claims of property.

(4) Competent Authority

- (a) Authority as of *right* — the State.
- (b) Authority by virtue of a *grant* — persons or corporations offering public services.

More specifically, the following are examples of *competent authority*:

- (a) National Government (thru the President of the Philippines) (*CA 20 as amended by CA 260*).
- (b) City of Manila (thru the Municipal Board with the Mayor's approval) (*Rep. Act 267*).
- (c) Provinces (thru the Provincial Board, with the approval of the Executive Secretary of the President) (*See Sec. 2106[f], Revised Adm. Code*).
- (d) Municipalities (thru the municipal councils with the approval of the Executive Secretary of the President) (*See Sec. 2245[b], Revised Adm. Code*).
- (e) Other public corporations (thru the Board of Directors, provided there is prior government approval) (*See Act 1459, par. 86[1]*).
- (f) The Manila Railroad Co. (*Act 1510, Sec. 1, par. 26, as amended by Act 2373; see also MRR v. Hacienda Benito, 37 O.G. 1957*).

[NOTE: The right to expropriate is not an inherent power in a municipal corporation, and before it can exercise the right, *some law* must exist conferring the power upon it. If a law grants it, whether wisely or not, it must be given effect, provided that all other requirements of the law are complied with. (*City of Manila v. Chinese Community, 40 Phil. 349*). The validity of a statute directing the expropriation of certain property is a judicial question. (*NARRA v. Francisco, L-14111, Oct. 24, 1960*).]

(5) Due Process of Law

(a) Under the Constitution, no person may be deprived of property without due process of law. (*Art. III, Sec. 1, 1987 Constitution*). In connection with expropriation, it has been held that there is due process of law when there has been a *substantial compliance* with the procedure laid down under Rule 69 — Expropriation — of the Rules of Court (now Rule 67). (*See Visayan Refining Co. v. Camus, 40 Phil. 550*). In other words, there must be proper expropriation proceedings. (*Santos v. Director of Lands, 22 Phil. 424*). Such proceedings must include:

- 1) a notice to the owner of the property;
- 2) a full opportunity to present his side on whether or not the purpose of the taking is public; or whether or not the government reasonably needs the property;
- 3) and such other procedural requisites as may be prescribed under the law. (*Black, Constitutional Law; see also Secs. 1-14, Rule 67, Rules of Court*).

[NOTE: The mere notice of the intention of the state to expropriate the land in the future cannot prevent the landowner from alienating the property, for after all, the condemnation proceedings may not even be instituted. Moreover, even while proceedings have already begun, it is possible that a sale to a person willing to assume the risk of expropriation may be considered valid. (*Rep. v. Baylosis, 61 O.G. 722*).J.

- (b) *Strict construction*: Whenever an entity is granted the right to expropriate, the grant must be strictly construed, and when the right is sought to expropriate private property that is not really needed, the right should be denied. (*See Manila Railroad Co. v. Hacienda Benito, 37 O.G. 1957*).
- (c) *Estoppel*: It is true that before there can be expropriation, there must first be instituted proper proceedings in court. Therefore, an entity can be held liable for damages for unlawful trespass if the proper procedure has

not been first resorted to. (*See City of Manila v. Chinese Community, 40 Phil. 349*). But the ruling will not apply if the owner of the property is guilty of estoppel, *i.e.*, if he allowed the entity to make use of the land, and incur expenses thereon without making any objection to the unauthorized taking. In such a case, he cannot complain against the expropriation, although of course, he would still be entitled to just compensation for the land, inasmuch as he can no longer recover the same. (*See Manila Railroad Co. v. Paredes, 32 Phil. 534*). Moreover, he will have to be paid not only for the part of the land actually taken, but also for the remaining portions, if by virtue of the improvements introduced thereon by the entity, the remaining land has become useless for him. (*See Tenorio v. Manila Railroad Co., 22 Phil. 411*).

- (d) *Confiscation abolished*: There is a distinction between expropriation (which requires due process of law), and confiscation (which does away with due process, and where no compensation is given). Confiscation has long been abolished by modern fundamental laws. Thus, if a revolutionary government confiscates the properties of a private individual, the properties cannot be considered owned by the confiscator. To decide otherwise would be to promote the interest of those who would foment public disorder. (*Endencia v. Lualhati, 9 Phil. 177*).
- (e) *Abandonment of proceedings*: When in the course of the expropriation proceedings it is realized that there is no more need for the property sought, it is permissible to abandon the proceedings, but the landowner must be indemnified for all losses or prejudice caused him, in case the land had been in the meantime possessed by the plaintiff. (*City of Manila v. Ruyman, 37 Phil. 421*).

(6) Public Use

- (a) As to what exactly is *public use* insofar as eminent domain is concerned may be difficult to determine. The character of the entity or agency employed is not a sufficient basis from which to conclude the presence or absence of a “public use.” If indeed the use be public, it does not matter

that the entity exercising the right be private. Upon the other hand, just because the agency is public does not necessarily follow that the purpose is also public. (*See Perry v. Keene, 46 N.H. 514*).

- (b) *Question of fact:* The question as to whether or not any specific or particular use is a public one is ultimately a *judicial* question. Of course, if Congress has specifically allowed expropriation of realty for a *designated* or *specified* public purpose, the courts of justice are not allowed to inquire into the necessity of such purpose. If, however, the grant has been merely a general one, that is, authority to expropriate land for *public use*, courts have jurisdiction to decide whether the taking is indeed for a public use. In such case, the issue is a question of fact, and the Court should inquire into and hear proof upon the question. Thus, if an owner successfully proves that an actual taking of his property serves no public use, or that the property is already devoted to or intended to be devoted to ANOTHER public use, courts are allowed to deny the expropriation of said property. (*City of Manila v. Chinese Community of Manila, et al., 40 Phil. 349*).

- (c) *Doctrine of Reasonable Necessity*

Absolute necessity for expropriation is not required; all that is needed is a reasonable necessity for the public use intended. (*Manila Railroad Co. v. Mitchell, 50 Phil. 832*).

- (d) *Samples of Public Uses*

Private property may validly be expropriated for the following uses or purposes:

- 1) market sites and market stalls (*Municipality of Albay v. Benito, 43 Phil. 576*);
- 2) military and aviation purposes (*Visayan Refining Company v. Camus, 50 Phil. 550*);
- 3) roads, streets, public buildings including school-houses, cemeteries, artesian wells (*See Malcolm, Phil. Const. Law, 374, see also Santos v. Director of Lands, 22 Phil. 424, which held that if the government needs*

- private land to widen an existing road, the proper remedy is not seizure but expropriation);
- 4) land needed by railroad companies for their railroad. (*Sena v. Manila Railroad*, 42 Phil. 102). Moreover, not only may the land actually and presently needed be expropriated, but also those that are adjacent thereto and may be used in the near future in connection with the railroad. This is because we have to consider the growth and future need of the enterprise. (*Manila Railroad Co. v. Mitchell*, 50 Phil. 832). A railroad is a public necessity, indispensable to the economic and material development of the country. (*Sena v. Manila Railroad Co.*, *supra*).

[NOTE: While Congress may authorize the devoting of land from one public use to another, a city is not so authorized. Thus, a city cannot order that a cemetery (devoted to public use) be used instead as a public street. The rule is this: when a cemetery is open to the public, it is of public use, and no part of the ground can be taken for other public use under a mere general authority of eminent domain. (*See City of Manila v. Chinese Community*, 40 Phil. 349).]

**Republic of the Philippines v.
Philippine Long Distance Telephone Co.
L-18841, Jan. 27, 1969**

FACTS: The Philippine Government, thru the Bureau of Telecommunications, wanted to enter into a contract with the Philippine Long Distance Telephone Co. (PLDT) (a sequestered private firm), whereby the latter would allow the Bureau of Telecommunications (thru the Government Telephone System) to send to or receive from other countries telephone calls (thru certain trunk lines of the PLDT). When the PLDT refused on the ground that its own facilities were inadequate and on the further ground that the Government Telephone System was competing with it (the PLDT), the Government *sued to compel the PLDT to enter into a contract with it* on the matter.

Issue: May the PLDT be compelled to enter into such a contract?

HELD: Strictly speaking, the PLDT cannot be compelled to enter into such a contract, in the absence of any previous agreement thereon. This is because freedom to stipulate terms and contracts is of the essence of our contractual system. As a matter of fact, in case of vitiated consent — such as intimidation or undue influence — a contract may properly be annulled. BUT, in the exercise of *eminent domain*, the desired interconnection can be required upon payment of just compensation, in view of the public service or use contemplated. Normally, expropriation deals with a transfer of title or ownership; there is nothing wrong therefore in imposing a burden *less* than a transfer of title. For instance, it is unquestionable that real property may thru *expropriation* be subject to an *easement of right of way*. If under Sec. 6, Art. XIII of the Constitution (now Sec. 18, Art. XII, 1987 Constitution), the state may in the interest of national welfare, transfer utilities to public ownership upon payment of just compensation, there is no reason why the state may not require a public utility to render services in the general interest, provided just compensation is paid therefor. (The case was thus remanded to the lower court for determination of the “just compensation.”)

[NOTE: On the point that the Government Telephone System should not be allowed to expand its facilities because in its original prospectus, it was stated that the service would be limited to government offices, the Court ruled that the Government is of error on the part of its agents. (*Pineda v. CFI of Tayabas*, 52 Phil. 803; *Benguet Consolidated Mining Co. v. Pineda*, 98 Phil. 711). Moreover, it is a well-known rule that erroneous application and enforcement of the law by public officers will *not block* subsequent correct application of the statute. (*PLDT v. Coll. of Int. Revenue*, 90 Phil. 676).]

Philippine Columbian Association v. Panis
46 SCAD 1002
(1993)

Public use now includes the broader notion of indirect public benefit or advantage, including in particular, urban land reform and housing.

(7) Payment of ‘Just Compensation’**(a) Meaning of “Just Compensation”**

In eminent domain proceedings, just compensation means a fair and full equivalent value of the loss sustained. (*MRR v. Velasquez*, 32 Phil. 286). Indeed, it must be “just” not only to the individual whose property is taken, but also to the public which is to pay for it. (*Rep. v. Lara*, 50 O.G. 5778). More specifically, it is the market value (the price that the property will bring when it is offered for sale by one who desires, but is not obliged to sell it, and is bought by one who is under no necessity of having it) PLUS the consequential damages, if any, MINUS the consequential benefits, if any. (*City of Manila v. Corrales*, 32 Phil. 85; *MRR v. Velasquez*, *supra*). However, the incidental or consequential benefits may be set off only against the consequential damages, and not against the basic value of the property taken. Otherwise, there is a possibility that the property may be taken without any compensation at all, when it is alleged for instance that the consequential benefits are equal to or greater than the consequential damages and basic value combined. Thus, the law expressly provides that “in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.” (*Sec. 6, Rule 67, Rules of Court*).

[*Example*: If the market value is P1 million, the consequential damages amount to P500,000, and the consequential benefits are valued at P1.5 million, how much should be the “just compensation”?

ANS.: Following the formula stated in the case of *MRR v. Velasquez* (*supra*), the answer would be P1 million + P500,000 – P1.5 million equals ZERO. But as has been stated, this is not the proper solution for the benefits should be set off only against the damages. Therefore, the correct solution is P1 million + P500,000 – P500,000 equals P1 million. This is because the consequential benefits considered should *not exceed* the consequential damages.]

In recent years, however, a new concept of just compensation in eminent domain has developed, having in mind the “social value” of property.

Meralco v. Pineda
206 SCRA 196
(1992)

In an expropriation case such as this one, where the principal issue is the determination of just compensation, a trial before the Commissioners is indispensable to allow the parties to present evidence on the issue of just compensation.

The findings of the Commissioners may be disregarded and the court may substitute its own estimate of the value. The latter may do so only for valid reasons. For that matter, the trial with the aid of the Commissioners is a substantial right that may not be done away with capriciously or for no reason at all.

Thus, the respondent judge’s act of determining and ordering the payment of just compensation without the assistance of a Board of Commissioners, is a flagrant violation of petitioner’s constitutional right to due process and is a gross violation of the mandated rule established by the Rules of Court.

Napocor v. Angas
208 SCRA 542
(1992)

The determination of just compensation in eminent domain cases is a JUDICIAL FUNCTION. Thus, 6% *per annum* is the correct and valid legal interest allowed in payments of just compensation for land expropriated for public use.

B.H. Berkentkotter & Co. v. CA
216 SCRA 584
(1992)

Just compensation is to be ascertained as of the time of the taking, which usually coincides with the commence-

ment of the expropriation proceedings. But where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.

The Court is not bound by the Commissioner's report.

Province of Camarines Sur v. CA
41 SCAD 389
(1993)

Presidential Decrees fixing the just compensation in expropriation cases to be the value given to the condemned property either by the owners or the assessor, whichever was lower, have been declared unconstitutional.

Land Bank v. CA
71 SCAD 806
GR 118712, July 5, 1996

The concept of "just compensation" embraces not only the correct determination of the amount to be paid to the owners of the land, but also the payment of the land within a reasonable time from its taking "and not being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss."

[NOTE: In eminent domain or expropriation proceedings, the general rule is that the *just compensation* to which the owner of condemned property is entitled to is the *market value*. Just compensation is determined by the nature of the land at the time of taking. Thus, in *National Power Corp. v. Chiong* (404 SCRA 527 {2003}), it was held the "duty of the court (to) consider the Commissioner's Report to satisfy itself that just compensation will be made to the defendant by its final judgment [o]n the matter."].

[NOTE: Interest at the rate of 12% *per annum* is imposed on the amount of payment of "just compensation" still due in order to help eliminate the issue of constant fluctuation and inflation of the value of the currency over time. (*Reyes v. National Housing Authority*, 395 SCRA 494 {2003}).].

(b) *Evidence of the Market Value*

Standing alone, the following do not constitute sufficient evidence of the market value:

- 1) the rental value as the basis. (*City of Manila v. Corrales*, 32 Phil. 85).
- 2) the assessed value. (*Tenorio v. MRR Co.*, 22 Phil. 411; *Republic v. Urtula*, L-16028, Nov. 29, 1960).
- 3) what a testifying witness would demand for his property under the same conditions. (See *MRR v. Mitchell*, 49 Phil. 801).
- 4) deeds of sales of property in the same community. (*MRR v. Fabie*, 17 Phil. 206).

All of these factors must be taken into consideration, particularly sales in an open, free, and fair market of properties under identical or similar circumstances, such as location and time of sale. (See *City of Manila v. Estrada*, 25 Phil. 208; *Macondray & Co. v. Sellner*, 33 Phil. 370; *City of Manila v. Neal*, 33 Phil. 291; *MRR v. Fabie*, 17 Phil. 208). In order that purchases and sales of properties may be considered competent proof of the market value of the expropriated property, the former must be shown to be *adjoining* the latter, or at least, within the zone of commercial activity with which the condemned property is identified. (*Republic v. Yaptinchay, et al.*, L-13684, July 26, 1960). While the owner's valuation of the property may not in law be binding on the government or the courts, it should at least set a ceiling price for the compensation to be awarded. The price of the condemned property should not be higher than what the owner demanded. (*Ibid.*; see also *Rep. v. Narciso*, L-6594, May 18, 1956). Moreover, the owner of the property taken has a right to its value for the use of which it would bring the most in an open market. (*City of Manila v. Corrales*, 32 Phil. 85).

Among the factors that may also affect the amount of just compensation are the topographical features of the land, permanent improvements thereon, and ready accessibility to the streets and roads in the vicinity. It

must be remembered also that *interest* on the amount must be given from the time the plaintiff takes possession of the property. (*Republic v. Gonzales, et al., L-4918, May 14, 1954*). However, *neither* the sentimental value of the property to its owner nor the inconvenience resulting from the loss thereof is an element in the determination of damages. (*Republic v. Lara, L-5080, Nov. 29, 1954; Republic v. Yaptinchay, et al., L-13684, July 26, 1960*). Upon the other hand, the valuation fixed by the provincial assessor cannot be deemed binding on the landowner where the latter did NOT intervene in fixing it. The assessment must be based on the owner's estimate so as to make it binding upon him. Thus, the bare opinion of the Provincial Appraisal Committee (experts who had not been confronted or cross-examined by the landowner) is not by itself adequate to overthrow that of the expropriation commissioners, especially if the records do not reveal HOW the committee arrived at the values set in their appraisal. (*Republic v. Urtula, L-16028, Nov. 29, 1960*).

Today, the basic evidence of the true market value is that which is declared by the Provincial or City Assessor, or that declared by the taxpayer himself, whichever is LOWER. This is to penalize taxpayers who deliberately give a low valuation so that the real estate tax which he will have to pay is also low. However, as already discussed, the consequential *damages* and *benefits* will still have to be ascertained, otherwise the just compensation referred to in the Constitution can be rendered nugatory.

(c) *Value at Taking or Value at Filing of Complaint*

Ordinarily, inquiry is limited to the actual market value at the time of the *filing* of the condemnation proceedings because under normal circumstances, the filing of the complaint coincides with and even precedes the taking of property sought to be expropriated. Where however the actual taking or occupation by the plaintiff, with the consent of the landowner *long* precedes the filing of the complaint for expropriation, the rule to be followed is that the value of the property should be fixed as of the

date when it was *taken*, and not the date of the filing of the proceeding. (*Republic v. Lara, et al.*, L-5080, Nov. 29, 1954). In one case, the government expropriated certain real estate on Taft Avenue. Because of such expropriation, the real estate value on that portion of Taft Avenue increased. The owner then demanded that he be paid the new enhanced value. It was held that the government should pay the value of the land at the time it was taken, since this value is the true measure of damages. Otherwise, this would discourage the construction of important public improvements. (*Provincial Gov't. of Rizal v. Caro de Araullo*, 58 Phil. 308). If private agricultural lands are taken by the Japanese, converted by the latter into commercial or residential lands, and subsequently expropriated by the Philippine Government, the government must pay for them as agricultural lands, and not as commercial or residential lands for what the owner really lost were agricultural lands. (*Rep. v. Garcellano, et al.*, L-19556 and L-12630, Mar. 29, 1958). The value indeed should be determined by, among other factors, its character at the time of the taking, and not as a "potential building site." (*Rep. v. Garcellano, Ibid.*).

[NOTE: By way of summary, we may state that the value should be that existing:

At the time of the TAKING or at the time of the FILING of the cases, whichever comes first. (*Republic v. Phil. National Bank, et al.*, L-14158, Apr. 12, 1961).].

Commissioner of Public Highways v. Burgos
L-34230, Mar. 31, 1980

The just compensation in eminent domain refers to the value of the property *at the time of taking*, not its value at a subsequent time. Art. 1250 of the Civil Code which refers to extraordinary inflation or deflation applies only to payments by virtue of a contract, not payment on account of expropriation proceedings.

Under the present law, the taking of the property can be asked of the courts, and will generally be granted as

long as 10% of the market value (discussed hereinabove) is properly deposited. (*See PDs 42, 76, 1259, and 1313*). BUT this taking of property can be declared improper, and the property itself will be returned to the owner if it is ruled that there is NO NECESSITY for the expropriation of the particular property taken, and that another property would fulfill better, the public need. (*De Knecht v. Hon. Bautista, GR 51078, Oct. 30, 1980*).

(d) *Speculative Benefits*

In one case, the Manila Railroad Company expropriated a parcel of land near a railroad station. The owner of the land, aside from asking for its actual value, wanted a larger sum, because according to him, the place was suitable for a hotel site, which would give him great income.

HELD: He must be paid only the value of the land at the time of taking. The possibility of the construction of a hotel is merely speculative and should not be considered. (*Manila Railroad Co. v. Mitchell, 49 Phil. 801*).

In another case, the expropriator wanted some amount deducted from that to be given to the owners of the land, on the ground that consequential benefits would arise because “the lot is going to be commercial, and probably the cost of the land there would not be less than P50 per square meter.” This statement was made by one, part of whose land was being expropriated, the rest continuing to remain his. On the issue whether or not the probable increase in land value should be considered, the Supreme Court —

HELD: This probable increase must not be considered. The consequential benefits which may be set off against the damages where part of a tract of land is taken by virtue of the right of eminent domain are those accruing to the residue of the tract from the construction of the improvement. They must be actual and appreciable, and *not merely conjectural*; and they must be the direct and proximate result of the improvement, remote benefits not being taken into consideration. The amount sought was

therefore not deducted. (*Republic v. Valera, et al., L-5776, Apr. 14, 1954*).

In *Municipal Gov't. of Sagay v. Jison, et al., L-10484, Dec. 29, 1958*, it was held that if the lot was agricultural when the government assumed possession, the adaptability thereof for conversion in the future into a residential site does not affect its nature *although* it is a circumstance that should be considered in determining its value at that time as an agricultural land.

(e) *Cost of Improving Expropriated Property*

The cost of *improving* expropriated property must be borne by the plaintiff-expropriator. Said cost must therefore not be deducted from the price that should be paid. (*See City of Manila v. Corrales, 32 Phil. 85*).

(f) *Incidental or Consequential Damages*

Example of incidental or consequential damages which should be reimbursed as part of "just compensation" are:

- 1) injuries to adjoining portions of the land
- 2) demolition or destruction of buildings or houses on the land. (*Mun. of Tarlac v. Besa, 55 Phil. 432; MRR v. Velasquez, 32 Phil. 286*).
- 3) depreciation caused to the remaining property. (*Manila Electric Co. v. Tuason, 60 Phil. 286*).

[NOTE: It has been held that a landlord is *not* responsible for his tenant's eviction through condemnation proceedings, and cannot be held liable therefor. The tenant must look to the plaintiff-expropriator for his compensation. (*Sayo v. Manila Railroad Co. and Archbishop of Manila, 43 Phil. 551*).].

Republic v. Lara, et al.
L-5080, Nov. 29, 1954

FACTS: X owned a parcel of land which the Japanese took over during the occupation and over which they

built a concrete airstrip, runway, and taxiway. If the government desires to expropriate the land, must these improvements be paid to the owner?

HELD: No, because said improvements really belong to the Republic which as victor in the last war should be considered as the legitimate successor to the properties owned by the Japanese in the Philippines. It is *wrong* to say that the Japanese army was a possessor in bad faith, and that therefore constructions by them belong to the owner of the land by industrial accession. This is because in the *first place*, the rules of the Civil Code concerning industrial accession are not designed to regulate relations between private persons and a sovereign belligerent, nor intended to apply to construction made exclusively for prosecuting a war, when military necessity is temporarily paramount. In the *second place*, international law allows the temporary use by the enemy occupant of private land and buildings for all kinds of purposes demanded by necessities of war.

(g) *Is the Government Compelled to Pay Interest?*

In the case of *Philippine Executive Commission v. Estacio* (L-7260, Jan. 21, 1956), the Supreme Court held that the owner of land expropriated by the government is entitled to recover *legal interest* on the *amount awarded* from the time the *state takes possession* of the land. This is so even if the law has no provision concerning said legal interest. (Of course if a part of the price had already been paid, interest would be only on the balance.) Furthermore, in computing interest, to the value of the land must also be added the value of the crops which had to be destroyed by the government. (See also *Republic v. Gonzales, et al.*, L-4918, May 14, 1954, where the obligation to pay interest was also stressed). In *Republic v. Garcellano, et al.* (L-9556 and L-12630, Mar. 28, 1958), the court reiterated the rule that legal interest, and *not rentals* should be paid. The Court added that since the owners are allowed such interest, they should bear the land taxes and any registration or cadastral fees required from the date of the taking up to the filing of the expropriation proceedings. In

Manila Railroad Co. v. Alano (36 Phil. 500), it was held that when a decision on expropriation forgets to provide for interest, but becomes *final*, no award of interest can be granted.

Commissioner of Public Highways v. Burgos
L-34230, Mar. 31, 1980

If the *final* judgment in an expropriation case orders the payment of interest computed from the filing of the complaint (and not from the taking of the property by the government), this order is now the law of the case and must be complied with.

(h) *Payment of Costs for Expropriation Proceedings*

Inasmuch as expropriation proceedings are *involuntary* in nature (since demanded as of right by the state) the Rules of Court provides that “all costs, except those of rival claimants litigating their claims shall be paid by the *plaintiff*, unless an appeal is taken by the owner and the judgment is affirmed, in which event, the costs of the appeal shall be made by the owner.” (Sec. 12, Rule 67, Rules of Court). But the defendant in an expropriation case cannot recover *attorney’s fees* as part of the costs unless specifically authorized by the statute. (*Tomten v. Thomas*, 232 Pzd. 723 [1953]).

(i) *Mere Passing of Ordinance Cannot Defeat Right to Compensation*

An ordinance prohibiting the construction of a building on *private* land on the ground that said land would be used for a public street is *invalid* as an exercise of the right of eminent domain, unless there be due process of law and payment of just compensation. (*Clemente, et al. v. Mun. Board, et al.*, L-8633, Apr. 27, 1956). The claim for compensation may prescribe. (*Jaen v. Agregado*, L-7921, Sep. 28, 1955).

(j) *The Taking of Local Waterworks Systems*

The exercise by the NAWASA (now MWSS) of its jurisdiction, supervision, and control over the local wa-

terworks system without paying just compensation to the municipal corporations concerned would be detrimental to their rights of dominion over their respective waterworks systems. Republic Act 1383 (which empowers the NAWASA [now MWSS] to take over local waterworks systems) is *unconstitutional insofar* as the lack of just compensation is concerned. (*City of Baguio v. NAWASA*, 106 Phil. 144; *Municipality of San Juan v. NAWASA*, L-22047, Aug. 31, 1967; *NAWASA v. Hon. Minerva I. Piguing*, L-25573, Oct. 11, 1968).

(k) *Rule if Government Does Not Pay*

Here, suit may be brought against the Auditor General, if payment is refused by him. (*Ministerio v. CFI of Cebu*, 40 SCRA 464, cited in *Santiago v. Republic*, 87 SCRA 294, L-48214, Dec. 19, 1978).

(8) Effects of Expropriation on the Ownership of the Property Expropriated

Among the effects of expropriation on the ownership of the property are the following:

- (a) *Ownership* (except the right to occupy or possess) is *transferred* only when payment of just compensation with proper interest has been made. (*Jacinto v. Dir. of Lands*, 49 Phil. 583).
- (b) While it is true that under the law (*Art. 435*), among other things, payment of just compensation must first be made before *possession* or occupation may even be transferred — otherwise the court shall *restore* the owner in his possession — still, in some instances, as in emergencies, the government may immediately get the property, occupy and possess it, and pay for the property later, but if this happens, the government should reimburse the former owner for the taxes that the latter may have paid for the real properties. These are the taxes due from the time the property was taken till said property is compensated for. (*City of Manila v. Roxas*, 60 Phil. 215). This is true even if it is a fact that title does not pass till payment is given. (*Calvo v. Zandueta*, 49 Phil. 605).

- (c) If the property expropriated is no longer needed for the public use it was originally intended, does ownership revert to the former owner? It depends. If the judgment gave *full ownership* to the plaintiff, he remains the owner even after the need has disappeared. If, however, the grant had been conditional, that is, that ownership would revert to the original owner, said condition is a valid one. (*See Fery v. Mun. of Cabanatuan, 42 Phil. 28*).
- (d) Expropriation transfers ownership over all kinds of properties whether real or personal, tangible or intangible. (*See Metropolitan Water District v. Director of Lands, 57 Phil. 293*).

[NOTE: An expropriation suit excludes recovery of a sum of money dealing with the exercise by the Government of its authority and right to take property for public use because it is incapable of pecuniary estimation and should be filed with the regional trial courts (RTCs). (*Bardillon v. Barangay Masili of Calamba, Laguna, 402 SCRA 440 {2003}*).].

(9) Extraordinary Expropriation

While ordinary expropriation refers to a taking for public use, extraordinary expropriation is allowed under our 1987 Constitution for *private use* (*Art. III, Sec. 9*) (although, of course, even here there is a *connotation of public use*), *i.e.*, for the benefit of *certain individuals* under the conditions provided therein. Thus, Art. XIII, Sec. 4 provides:

“The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits,

the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.”

[NOTE: The COST mentioned in the above Constitutional provision is not only the purchase price which the Government pays to owners of landed estates, but also the cost of administration and of its eventual sale to tenants and occupants, not more, but not less. (*See Javillonar v. Land Tenure Administration, L-10303, Aug. 22, 1958*).]

[NOTE: In connection with the condemnation proceedings authorized by Rep. Act 1400, Congress did *not* intend to give the landowner the power to choose either what portion shall be expropriated or what portion shall be exempted from expropriation. Initially, the parties are expected to try to reach an agreement if they can, on the area to be expropriated and/or the area to be excluded from the expropriation proceedings; and in the event of disagreement, the courts of justice should settle the issue in accordance with the demands of justice, equity and fair play. (*Land Tenure Administration v. Ascue, et al., L-14969, Apr. 29, 1961*).]

[NOTE: The Supreme Court has consistently held that the rule requiring previous exhaustion of administrative remedies before resorting to the courts applies only (in land cases) to controversies arising out of the disposition of disposable public lands, and NOT to cases involving land that was originally owned by private parties and later was acquired by the Government for the purpose of reselling them to *bona fide* tenants or occupants. (*Marukot v. Jacinto, L-8036-38, Dec. 20, 1955; Geukeko v. Araneta, L-10182, Dec. 24, 1957; Lemos v. Castañeda, et al., L-16287, Oct. 27, 1961*).]

(10) Purpose of Extraordinary Expropriation

Art. XIII, Sec. 4 of the 1987 Constitution has for its purpose not mere equality in the owning of lands but the championing of the cause of *social justice* to the end that *public welfare* will be enhanced. (*See Guido v. Rural Progress Administration, L-2089, Oct. 31, 1949*).

[NOTE: The choice or discretion to sell private lands acquired by the government through purchase or expropriation,

under either Sec. 1 or Sec. 10 of Com. Act No. 539, is with the President of the Philippines whose choice, once exercised becomes final and binding on the government. Should the President therefore give the land to a province for the establishment of a vocational school, instead of for distribution to the landless, this would be perfectly all right, for the government is also required to promote the education of our youth. (*Juat, et al. v. Land Tenure Administration, et al., L-17080, Jan. 28, 1961*).]

[NOTE: The President of the Philippines is allowed to sell to provinces, cities, and municipalities portions of expropriated landed estate (sufficient in size and conveniently located) for public plazas, streets, markets, cemeteries, schools, municipal and other public buildings. (*Juat v. Land Tenure Administration, L-17080, Jan. 28, 1961, 1 SCRA 361*). The purpose is to promote public policy and this would include the education of the youth. (*Ibid.*)].

(11) Lands Covered by Extraordinary Expropriation

In the leading case of *Guido v. Rural Progress Administration, supra*, and reiterated in the case of *Urban Estates, Inc. v. Montesa, L-3830*, the Supreme Court held that only *big landed estates* were contemplated by CA 539 which in turn is based on Art. XIII, Sec. 4 of the 1987 Constitution. In another case, the Court also held that even *small estates* may be expropriated, provided that a serious social problem or conflict exists therein. (*Rural Progress Adm. v. Reyes, L-4703, Oct. 8, 1953*). In the case of *Republic v. Gabriel (L-6161, May 26, 1954)*, the Court reiterated and quoted the ruling in the *Montesa case*:

“The Constitution contemplates *large scale purchase or condemnation* of lands with a view to *agrarian reforms* and the alleviation of acute housing shortage.

“Condemnation of private lands in make-shift or piece-meal fashion, random taking of a *small* lot here, and a *small* lot there to accommodate a few tenants or squatters is a different thing. This is true, be the land *urban or agricultural*.

“The first (large-scale) sacrifices the rights and interests of one or a few for the good of all; the second is a

deprivation of a citizen of his property for the convenience of another citizen or a few other citizens without perceptible benefit to the public. The first carries the connotation of public use; the last follows along the lines of a faith or ideology alien to the institution of property.”

[NOTE: In this case of Gabriel, the property being expropriated was only 41,671 square meters, so that the court held that “such property can *hardly* be considered landed estate within the purview of the Constitution,” hence, expropriation was denied.]

[NOTE: In *Prov. of Rizal v. Bartolome San Diego, Inc.* (L-10802, Jan. 22, 1959), it was held that tenancy trouble alone, whether due to the fault of the tenants or of the landowners does not justify expropriation. (See also *NARRA v. Francisco*, L-14111, Oct. 24, 1960).]

Republic of the Phils.
v. Hon. Numeriano G. Estenzo, et al.
L-24656, Sep. 25, 1968

FACTS: Under Sec. 154(3) of the Land Reform Code (Republic Act 3844) enacted on August 8, 1963, “expropriation proceedings instituted by the Land Tenure Administration pending in the Court of First Instance (now Regional Trial Court) at the time of the effectivity of this Code, shall be transferred and continued in the respective Courts of Agrarian Relations ...” Now then, suppose the expropriation case had *already been decided*, by the CFI (now RTC) before the effectivity of the Land Reform Code, can the decision of the said CFI (now RTC) be successfully assailed as having been rendered without jurisdiction?

HELD: The CFI (now RTC) certainly had jurisdiction since the Land Reform Code would not be applicable. Note that the case was *not* a pending one; it had already been decided.

[NOTE: *The Land Reform Code has been replaced by the Comprehensive Agrarian Reform Law (CARL).*]

(12) Effect of Grouping Together the Shares of Small Land-owners

A lot which measures less than four hectares belonging to nine owners is not a landed estate for expropriation purposes. *Grouping* the nine persons together or suing them as a corporation does not conceal the resultant 4,375 square meters for each only. It would certainly be unfair to implead nine owners of small adjacent lands and then allege that they own a large estate which can be expropriated. (*Mun. of Caloocan v. Manotok Realty, Inc.*, L-6444, May 14, 1954; *NARRA v. Francisco, et al.*, L-14111, Oct. 24, 1960).

(13) Ability of Tenants to Cultivate

To avail of the benefits of Com. Act 539, which allows expropriation of big landed estates for sale to the tenants, the tenants must themselves *be able to cultivate* by themselves the land sought to be expropriated, otherwise, if it is impractical to do this, expropriation would not be allowed. (*Rep. v. Castro, et al.*, L-4370, Feb. 25, 1955). The order of preference for the lots is as follows: *first*, to *bona fide* tenants; *second*, to the occupants; and *last*, to private individuals. But this order of preference should be observed only if the parties affected stand on an equal footing, or under equal circumstances. The order need not be rigidly followed, when a party, say a *bona fide* tenant, has already in his name, other lots. Incidentally, a tenant need not be in actual physical possession of the land in order to be considered *bona fide* within the meaning of the law. A person who holds the leasehold right over the property may also be called a tenant even if the material possession thereof is held by another. (*Gutierrez v. Santos, et al.*, L-12253, Mar. 28, 1960). A *bona fide* tenant ceases to be one if he is NOT up-to-date in the payment of his rentals. His delinquency makes him lose his preferred status. (*Juat v. Land Tenure Administration*, L-17080, Jan. 28, 1961). Even if the word "occupant" is not preceded by the phrase "*bona fide*," it is understood that good faith on the part of the beneficiaries is intended as a requirement unless the law expressly provides the contrary. Therefore, a squatter or a person guilty of illegal entry cannot be deemed a beneficiary under Com. Acts 20 and 539, nor of Rep. Act 1162. (*Republic v. Vda. de Calivan*, L-16927, May 31, 1961).

(14) Effect of Sale of Landed Estate Before Government Has Expropriated It

If *before* a big landed estate has been expropriated, it is sold by the owner to a third person, the *tenants* of the land should *vacate* the same. This is so, even if said tenants had been *working* for the expropriation of the land in order that it may be sold to them at cost and in small parcels. The important thing is that the land had not yet been expropriated. (*Lucio Lopez v. Elias de la Cruz, L-6274; Espiritu v. Rodriguez, L-6486, Mar. 11, 1954*). In *Province of Rizal v. Bartolome San Diego, Inc., et al., L-10802, Jan. 22, 1959*, it was held that mere notice of the intention of the Government to expropriate a parcel of land does *not* bind either the land or the owner so as to prevent subsequent disposition of the property such as mortgaging or even selling it in whole or by subdivision. (*See also Rep. v. Baylosis, et al., 51 O.G. 739*). To bind the land to be expropriated and the owner thereof, the expropriation must be actually commenced in Court, and *even then*, the owner may mortgage or sell the land if he can find persons who would step into his shoes and deal with the Government. (*Tuason v. De Asis, et al., L-11319-20, 13507-8, 13504, Feb. 29, 1960*). The suspension of an ejectment proceeding should only be made after the Government has taken steps relative to the expropriation of the property in accordance with the procedure laid down by law, otherwise, the action would place the interest of the landlord in jeopardy. (*Ibid.; see also Teresa Realty, Inc. v. State Construction and Supply Co., L-10883, Mar. 25, 1959*). Indeed, Rep. Act 1162, as amended by Rep. Act 1599, about the suspension of proceedings for ejectment of tenants, has NO application to a case where expropriation proceedings have not commenced. (*Teresa Realty, Inc. v. Potenciano, L-17588, May 30, 1962; Teresa Realty, Inc. v. Garriz, L-14717, July 31, 1962*). Moreover, the mere filing of the condemnation proceedings for the benefit of the tenants cannot by itself alone, lawfully suspend the condemnee's *dominical* rights, whether of possession, enjoyment, or disposition. Thus, the owner may still enforce final and executory judgments against the actual occupants of the property. The rule would of course be different if the government has already taken *possession* of the property by

depositing in court its provisional value. (*J.M. Tuason and Co. v. Court of Appeals, L-18128, 18672, Dec. 26, 1961*).

(15) Interest of Education Superior to Interest of a Few Tenants

In one case, the City of Manila, invoking Sec. 1 of Rep. Act 267 (authorizing cities to *purchase* lands for subdivision and resale to the tenants) wanted to *expropriate* several parcels of land owned by the Arellano Law College, so as to subdivide and resell to tenants who have erected their houses thereon. The question was whether or not *expropriation* would prosper.

HELD: Expropriation will not prosper for the following reasons:

- (a) First, *ordinary* expropriation is not the remedy, for the purpose is *not a public one*.
- (b) Secondly, even granting the purpose to be public, still the alleged public purpose (of benefiting some tenants) fades into insignificance in comparison with the preparation of young men and women for useful citizenship and eventual governmental service.
- (c) Thirdly, *extraordinary* expropriation would not prosper because the persons occupying the site are *not bona fide* tenants thereof.
- (d) Fourthly, the land is small (7,270 sq.m.), or just one third of the land involved in the *Guido* case.
- (e) Fifthly, what the law authorized was a purchase, not an expropriation; and even granting that extraordinary expropriation was allowed, same would be unconstitutional for the land is small. (*City of Manila v. Arellano Law College, L-2929, Feb. 28, 1950, 47 O.G. 4197*).

(16) Difference Between ‘Sale’ and ‘Expropriation’

A sale is voluntary; expropriation is involuntary. So if an owner is willing to sell his property to the government, and the price is mutually agreed upon, the transaction is a sale, and

it is *not* essential to institute condemnation proceedings. (See *Noble v. City of Manila*, 38 O.G. 2770).

(17) Power of Eminent Domain Superior to the Constitutional Clause Prohibiting the Infringement of Contracts

If *A* and *B* enter into a contract of sale, with the provision that the government cannot expropriate the property, may the State still institute condemnation proceedings? The answer is in the affirmative, for it has been held that the existence of a contract between parties cannot prevent expropriation just because the obligation of contracts would be impaired. (*Long Island Water Supply Co. v. Brooklyn*, 166 U.S. 685). However, when the *Government is itself a party* to the contract of sale (as when the government had leased or purchased the property) it cannot afterwards repudiate the contract it had voluntarily entered into, and then institute expropriation proceedings. (*Noble v. City of Manila*, *supra*).

**Vicente Noble v. City of Manila
38 O.G. 2770**

The City of Manila leased *A*'s building for three years, with a provision that at the end of the stated period, the City would buy the building at an agreed price. At the end of the lease, the City wanted to cancel the contract, and to instead resort to expropriation proceedings.

HELD: The City cannot cancel its contract or agreement to buy the land. "Expropriation lies only when it is made necessary by the opposition of the owner to the sale, or by the lack of any agreement as to the price. There being in the present case a valid and subsisting contract between the owner of the building and the city, for the purchase thereof at an agreed price, there is no reason for the expropriation ... In the circumstances of the present case (instead of enhancing public welfare), the expropriation would depart from its own purposes and turn out to be an instrument to repudiate compliance with obligations legally and validly contracted."

[NOTE: Suppose in the above-given case, it had been the owner of the building who had changed his mind, and would no

longer proceed with the sale, would expropriation now be the proper remedy? NO. The remedy should be the enforcement of the contract./.

(18) Propriety of Expropriation when Ownership Is Disputed

While it is true that ordinarily, expropriation can prosper when there are rival claimants to the condemned property, still if it is alleged that a foreign corporation owns the land (acquired after the effective date of the Constitution), expropriation by the Government is not the proper remedy, for expropriation *presupposes ownership* over the land by the defendant. It is inconsistent to recognize and at the same time deny ownership of title of the person to the property sought to be expropriated. Any hearing and valuation of the property held by virtue of such authorized proceedings should be considered null and void and therefore should be set aside. (*Mun. of Caloocan v. Chian Huat & Co., L-6301, Oct. 30, 1954*). However, if a Filipino sells his land to a Chinese citizen, and the latter alienates it in favor of another Filipino, to whom a new transfer certificate of title has been issued, the validity of such title can be questioned no longer. (*Natividad Herrera, et al. v. Luy Kim Guan, et al., L-17043, Jan. 31, 1961*). If on the other hand, the land is still in the hands of the Chinese buyer, the Filipino who had sold it to him will NOT be allowed to get back the land, even if he should *offer* to return the purchase price. A violation of the Constitution should logically leave the offenders *without* recourse against each other. (*Soriano v. Ong Hoo, L-10931, May 28, 1958*).

**Estanislao Alfonso v. Pasay City
L-12754, Jan. 30, 1960**

FACTS: Alfonso's land, protected by a Torrens Title, was taken by Pasay City for road purposes, without expropriation proceedings, and without compensation. The taking was in 1925. Alfonso now asks for its return (plus rent) or for its *present* market value. Pasay City pleads prescription and laches.

HELD: There can be no prescription because of the Torrens Title. However, restoration of the land is now neither convenient or feasible because it is now a public road. Therefore, Alfonso is merely entitled to the value of the lot (not the present market value, but the value at the *time of taking*) plus *interest* (in lieu of rentals) from time of taking to time of payment. Pasay City should also pay attorney's fees.

(19) No 'Res Judicata' With Respect to Damages

Inasmuch as the only issue involved in the decision denying plaintiff's right to expropriate the land of defendants, is the propriety or impropriety of said expropriation the latter's right to damages *not* having been litigated therein, said decision cannot be *res judicata* as to the matter of damages. (*Rep. v. Baylosis, L-13582, Sep. 30, 1960*).

Note: The doctrine of *res judicata* applies to both judicial and quasi-judicial proceedings. The doctrine actually embraces 2 concepts: the *first* is bar by prior judgment under paragraph (b) of Rule 39, Section 47, and the *second* is conclusiveness of judgment under paragraph (c) thereof. In the present case, the second concept — conclusiveness of judgment — applies. The said concept is explained in this manner: "A fact or question which was an issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point of question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit." (*Ocho v. Carlos, GR 137908, Nov. 22, 2000*).

(20) Two Stages in Expropriation**Cases:****NAPOCOR v. Hon. Enrique T. Joison, et al.
GR 94193-99, Feb. 25, 1992**

Respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction, and is otherwise either unmindful or ignorant of the law when he fixed the provisional values of the properties for the purpose of issuing a writ of possession on the basis of the market value and the daily opportunity profit petitioner may derive in violation or in disregard of PD 42; in amending such determination in Civil Cases 5938 and 5939 by increasing the same without hearing; in directing the defendants to manifest within twenty-four (24) hours whether or not they are accepting and withdrawing the amounts representing the provisional values deposited by the plaintiff for each of them as “final and full satisfaction of the value of their respective property;” in declaring the provisional values as the final values and directing the release of the amounts deposited, in full satisfaction thereof, to the defendants even if not all of them made the manifestation; and in suspending the issuance of the writ of possession until after the amounts shall have been released to and received by defendants.

In *Municipality of Biñan v. Hon. Jose Mar Garcia, et al.* (180 SCRA 576 [1989]), this court ruled that there are two (2) stages in every action of expropriation:

“The *first* is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, ‘of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint.’ An order of dismissal, if this be ordained, would be a final one, of course, since it finally disposes of the action and

leaves nothing more to be done by the Court on the merits. So, too, would an order of condemnation be a final one, for thereafter as the Rules expressly state, in the proceedings before the Trial Court, ‘no objection to the exercise of the right of condemnation (or the propriety thereof) shall be filed or heard.’

The *second* phase of the eminent domain action is concerned with the determination by the Court of the just compensation by the property sought to be taken. This is done by the Court with the assistance of not more than three (3) commissioners. The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too. It would finally dispose of the second stage of the suit, and leave nothing more to be done by the Court regarding the issue.”

However, upon the filing of the complain or at any time thereafter, the petitioner has the right to take or enter upon the possession of the property involved upon compliance with PD 42 which requires the petitioner, after due notice to the defendant, to deposit with the Philippine National Bank in its main office or any of its main office or any of its branches agencies, “an amount equivalent to the assessed value of the property for purposes of taxation.” This assessed value is that indicated in the tax declaration.

PD 42 repealed the “provisions of Rule 67 of the Rules of Court* and of any other existing law contrary to or inconsistent” with it. Accordingly, it repealed Section 2 of Rule 67 insofar as the determination of the provisional value, the form of payment and the agency with which the deposit shall be made, are concerned. Said section reads in full as follows:

“SECTION 2. *Entry of plaintiff upon depositing value with National or Provincial Treasurer.* — Upon the filing of the complaint or at any time thereafter, the plaintiff shall have the right to take or enter upon the possession of the real or personal property involved if he deposits with the National or Provincial Treasurer its value, as

*Sec. 2, Rule 67 has been amended by the 1997 Rules of Civil Procedure.

provisionally and promptly ascertained and fixed by the court having jurisdiction of the proceedings, to be held by such treasurer subject to the orders and final disposition of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a depository of the Republic of the Philippines payable on demand to the National or Provincial Treasurer, as the case may be, in the amount directed by the court to be deposited. After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved.”

It will be noted that under the aforequoted section, the court has the discretion to determine the provisional value which must be deposited by the plaintiff to enable it “to take or enter upon the possession of the property.” Notice to the parties is not indispensable. In interpreting a similar provision of Act 1592, this Court, in the 1915 case of *Manila Railroad Company, et al. v. Paredes, et al.* (31 Phil. 118), held:

“The statute directs that, at the very outset, ‘when condemnation proceedings are brought by any railway corporation’ the amount of the deposit is to be ‘provisionally and promptly ascertained and fixed by the court.’ It is very clear that it was not the intention of the legislator that before the order fixing the amount of the deposit could lawfully be entered, the court should finally and definitely determine who are the true owners of the land; and after doing so, give them a hearing as to its value, and assess the true value of the land accordingly. In effect, that would amount to a denial of the right of possession of the lands involved until the conclusion of the proceedings, when there would be no need for the filing of the deposit. Of course, there is nothing in the statute which denies the right of the judge to hear all persons claiming an interest in the land, and courts should ordinarily give all such persons an opportunity to be heard if that be practicable, and will cause no delay in the prompt and provisional ascertainment of the value of the land. But the scope and extent of the inquiry is left wholly in the

discretion of the court, and a failure to hear the owners and claimants of the land, who may or may not be known at the time of the entry of the order, in no wise affects the validity of the order.”

PD 42, however, effectively removes the discretion of the court in determining the provisional value. What is to be deposited is an amount *equivalent to the assessed value for taxation purposes*. No hearing is required for that purpose. All that is needed is notice to the owner of the property sought to be condemned. Clearly, therefore, respondent Judge either deliberately disregarded PD 42 or was totally unaware of its existence and the cases applying the same.

In the case at bar, respondent Judge issued the July 16, 1990 Order directing the defendants to state in writing within twenty-four (24) hours whether or not they would accept and withdraw the amounts deposited by the petitioner for each of them “as final and full satisfaction of the value of their respective property (*sic*) affected by the expropriation” and stating at the same time that the writ of possession will be issued after such manifestation and acceptance, and receipt of the amounts.

The above Order has absolutely no legal basis even as it also unjustly, oppressively and capriciously compels the petitioner to accept the respondent Judge’s determination of the provisional value as the just compensation after the defendants shall have manifested their conformity thereto. He thus subordinated his own judgment to that of the defendant’s because he made the latter the final authority to determine such just compensation. This court ruled in *Export Processing Zone Authority v. Dulay, et al.* (149 SCRA 305 [1987]) that the determination of just compensation in eminent domain cases is a judicial function; accordingly, We declared as unconstitutional and void, for being, *inter alia*, impermissible encroachment on judicial prerogative which tends to render the Court inutile in a matter which, under the Constitution, is reserved to it for final determination, the method of ascertaining just compensation prescribed in PDs 76, 464, 794 and 1533; to wit: the market value as declared by the owner or administrator or such market value as determined by the assessor, whichever is

lower in the first three (3) decrees, and the value declared by the owner or administrator or anyone having legal interest in the property or the value as determined by the assessor, pursuant to the Real Property Tax Code, whichever is lower, prior to the recommendation or decision of the appropriate Government office to acquire the property, in the last mentioned decree. If the legislature or the executive department cannot even impose upon the court how just compensation should be determined, it would be far more objectionable and impermissible for respondent Judge to grant the defendants in an eminent domain case such power and authority.

Without perhaps intending it to be so, there is not only a clear case of abdication of judicial prerogative, but also a complete disregard by respondent Judge of the provisions of Rule 67 as to the procedure to be followed after the petitioner has deposited the provisional value of the property. It must be recalled that three (3) sets of defendants filed motions to dismiss pursuant to Section 3, Rule 67 of the Rules of Court; Section 4 of the same rule provides that the court must rule on them and in the event that it overrules the motions or, when any party fails to present a defense as required in Section 3, it should enter an order of condemnation declaring that the petitioner has a lawful right to take the property sought to be condemned.

Reyes v. National Housing Authority
395 SCRA 494
(2003)

In this instant controversy, the Supreme Court asseverated the following, thus:

1. it is now settled doctrine that the concept of public use is no longer limited to traditional purposes — the idea that “public use” is strictly limited to clear cases of “use by the public” has been abandoned and the term has not been held to be synonymous with “public interest,” “public benefit,” “public welfare,” and “public convenience;”
2. expropriation of private lands for slum clearance and urban development is for a public purpose even if the

- developed area is later sold to private homeowners, commercial firms, entertainment and service companies, and other private concerns;
3. the expropriation of private property for the purpose of socialized housing for the marginalized sector is in furtherance of the social justice provision under Sec. 1, Art. XIII of the 1987 Philippine Constitution;
 4. when land has been acquired for public use in *fee simple* unconditionally, either by the exercise of eminent domain or by purchase, the former owner retains no rights in the land, and the public use may be abandoned, or the land may be abandoned, or the land may be devoted to a different use without any impairment of the estate or title acquired, or any reversion to the former owner; and
 5. it is a recognized rule that although the right to enter upon and appropriate the land to public use is compelled prices to payment, title to the property expropriated shall pass from the owner to the expropriation only upon full payment of the *just compensation*.

(21) Urban Land Reform

Pablo Nidoy v. CA and Charles Ang GR 105017, Sep. 30, 1992

Clearly, the right of first refusal applies only to tenants who have resided for ten (10) years or more on the leased land declared as within the Urban Land Reform Zone, and who have built their homes on that land. It does not apply to apartment dwellers. Petitioner, who rents one of the units in the apartment building, is merely an apartment dweller although the land is within the *Urban Land Reform Zone*. Moreover, the right of first refusal may only be exercised by the legitimate tenants, and petitioner having ceased to be a *bona fide* tenant cannot avail himself of the benefits of PD 1517, as amended.

Petitioner's contention that he cannot be evicted or dispossessed of the leased land even if he does not enjoy the right of first refusal under PD 2016, the amendatory decree of the "Urban Land Reform Act," is not well taken. True, Sec. 2 thereof

provides that “no tenant or occupant family, residing for ten years or more x x x in land proclaimed as Areas for Priority Development x x x shall be evicted from the land or otherwise dispossessed.” However, the benefits of this amendatory decree extend only to legitimate tenants who have been leasing the land on which they have constructed their homes for ten (10) years or more from 11 June 1978 (date of effectivity of PD 1517) in land proclaimed as an Area for Priority Development; it does not extend to apartment dwellers such as herein petitioner.

The rationale for the rule on non-eviction is to preclude unscrupulous landowners from demanding a steep price for the land from their tenants with the view of evicting the latter should they fail to exercise their right of first refusal. PD 2016 seeks to prevent the landowners from resorting to this ploy. The “Whereas Clauses” of the law are enlightening —

x x x x

“WHEREAS, notwithstanding the above-mentioned presidential issuances relating to the institution of urban land reform and its implementing machinery, resident families in Areas for Priority Development or Urban Land Reform Zones are being evicted from such land in violation of Section 6 of the Urban Land Reform Law which provides that qualified families within Urban Land Reform Zone ‘shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same;

“WHEREAS, landowners of the above-cited land are able to go around Section 6 of the Urban Land Reform Law by offering to sell the land to occupant families at a very high price which is beyond the occupant’s capacity to pay and subsequently evicting them for failure to exercise their option to buy the said land thus rendering the Urban Land Reform Law inoperative and of no consequence.”

National Housing Authority v. Allarde
115 SCAD 220, 318 SCRA 22
(1999)

As early as Apr. 26, 1971, the Tala Estate was reserved, *inter alia*, under Presidential Proclamation No. 843, for the

housing program of the National Housing Authority, the same has been categorized as not being devoted to the agricultural activity contemplated by Section 3(c) of Republic Act 6657, and is, therefore, outside the coverage of the Comprehensive Agrarian Reform Law.

Government projects involved for the various plants and installations of the National Housing Corporation, for its future expansion and for its staff and pilot housing development and for housing, resettlement sites and other uses necessary and related to an integrated social and economic development of the entire estate and environs x x x are infrastructure projects.

(22) Instance When Any Transaction Entered Into By the Municipality Involving the Land Is Governed By the Applicable Civil Law

**De Guzman v. Court of Appeals
504 SCRA 238 (2006)**

After the municipality acquired ownership over the land thru expropriation and passed the ordinance converting the said land into a commercial area, any transaction entered into by the municipality involving the land was governed by the applicable civil law in relation to laws on local government.

As absolute owner of the land, the municipality is entitled to devote the land for purposes it deems appropriate.

**Lucero, Jr. v. City Government of Pasig
508 SCRA 23 (2006)**

FACTS: The lease (and occupation) of a stall in a public market is not a right but a purely — statutory privilege governed by laws and ordinances. *Issue:* This, being the case, is the operation of a market stall by virtue of a license subject to the *police power* of the local government?

HELD: Yes. For a public market is one dedicated to the service of the general public and operated under government control and supervision as a public utility. After all, the operation of a public market and its facilities is imbued with public interest is imbued with public interest.

Art. 436. When any property is condemned or seized by competent authority in the interest of health, safety or security, the owner thereof shall not be entitled to compensation, unless he can show that such condemnation or seizure is unjustified.

COMMENT:

(1) Seizure as an Exercise of Police Power

- (a) This article is based on police power, which in turn is based on the maxim that “the welfare of the people is the supreme law of the land.”
- (b) Unlike eminent domain which requires the giving of just compensation, police power needs no giving of a financial return before it can be exercised. This is therefore one instance when property may be seized or condemned by the government *without any financial compensation*.
- (c) Police power can refer not merely to condemnation and seizure, but also to total destruction itself, provided that (a) the public interest is served and (b) the means used are not unduly harsh, abusive, or oppressive. (*See U.S. v. Toribio, 15 Phil. 85*). Thus, nuisances can be abated; and rotting canned goods may be destroyed. If the condemnation, seizure, or destruction is *unjustified*, the owner is *entitled* to compensation. (*See Art. 436*).

(2) Abatement of Nuisances

A State, in the exercise of police power, may abate *nuisances*, whether public or private, whether *per se* or *per accidens*. (*See Homeowners' Association of El Deposito v. Lood, L-31864, Sep. 29, 1972*).

[NOTE:

- (a) *public nuisance* — that which affects a community or a considerable number of persons. (*Art. 695*).
- (b) *private nuisance* — that which is not public. (*Art. 695*).

- (c) *nuisance per se* — that which is a nuisance under all circumstances.
- (d) *nuisance per accidens* — that which is a nuisance only under certain circumstances, like a factory, situated in a residential district.].

**City of Manila v. Gerardo
Garcia, et al.
L-26053, Feb. 21, 1967**

FACTS: The City of Manila is the owner of parcels of land forming one compact area in Malate, Manila. Shortly after liberation, several persons entered upon these premises without the City's knowledge and consent, built houses of second class materials, and continued to live there till action was instituted against them. In 1947, the presence of the squatters having been discovered, they were then given by then Mayor Valeriano Fugoso written permits each labelled as "lease contract." For their occupancy, they were charged nominal rentals. In 1961, the premises were needed by the City to expand the Epifanio de los Santos Elementary School. When after due notice the squatters refused to vacate, this suit was instituted to recover possession. Defense was that they were "tenants."

HELD: They are squatters, not tenants. The mayor cannot legalize forcible entry into public property by the simple expedient of giving permits, or for that matter, executing leases. Squatting is unlawful and the grant of the permits fosters moral decadence. The houses are public nuisances *per se* and they can be summarily abated, even without the aid of the courts. The squatters can, therefore, be ousted.

(3) Observance of Due Process

When the government exercises police power and issues police regulations, the person concerned is not deprived of property without due process of law, provided, that the requisites of the law are followed. (*Tan Chat v. Mun. of Iloilo, 60 Phil. 465*). If a person buys a lot with a building thereon which has been declared a *fire hazard* and which under the building permit therefore was supposed to be REMOVED, he cannot prevent

by injunction, the DEMOLITION of the fire hazard. He cannot indeed say that he is being deprived of his property without due process of law. (*Verzosa v. City of Baguio, et al.*, L-13546, Sep. 30, 1960).

(4) Sale of Fresh Meat Outside City Markets

The City of Manila has authority in the exercise of its police power under the general welfare clause (*RA 409, Sec. 18, par. KK*) to enact an ordinance prohibiting the sale of fresh meat outside the city markets. (*Co Kiam, et al. v. City of Manila, et al.*, L-6762, Feb. 28, 1955).

(5) Houses on Streets

Houses constructed, without governmental authority, on public streets and river beds, obstruct *at all times* the free use by the public of said places, and accordingly constitute a nuisance *per se*, aside from being a public nuisance. (*Sitchon, et al. v. Aquino, et al.*, L-8191; *De la Cruz, et al. v. Aquino, et al.*, L-8397, Feb. 27, 1956).

Art. 437. The owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works or make any plantations and excavations which he may deem proper, without detriment to servitudes and subject to special laws and ordinances. He cannot complain of the reasonable requirements of aerial navigation.

COMMENT:

(1) Surface Right of a Land Owner

This article deals with the extent of ownership which a person has over a parcel of land — more specifically, with what is commonly referred to as “*surface right*.” Thus, if a person owns a piece of land, it is understood that he also owns its surface, up to the boundaries of the land, with the right to make thereon allowable *constructions, plantings, and excavations*, subject to:

- (a) servitudes or easements

- (b) special laws — like the Mining Law
- (c) ordinances
- (d) the reasonable requirements of aerial navigation
- (e) principles on human relations (justice, honesty, good faith) and the prevention of injury to the rights of third persons. (*Arts. 19 and 431*).

Example: unnecessary obstruction of the light and view of a neighbor.

(2) Further Restriction on Surface Right

Surface right must also be restricted by the reasonable requirements of underground shelters and depots with proper state permission, as long as the surface right is not substantially disturbed. (If ownership does not extend *ad coelum* — indefinitely upwards to the sky, it should not also extend *usque ad internos* — indefinitely downwards). (*Observations on the new Civil Code, 15 Lawyer's Journal, p. 499, Oct. 31, 1950*). On this point, the Code Commission answered that a special detailed law was needed on the points touched upon by the Justice. (*See Memorandum of the Code Com., Feb. 17, 1951, p. 2*).

(3) Regalian Doctrine to be Observed

It is understood that the Regalian Doctrine (State ownership of mines and natural resources) stressed in the Constitution and implemented in the Mining Law, must be observed, hence, mines discovered underneath the land should belong to public dominion inasmuch as they are properties for the development of our national wealth.

Republic v. CA GR 43938, Apr. 15, 1988

The Regalian doctrine reserves to the State all natural wealth that may be found in the bowels of the earth even if the land where the discovery is made be private. Said doctrine is intended for the benefit of the State, not of private persons. The rule simply reserves to the State all minerals that may be

found in public and even private land devoted to “agricultural, industrial, commercial, residential or (for) any purpose other than mining.” Thus, if a person is the owner of agricultural land in which minerals are discovered, his ownership of such land does not give him the right to extract or utilize the said minerals without the permission of the State to which such minerals belong.

Director of Lands Management Bureau v. CA
GR 112567, Feb. 7, 2000
120 SCAD 475

The Court cannot apply here the *juris et de jure* presumption that the lot being claimed by the private respondent ceased to be a public land and has become private property.

To reiterate, under the Regalian Doctrine, all lands belong to the State. Unless alienated in accordance with law, it retains its basic rights over the same as *dominus*.

Art. 438. Hidden treasure belongs to the owner of the land, building, or other property on which it is found.

Nevertheless, when the discovery is made on the property of another, or of the State or any of its subdivisions, and by chance, one-half thereof shall be allowed to the finder. If the finder is a trespasser, he shall not be entitled to any share of the treasure.

If the things found be of interest to science or the arts, the State may acquire them at their just price, which shall be divided in conformity with the rule stated.

COMMENT:

(1) Where Hidden Treasure May Be Found

The treasure may be found on:

- (a) land
- (b) building
- (c) or other property.

[NOTE: Under the old law (Art. 351 of the old Civil Code), treasure could be found only on "land."].

(2) Treasure Found on One's Own Property

If *X* finds a hidden treasure in his house, he alone owns the treasure. If he is married, the treasure belongs to the conjugal partnership. (Art. 154).

(3) Treasure Found on Another's Property; Meaning of "By Chance"

For the finder to be entitled to *one-half*, the discovery on another's property must be "by chance." This means according to Spanish commentators that there must be *no purpose or intent* to look for the treasure. (2 *Navarro Amandi* 71). Dean Francisco Capistrano and Dean Vicente Francisco are however, of the opinion that the phrase "by chance" was intended by the Code Commission to mean "by good luck," implying that one who intentionally looks for the treasure is embraced in the provision. If, however, discovery is on another's property, permission must be sought, otherwise the finder will be considered a trespasser. It would have avoided confusion had the Code Commission therefor used the phrase "by good luck." The author is of the opinion that "by chance" really means "by good luck," whether there was a deliberate search for the treasure or not but there was no prior agreement on how the treasure, if found, would be divided. The reason is evident: it is *extremely difficult* to find hidden treasure *without looking for it deliberately*, for in many instances, the treasure is buried, that is, "hidden," sometimes many feet under the ground.

(4) Problem (Re: Permission Given To Look for Hidden Treasure)

A, believing *B*'s land contained hidden treasure, asked *B*'s permission to look for the treasure. *B* gave permission, and *A* discovered the treasure. How much of the treasure should go to *A*?

ANS.: Although there are conflicting opinions on this point, it is believed that the treasure should be divided equally between the finder and the owner even if the finding was the

result of a *deliberate hunt* for the treasure. Equity demands the equal sharing for it cannot be denied that had the landowner not given his permission, the treasure would not have been found; and conversely, had there not been a seeker of the treasure, same would not have been discovered. (*See 3 Manresa 167*). It would indeed be very presumptuous to conclude that the landowner by giving permission, intended to renounce all his rights. Moreover, by giving half to each party concerned, we can more or less follow the intention of the Code Commission.

PROBLEM

X is the owner of a piece of land where hidden treasure was believed to be buried. *Y*, who owns a mechanical device used in detecting hidden treasure was given permission by *X* to use the device on his land. *Y* discovered, after some effort, jewelry and other precious objects which are not of interest to science or the arts worth P5 million. To whom should the treasure belong? Explain your answer.

ANS.: The treasure belongs to BOTH (50-50) because this is still a case of finding by “chance,” defined as “good luck,” in conformity with the intent of the Code Commission. This is so even if the search for the treasure was clearly a deliberate one. *Firstly*, it is difficult to find “hidden” treasure without a hunt for it, for in many cases the same is buried many feet beneath the earth. *Secondly*, what is the use of asking permission, if after all the treasure would go, all of it, to the proprietor of the land? *Thirdly*, permission is required, otherwise the finder would generally be a trespasser, who gets NOTHING.

[*NOTE:* Sometime ago, there was the so-called “Golden Buddha incident.” It is clear from the foregoing that the finder as long as he sought permission, is entitled to *one-half*, even if the search was deliberate.]

(5) Rule if Finder or Owner Is Married

The law provides that “the share of the hidden treasure which the law awards to the *finder* or the *proprietor* belongs to the conjugal partnership.” (*Art. 154*).

Example:

A husband by chance discovered hidden treasure on the land of his wife. Who owns the treasure?

ANS.: The *half* pertaining to the husband as finder belongs to the conjugal partnership. The half pertaining to the wife as proprietor also belongs to the conjugal partnership. (See Art. 154).

(6) Rights of a Usufructuary over the Hidden Treasure Found on Land He Is Using

The law says: "With respect to hidden treasure which may be found on the land or tenement, the usufructuary shall be considered a stranger." (Art. 566, Civil Code). What does "stranger" mean? It simply means that the usufructuary, does NOT get a share. If he found the treasure, he gets half as *finder*; but if another person found it, such person gets half as finder, and the naked owner gets the other half as *owner*. The same rule applies to a tenant or lessee. (See 3 Manresa 158).

(7) If Finder Is a Paid Laborer of the Landowner

In the case of paid laborers, a distinction must be made. If he really discovered the property *by chance*, he gets *half*. If on the other hand, he had been employed *precisely* to look for the treasure, he will get *nothing* insofar as the treasure is concerned. Of course, he will get his wages or salary. (3 Manresa 165-166). The rule is substantially the same in American law. (25 C.J., p. 1138).

(8) Problem (Treasure Found Under Government Property)

If hidden treasure is found by chance under a municipal plaza, who owns the treasure?

ANS.: Half goes to the finder and the other half to the municipality. However, if the hidden treasure is scientifically or artistically valuable, the finder's half has to be given to the municipality or state, who in turn will give him a just price therefor. (Art. 438). The acquisition here by the municipality or

by the state is a *particular form* of eminent domain or expropriation, hence, the procedure thereon should be substantially followed.

(9) Trespasser

A trespasser (one prohibited to enter, or not given authority to enter) who discovers hidden treasure is *not* entitled to any share of the treasure. If a person lawfully allowed to enter discovers the treasure, but does not reveal the fact of discovery, he does not thereby become a trespasser, in view of the permission to enter. Thus, he is entitled still to his share.

(10) Treasure Hunts

A treasure hunt is an express search for hidden treasure. An owner of land may for example contract with a group of men who would look for the treasure. Should discovery be made, the actual finders will not necessarily be entitled to half. Instead, they will be given what has been stipulated in the contract.

Art. 439. By treasure is understood, for legal purposes, any hidden and unknown deposit of money, jewelry, or other precious objects, the lawful ownership of which does not appear.

COMMENT:

(1) Requisites in the Definition of Hidden Treasure

- (a) Hidden and unknown deposit (such that finding it would indeed be a discovery).
- (b) Consists of money, jewelry or other precious objects.
- (c) Their lawful ownership does not appear.

(2) Meaning of “Other Precious Objects”

Following the doctrine of *ejusdem generis* — the phrase “other precious objects” should be understood to refer to those of the same *class as money or jewelry*, and should not therefore include *property imbedded in the soil*, or part of the soil, like *minerals*. (*Goddard v. Winchell*, 41 Am. St. Rep. 481). Immova-

bles, like a tomb, would of course be excluded under the same rule of *ejusdem generis*, but not the things found inside said tomb, particularly those of interest to science or the arts. (See Art. 438, 3rd par.; 3 *Manresa* 162-163). Incidentally, under American law, the equivalent of “hidden treasure” is “treasure trove.” (See *Ferguson v. Rey*, 44 Ore. 557).

(3) Lawful Ownership Must Not Appear

In one case, a legatee in a will inherited some books. Inside one of the books was found a wad of money bills. It was proved that the books and the money had been used by the testator. For this reason, it was held that the money did not constitute hidden treasure, because its lawful ownership appeared. (*TS, Tribunal Supremo or the Supreme Court of Spain, Feb. 8, 1902*).

(4) Precious Objects Deliberately Hidden

If deliberately hidden by the owner, precious objects cannot be considered hidden treasure even if discovered by another as long as the true owner can prove his ownership. This is because far from abandoning or renouncing his property, he intended to return to it. Thus, said property, not being hidden treasure, cannot indeed be acquired by “occupation,” one of the modes of acquiring ownership, which includes within its scope “hidden treasure.” If however, the true owner has forgotten where he kept the same and has *given up hope* of ever recovering it, the object may now be appropriated by another since it has already become “abandoned property.” If the true owner has not *yet abandoned* the property, it is clear that same cannot be acquired by “occupation” and cannot properly be considered “hidden treasure.”

(5) Death of Lawful Owner

If the ownership of the treasure is known, but the owner is already dead, same will not be considered “hidden treasure,” and must therefore go to the owner’s rightful heirs. If the only legal heir left is the state, the treasure will appertain to the State’s patrimonial property. (See 5 *Corpus Juris* 1136).

Chapter 2
RIGHT OF ACCESSION
GENERAL PROVISIONS

Art. 440. The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.

COMMENT:

(1) ‘Accession’ Defined

Accession is the right of a property owner to everything which is:

- (a) produced thereby (*accession discreta*);
- (b) or which is *incorporated* or *attached* thereto, either *naturally* or *artificially* (*accession continua* or *accession non-interrumpida*), which in turn is divided into:
 - 1) natural accession (*accession natural*);
 - 2) artificial accession (*accession artificial* or *accession industrial*).

[NOTE: Because of the word “artificially,” it is understood that IMPROVEMENTS made on the property are included within the scope of “accession.”].

(2) Other Definitions of Accession

- (a) *According to Sanchez Roman (Vol. II, p. 89)*

Accession is the right of an owner of a thing to the products of said thing as well as to whatever is inseparably attached thereto as an accessory.

- (b) *According to Stimson's Law Dictionary, Revised Edition, p. 58.*

Accession is that by which property is given to a person in addition to what said person already possesses, said additional property being the result of a natural increase, like land, by deposit of a river; or houses, when built on one's own land; or the young of animals.

- (c) *According to Del Viso, Vol. II, p. 33.*

Accession is the right which ownership of property gives over everything which the same produces, or which is attached or incorporated thereto, naturally or artificially.

(3) Classification of Accession

- (a) *Accession Discreta* (To the Fruits)

- 1) natural fruits
- 2) industrial fruits
- 3) civil fruits

- (b) *Accession Continua* (Attachment or Incorporation)

- 1) *With reference to real property*
 - a) *accession industrial*
 - (1) building
 - (2) planting
 - (3) sowing
 - b) *accession natural*
 - (1) alluvium
 - (2) avulsion
 - (3) change of course of rivers
 - (4) formation of islands
- 2) *With respect to personal property*
 - a) *adjunction or conjunction*
 - (1) *inclusion* (engraftment)
 - (2) *soldadura* (attachment)

- (3) *tejido* (weaving)
- (4) *pintura* (painting)
- (5) *escritura* (writing)
- (b) mixture (*confusion* — liquids; *commixtion* — solids)
- (c) specification.

(4) Is Accession a Mode of Acquiring Ownership?

In Book III of the Civil Code, which deals with “different modes of acquiring ownership,” the different modes are enumerated, namely:

- (a) occupation
- (b) intellectual creation
- (c) law
- (d) donation
- (e) succession
- (f) tradition, as a consequence of certain contracts
- (g) prescription

It will be noted that accession is not one of those listed therein. It is therefore safe to conclude that accession is *not a mode* of acquiring ownership. The reason is simple: accession presupposes a previously existing ownership by the owner over the principal. This is not necessarily so in the other modes of acquiring ownership. Therefore, fundamentally and in the last analysis, accession is a right implicitly included in ownership, without which it will have no basis or existence. Truly, it is *one of the attributes or characteristics* which will make up the concept of dominion or ownership. (*Manresa, 6th Ed., Vol. 3, p. 116; 180-182*). We can of course refer to acquisition by *accession* as acquisition by LAW (for the law itself gives the right).

(5) Reason Behind Accession

- (a) for *accession discreta* (to the fruits) — justice, pure and simple, for one who owns a thing should justly enjoy its fruits;

- (b) for *accession continua* (attachment or incorporation) — economic convenience is better attained in a state of single ownership than in a co-ownership. Moreover, natural justice demands that the owner of the principal or more important thing should also own the accessory. (2 *Castan 215-216*).

(6) Right to Accession Generally Automatic

In general, the right to accession is automatic (*ipso jure*), requiring no prior act on the part of the owner of the principal. (*Villanueva v. Claustro, 23 Phil. 54*). A good example is in the case of landowner over whose land a river now flows. He is *ipso facto* the owner of the abandoned river bed in *proportion to the area he has lost*. (See Art. 461).

Section 1. — RIGHT OF ACCESSION WITH RESPECT TO WHAT IS PRODUCED BY PROPERTY (ACCESSION DISCRETA)

Art. 441. To the owner belongs:

- (1) The natural fruits;**
- (2) The industrial fruits;**
- (3) The civil fruits.**

COMMENT:

(1) *Accession Discreta* (Right to the Fruits)

This Article refers to *accession discreta* which is defined as the right to the ownership of fruits produced by our property. (See *Del Viso, Vol. II, p. 33; 3 Sanchez Roman 89*).

(2) Some Decided Cases and Doctrines

- (a) In an action to recover paraphernal property of the wife, the intervention of the husband is not needed, and therefore the husband is not a necessary party. But if aside from the paraphernal property, *fruits therefrom* are sought

to be recovered, the husband must join in the action first because he is a co-owner of said fruits (since they belong to the conjugal partnership) and secondly because he is the administrator of the conjugal partnership. (*See Quizon v. Salud, 12 Phil. 109*).

- (b) In an action to recover a person's property unlawfully in the possession of another, damages may in part consist of the value of the fruits produced. (*See Quizon v. Salud, Ibid.*).
- (c) A tenant who continues on the land after expiration of the lease contract and upon demand to vacate can be considered a possessor in bad faith and is responsible for the fruits actually produced as well as those that could have been produced by due diligence. It will be observed that liability for the fruits is a consequence of the usurpation and not because of a provision in the contract violated. (*See Guido v. Borja, 12 Phil. 718*).

(3) Instances When Owner of Land Does Not Own the Fruits

Under Art. 441, the owner of land owns the fruits. In the following cases, it is not the owner who owns the fruits, but somebody else:

- (a) *possessor in good faith* of the land (He owns the fruits already received). (*See Art. 544, par. 1*).
- (b) *usufructuary*. (*See Art. 566*).
- (c) *lessee* gets the fruits of the land (Of course, the owner gets the civil fruits in the form of rentals). (*See Art. 1654*).
- (d) In the contract of *antichresis*, the antichretic creditor gets the fruits, although of course, said fruits should be applied first, to the *interest*, if any is owing, and then to the principal amount of the loan. (*See Art. 2132*).

Art. 442. Natural fruits are the spontaneous products of the soil, and the young and other products of animals.

Industrial fruits are those produced by lands of any kind through cultivation or labor.

Civil fruits are the rents of buildings, the price of leases of lands and other property and the amount of perpetual or life annuities or other similar income.

COMMENT:

(1) Technical Meaning of ‘Fruits’

The term “*natural*,” “*ndustrial*,” and “*civil fruits*” as defined by the Code are *highly technical*, therefore when they are found in a final judgment, there can be no doubt as to their meaning. Thus, if a final judgment speaks only of *natural* and *civil fruits*, it is understood that industrial fruits are NOT included. (*Pamintuan v. Garcia*, 39 Phil. 746).

(2) Natural Fruits

There are two kinds of *natural* fruits:

- (a) the *spontaneous* products of the soil (that is, human labor does *not* intervene).

Examples — herbs, common grass. (*See 3 Manresa 182*).

- (b) the young and other products of animals. (*See Art. 442, par. 1*).

Examples — chicks and chicken eggs.

(3) Industrial Fruits

As defined, they are “those produced by lands of any kind thru cultivation or labor.” (*Art. 442, par. 2*).

Examples:

- (a) lanzones and bananas
- (b) palay and corn
- (c) zacate (when this is cultivated as food for horses). (*See 3 Manresa 182-183*).

- (d) all kinds of cultivated vegetables, since these are no doubt also produced by the land thru human labor (but not canned goods or manufactured products). (*3 Manresa 192-193*).

[NOTE: Are the cultivated trees in *themselves* to be considered fruits?

ANS.: It is submitted that strictly, they are not fruits in the juridical sense for they are really immovables as long as they are still attached to the land, which may themselves produce fruits. However, there is no doubt we may consider said *trees* as *fruits* when they are expressly *cultivated* or *exploited* to carry on an industry. (*See 3 Manresa 183*).]

[NOTE: Under American law, distinction has been made between:

- a) *perennial* crops (those growing each season without need of replanting, like oranges and apples).
- b) *annual* crops (those which have to be planted each year, like cereals and grains).

In America, (a) is referred to as *natural* fruits while (b) is called *industrial* fruits. (*See Walsh, The Law of Property, pp. 14-15*).]

(4) Young of Animals

Whether brought about by *scientific* means or not, it would seem that the young of animals should be considered as “natural” fruits, since the law makes no distinction.

(5) Meaning of ‘Other Products of Animals’

The phrase no doubt refers to such things as chicken eggs, or horse manure, or milk, or wool.

(6) BAR Question (Re: Offspring of Animals)

To whom does the offspring of animals belong when the male and female belong to different owners?

ANS.: This point is not covered either by the old or the new Civil Code. However, under the Partidas, the owner of the *female* was considered also the owner of the *young*, unless there is a contrary custom or speculation. (2 *Navarro Amandi* 276). Moreover, in one case it was held that “the legal presumption, in the absence of proof to the contrary, is that the calf, as well as its *mother* belong to the owner of the latter, by the right of accretion.” (*U.S. v. Caballero*, 25 *Phil.* 356). (See also *Siari Valley Estate v. Lucasan*, L-7046, Aug. 31, 1955). Commentators opine that the rule of the Partidas may be applied under the Codes because such rule merely continues the ownership which the owner of the female possessed, when the young was still in the womb of the mother. This is also in accord with the maxim “*pratus sequitor ventrem*” (the offspring follows the dam — or mother). (See 3 *Sanchez Roman* 139). This maxim is based on two good reasons:

- (a) First, oftentimes, it is not *known* who the *male* is.
- (b) Second, during the pregnancy of the female, its owner is greatly burdened by the consequential expenses and *virtual uselessness* of the animal, and it is only fair that when the young is born, the owner should gain, or at least recover his loss. (See *Blackstone Comm.* 390).

(7) Some Problems

- (a) A leased a female animal from B. During the period of the lease, the animal produced a sibling. Who owns the young (sibling)?

ANS.: A owns the young, for after all a contract of lease is onerous. It should be observed that by virtue of the contract of lease, the general rule that the owner of the female is also the owner of the young must give way. (See 3 *Corpus Juris* 22).

- (b) Suppose in the preceding problem, A was merely given the animal by way of *commodatum* (gratuitous borrowing), would your answer be the same?

ANS.: No. This time the owner of the female retains ownership in view of the gratuitous contract. (See *Orser v. Stoems*, 9 *Cow [N.Y.]* 687.).

(8) Civil Fruits

As defined, civil fruits consist of:

- (a) rent of buildings;
- (b) price of leases (rentals) of lands and *other property (even if personal property)*;
- (c) the amount of perpetual or *life annuities* or other similar income (but *not* a bonus granted as a reward or as a compensation to a person who mortgaged and thus risks his land to secure another's indebtedness). (*See Bachrach Motor Co. v. Talisay-Silay Milling Co., 56 Phil. 117.*)

In the case of *Bachrach v. Seifert and Elianoff, 48 O.G. 569*, it was held that a *dividend*, whether in the form of cash or stock, is income or fruits, because it is declared out of the profits of a corporation, and not out of the capital. (*See also Orozco, et al. v. Araneta, L-3691, Nov. 21, 1951.*)

(9) Cases**Bachrach Motor Co. v. Talisay-Silay Milling Co.
56 Phil. 117**

FACTS: A milling company, in order to obtain a loan from a bank, requested one of its sugar planters to mortgage the latter's land as security. As a reward, the company gave the mortgagor a bonus. The bonus was later claimed by:

- (a) a creditor of the mortgagor;
- (b) the bank. (The bank reasoned out that as mortgagee, it was entitled to the fruits and that the bonus should be considered as civil fruits).

HELD: The creditor of the mortgagor is entitled. In the *first place*, a mortgagee is not entitled to the fruits of the land mortgaged. In the *second place*, the bonus is not civil fruits. It is not one of those meant by the law when it says "other similar income" since this phrase refers merely to things analogous to

rents, leases, and annuities. Assuming that it is *income*, still it is not *income* obtained or derived from the land itself, but income obtained as compensation for the risk assumed by the owner. It should, moreover, be remembered that the bonus was not based upon the value or importance of the land but upon the total value of the debt secured. And this is something distinct from and independent of the property mortgaged.

Wait v. Williams
5 Phil. 571

FACTS: From the 1st of a certain month to the 20th, Regidor was entitled to the fruits of a certain property; and from the 21st to the 30th of the same month, the Obras Pias was entitled. The property was being rented. Who should get the rentals?

HELD: The rentals for the first 20 days should belong to Regidor; those for the last 10 days should go to the Obras Pias. This is because civil fruits are deemed to *accrue daily*. (Art. 544).

Velayo v. Republic
L-7915, July 30, 1955

Unpaid charges for the use of government airports and air navigation facilities are civil fruits that belong to the *national government, as owner*, and not to the Civil Aeronautics Administration, which is only an instrumentality authorized to collect the same.

The Overseas Bank of Manila v. Court of Appeals
L-49353, June 11, 1981

Banks are not required to pay interest on deposits for the period during which they are not allowed to operate by the Central Bank. This is demanded by fairness. However, interests that had accrued prior to the suspension should be paid by the bank, for after all, it has made use then of the money deposited.

Art. 443. He who receives the fruits has the obligation to pay the expenses made by a third person in their production, gathering, and preservation.

COMMENT:

(1) Duty of Recipient of Fruits to Reimburse Necessary Expenses

Examples:

A is the owner of a piece of land upon which fruits were grown, raised, harvested, and *gathered* by B in bad faith. Who should be considered the owner of the fruits?

ANS.: A should be considered the owner of the fruits, since he is the owner of the land, and B is a planter in bad faith but he must reimburse B for the expenses for production, gathering, and preservation. The reason for reimbursing B even though he is in bad faith, is that were it not for the said necessary cultivation expenses, there would not be any fruits grown at all, or left or preserved. Thus, this article is merely in consonance with the principle that no one may enrich himself unjustly at another's expense. (*3 Manresa*, pp. 181-183).

[*NOTE:* Under Art. 449, "He who builds, *plants*, or sows in *bad faith* on the land of another, loses what is built, planted, or sown *without right to indemnity*." How can this Article 449 be reconciled with the answer to the example given above?

ANS.: Art. 449 applies only if the crops have *not yet* been gathered (here the landowner gets the fruits *without indemnity* by the principle of *accession continua*). On the other hand, Art. 443 applies when the crops have already been gathered (hence, *accession continua* cannot apply). It should be observed that in the example given, the crops were already gathered. (*See 3 Manresa*, pp. 187, 219-220; *see also Dimson v. Rivera*, {CA} 39 O.G. 1744). Thus, in one case, the possessor in bad faith was ordered to return the fruits he had gathered "with a right to deduct the expenses of planting and harvesting." (*Tacas v. Tobon*, 53 *Phil.* 356).].

(2) Non-Applicability of Article When Planter is in Good Faith

Art. 443 does not apply when the planter is in good faith, because in this case, he is entitled to the fruits already received, hence, there is no necessity of reimbursing him. (*See Art. 544*).

(3) Characteristic of the Expenses Referred to in Art. 443

- (a) They must have been used for production, gathering, or *preservation*, not for the improvement of the property.
- (b) They must have been necessary, and not luxurious or excessive. Indeed, they must be commensurate with those ordinarily necessitated by the product. (*See 3 Manresa 187-188*).

(4) Query

Suppose the expenses exceed the value of the fruits (as when, for example, typhoons have damaged the crops) must there still be a reimbursement for the expenses?

ANS.: Yes, if the owner insists on being entitled to the fruits.

This is because:

- (a) the law makes no exception or distinction;
- (b) the same thing would have happened had the owner been also the planter;
- (c) he who gets expected advantages must be prepared to shoulder losses.

It is understood, of course, that if the fruits had not yet been gathered, no indemnity is required. (*See 3 Manresa 187-188; Art. 449*).

Art. 444. Only such as are manifest or born are considered as natural or industrial fruits.

With respect to animals, it is sufficient that they are in the womb of the mother, although unborn.

COMMENT:**(1) Two Kinds of Crops (Annual and Perennial)**

Annual crops (like cereals, grains, rice, corn, sugar) are deemed manifest (existing) the moment their seedlings appear from the ground, although the grains have not yet actually appeared.

Perennial crops (like oranges, apples, mangoes, and coconuts) are deemed to exist only when they actually appear on the trees. (See 2 Manresa, p. 190; see also Walsh, *Law of Property*, pp. 14-15).

(2) Animals

The young of animals are already considered existing even if still in the *maternal womb*. (Art. 444, par. 2). But doubt may arise whether they are already in the womb or not, so Manresa suggests that they should be considered existing only at the commencement of the maximum ordinary period of gestation. (See 3 Manresa, pp. 190-191).

(3) Rules for Civil Fruits as Distinguished from Natural and Industrial Fruits

- (a) Civil fruits accrue daily (Art. 544) and are therefore considered in the category of personal property; natural and industrial fruits, while still growing, are real property.
- (b) Civil fruits can be pro-rated; natural and industrial fruits ordinarily cannot. (See Art. 544).

Section 2. — RIGHT OF ACCESSION WITH RESPECT TO IMMOVABLE PROPERTY

Art. 445. Whatever is built, planted or sown on the land of another and the improvements or repairs made thereon, belong to the owner of the land, subject to the provisions of the following articles.

COMMENT:**(1) Accession Industrial (Building, Planting, Sowing)**

Art. 445 deals with *accession continua*; more specifically with *accession industrial*. (*BUILDING, PLANTING, SOWING*) – [NOTE: The difference between sowing and planting is that in the former, each deposit of seed gives rise merely to a single crop or harvest; whereas in planting, more or less permanent trunks or trees are produced, which in turn produce fruits themselves. In the latter case therefore, without a replanting, crops will continue to grow every season.]

[NOTE: Art. 445 can, of course, be applied only if the owner of the land is known. If he be unknown, no decision on the ownership of the things planted, built or sown, can be made. (See *Binondo v. Mier*, 34 Phil. 576).]

(2) Basic Principles of Accession Continua (Accession Industrial)

- (a) To the owner of the principal (the land for example) must belong also the accessions, in accordance with the principle that “the accessory follows the principal” (“*accessio cedit principali*”).
- (b) The union or incorporation must, with *certain exceptions*, be effected in such a manner that to separate the principal from the accessory would result in *substantial injury* to either.
- (c) He who is in good faith may be held responsible but he should not be penalized.
- (d) He who is in *bad faith* may be penalized.
- (e) No one should enrich himself *unjustly* at the expense of another.
- (f) Bad faith of one party neutralizes the bad faith of the other so both should be considered in good faith.

Crudo v. Mancilla
(CA) 37 O.G. 2089

If a landowner upon whose land grows a tree with branches extending to the neighboring tenement, decides to cut down the tree, and thus deprive his neighbor of whatever advantages the branches afforded the neighbor (such as “for *shade* purposes”), he is *not* required to pay his neighbor any indemnity occasioned by the loss of the branches for he merely cuts down what is his, by the principle of accession.

[NOTE: The only right which the neighbor has, in accordance with the law on easement, is to have the branches cut off insofar as they extend over his property. (See Art. 680).]

(3) One Exception to the General Rule Enunciated in Art. 445 Whereby the Owner of the Land is also the Owner of Whatever Is Built, Planted, or Sown Thereon

Under Art. 120 of the Family Code:

“Art. 120. The ownership of improvements, whether for utility or adornment, made on the separate property of the spouses at the expense of the partnership or through the acts or efforts of either or both spouses shall pertain to the conjugal partnership, or to the original owner-spouse, subject to the following rules:

When the costs of the improvement made by the conjugal partnership and any resulting increase in value are more than the value of the property at the time of the improvement, the entire property of one of the spouses shall belong to the conjugal partnership, subject to reimbursement of the value of the property of the owner-spouse at the time of the improvement; otherwise, said property shall be retained in ownership by the owner-spouse, likewise subject to reimbursement of the cost of the improvement.

In either case, the ownership of the entire property shall be vested upon the reimbursement, which shall be made at the time of the liquidation of the conjugal partnership.

- (1) It is important to Note which is Bigger or Greater —

- (a) the value of the property just *before* the improvement was made; or
 - (b) its value after the improvement including the cost.
- (2) Rules
- If (a) is greater, the whole thing belongs to the owner-spouse, without prejudice to reimbursement of the conjugal partnership.
- If (b) is greater, the whole thing belongs to the conjugal partnership but the owner-spouse must be reimbursed.
- (3) If on the lot of the husband worth P1,000,000, a 5-million-peso (P5,000,000) house is constructed, the house and lot will belong to the conjugal partnership, but it will reimburse the husband P1,000,000. The ownership will be vested in the conjugal partnership at the *time of reimbursement* and this reimbursement will be made when the conjugal partnership is liquidated.
- (4) In No. 3, if the house costs less than P1,000,000, the husband will be the owner of the house and lot, but he must reimburse the conjugal partnership the cost of the house.

Caltex (Phils.), Inc. v. Felias
L-14309, June 30, 1960

FACTS: A husband and his wife, with *conjugal* funds, constructed a building on a lot owned by the *wife's parents*. *Subsequently*, the parents donated the said lot to the wife. *IS-SUE:* Who now owns the land?

HELD: The lot is the separate property of the wife, NOT conjugal, because the building was constructed when the land still belonged to the parents of the wife. What is applicable is the rule that “the accessory follows the principal.” When the building was constructed, the same became the property of the wife’s parents by accession, and when later on the land was donated to the wife, the lot became her separate property, and the donation transmitted to her the rights of a landowner over

a building constructed on it. It would have been different had the building been constructed at the time the lot was already owned by the wife. In this case, Art. 158 of the Civil Code (now Art. 120 of the Family Code) would apply.

(4) Meaning of ‘Building’ in Art. 445

“Whatever is built” refers to all kinds of constructions with a roof, and used as residence, for office, or social meetings, etc. (*See Philippine Sugar Estate Development v. Pozat, 48 Phil. 536*).

(5) Some Latin Legal Maxims in Connection with Accession Industrial

- (a) *Accessorium non ducit sed sequitor suum principali*. (The accessory does not lead but follows its principal. Or: if the principal is given, the accessory is also given; but if the accessory is given, this does not necessarily mean that the principal is also given.)
- (b) *Accessorium sequitor naturam rei cui accedit*. (The accessory follows the nature of that to which it relates.)
- (c) *Aedificatum solo, solo cedit*. (What is built upon the land goes with it; or the land is the principal, and whatever is built on it becomes the accessory.)

Art. 446. All works, sowing, and planting are presumed made by the owner and at his expense, unless the contrary is proved.

COMMENT:

(1) Presumption that Works, Sowing and Planting Were Made by the Landowner and at His Expense

The two disputable (*juris tantum*) presumptions under this Article are:

- (a) The works, sowing, and planting were *made by the owner*. (*See Art. 437 on surface right, and Art. 445*).

- (b) They were made at the *owner's expense*. (This is so even if another actually undertook the task, for then he might have been acting only as the agent. [*See 3 Manresa, pp. 195-197*].). Moreover, even if he did not so act as agent, we may still presume that the undertaking was made with the landowner's consent. If the building be large, expensive, or important, common sense may direct us to believe that the owner of the building is also the owner of the land. BUT this would not be the case for under the principles of accession, we must still presume that the owner of the land is the person who erected the building. (*See 3 Manresa 196*).

(2) Example

I own a piece of land containing rice crops and a fence. It is presumed that I made the plantings and the fence at my expense. This presumption is however rebuttable, as the contrary may be proved, according to the law. The usefulness of the presumption lies in the fact that I do not have to prove anymore that they were constructed at my expense, since I have the presumption in my favor. Whoever alleges the contrary should prove his contention.

[*NOTE*: The two presumptions in this Article are rules of evidence or of substantive law, not mere rules of procedural law. (*See U.S. v. Genato, 15 Phil. 171*).].

Art. 447. The owner of the land who makes thereon, personally or through another, plantings, constructions or works with the materials of another, shall pay their value; and, if he acted in bad faith, he shall also be obliged to the reparation of damages. The owner of the materials shall have the right to remove them only in case he can do so without injury to the work constructed, or without the plantings, constructions or works being destroyed. However, if the landowner acted in bad faith, the owner of the materials may remove them in any event, with a right to be indemnified for damages.

COMMENT:**(1) Rules When Landowner Constructs or Plants on His Land With the Materials of Another**

This Article treats of the rights and obligations of:

- (a) the owner of the land who uses the materials of another;
- (b) the owner of the materials.

(2) Rights and Obligations of the Owner of the Land Who Uses the Materials of Another

- (a) If the landowner acted in *good faith* –

He becomes the owner of the materials but he must pay for their value. The only exception is when they can be removed without destruction to the work made or to the plants. In such a case, the owner of the materials can remove them.

- (b) If the landowner is in *bad faith* –

He becomes the owner of the materials but he must pay:

- 1) their value;
- 2) and *damages*.

[The exception is when the owner of the materials decides to remove them *whether* or not destruction would be caused. (In this case, the materials would still *belong to the owner of said materials*, who in addition will still be entitled to damages).].

(3) Rights and Obligations of the Owner of the Materials

- (a) If the landowner acted in *good faith* –

- 1) The owner of the materials is entitled to *reimbursement* (provided he does not remove them).
- 2) He is entitled to removal (provided no substantial injury is caused).

- (b) If the landowner acted in *bad faith* —
- 1) The owner of the materials is entitled to the ABSOLUTE right of *removal* and *damages* (whether or not substantial injury is caused).
 - 2) He is entitled to *reimbursement* and *damages* (in case he chooses not to remove).

(4) Illustrative Examples

- (a) *A*, on his land, constructed a house with the materials of *B*. *A* is in good faith. Can *B* remove said materials?

ANS.: No, *B* cannot remove said materials because to do so would necessarily injure the house. (*Art. 447*).

- (b) *A* rented *B*'s land, and built on it a house, with materials belonging to *C*. *A* was in good faith. Are *A* and *C* co-owners of the house?

ANS.: No, they are not co-owners of the house because by the principle of accession, just because a person's materials were used, it does not follow that the owner of the materials becomes owner of any part of the building. At most, *C* is entitled to reimbursement for their value. (*Liwanag v. Yu-Sonquian, 5 Phil. 147*).

- (c) *A*, on his land, constructed a house with the materials of *B*. *A* is in bad faith. Can *B* remove the materials even if in doing so, the whole structure will be destroyed? Can *B* also ask for damages?

ANS.: Yes, *B* is allowed the right of *absolute* removal as well as *indemnification for damages*. (This is to penalize *A*'s *bad faith*.) (*Art. 447*).

- (d) What is the measure of damages?

ANS.: "Indemnification for damages shall comprehend not only the value of the loss suffered (*dano emergente* or *danos*) but also that of the profits which the obligee failed to realize (*lucro cessante* or *perjuicios*)." (*Art. 2200*).

(5) Queries

- (a) The law says: “Pay their value” (*reimbursement*). Suppose the landowner wants to return the materials *instead* of reimbursing their value, may this be done even without the consent of the former owner of the materials?

ANS.: It depends:

- 1) If no *damage* has been made to the *materials*, or they have not been *transformed* — as a result of the construction — they may be *returned* (of course, at the landowner’s expense).
 - 2) If damage has been made or there has been a transformation, they cannot be returned anymore. (Note that the law does not grant this option to the landowner). (*See 3 Manresa 204*).
- (b) The law says: “the owner of the materials shall have the right to *remove* ...” Suppose the landowner has already demolished or removed the plantings, constructions, or works, is the owner of the materials still entitled to claim them?

ANS.: Although there are differences of opinion on this matter, the best rule seems to be that the owner of the materials is still entitled to get them since the law makes no distinction. (*See 3 Manresa 206-207*). Moreover, the landowner may insist on returning said materials for evidently there is no accession. (*Ibid.*).

- (c) A builds a house on his land using the materials of B. Later, A sells the house and land to C. Against whom will B have a right of action, against A, the builder, or C, the buyer?

ANS.: The law is silent on this point, but it would seem that the right of action should be directed against C, since it was he who benefited from the accession. (*See Gonzon v. Tiangco, [CA] 36 O.G. 822; see also Martin v. Martin, L-12439, May 22, 1959*).

(6) Meaning of Bad Faith and Good Faith in Connection with Art. 447

Although Art. 447 does not define good faith or bad faith, we may, by analogy, apply the definitions provided for in Arts. 453 and 526. Hence:

- (a) The builder, planter or sower is in BAD faith if he makes use of the land or materials which he *knows* belong to another. (Thus, one who buys land *without verifying* whether or not the land belongs to another with a Torrens Title and who subsequently builds on it, is a builder in bad faith, if indeed the land is already registered under the Land Registration Law in the name of another. [*J.M. Tuason and Co. v. Macalindong, L-15398, Dec. 24, 1962*]). Thus, also, a purchaser is not a builder in good faith where he has presumptive knowledge of an existing Torrens Title in favor of another. [*J.M. Tuason v. Mumar, L-21544, Sep. 30, 1968*]. Likewise, one who is aware of a notice of *lis pendens* is a purchaser in *bad faith*. [*Clemente v. Pascua, L-25153, Oct. 4, 1968*].)
- (b) He is in GOOD faith if he did not know that he had no right to such land or materials. (If a landowner with a Torrens Title builds *beyond* the boundaries of his property as stated in the certificate of title (and thus constructs partly on his neighbor's land), is he necessarily in bad faith? No, for he may still be in *good faith*. No one, not even a surveyor, can determine the precise location of his land by simply examining his title. (*Co Tao v. Chico, L-49167, Apr. 30, 1968*).
- (c) The owner of the materials is in BAD faith if he allows another to use the materials *without* informing him of the ownership thereof.
- (d) The owner of the materials is in GOOD faith if he did not know that another was using his materials; or granting that he did know, if he informed the user of the ownership thereof and made the necessary prohibition.

(7) Rule When Both Parties are in Bad Faith

Regarding Art. 447, what rule should apply if the landowner and the owner of the materials are *both in bad faith*?

ANS.: Consider them in *good faith*.

(8) Rule When Landowner is in Good Faith But Owner of Materials is in Bad Faith

Regarding Art. 447, what rule should apply if the landowner is in *good faith*, but the owner of the materials is in *bad faith*?

ANS.: There is no provision of the law on this point, but it would seem that the landowner would not only be exempted from reimbursement, but he would also be entitled to consequential damages (as when for instance, the materials are of an inferior quality). Moreover, the owner of the materials would lose all rights to them, such as the right of removal, regardless of whether or not substantial injury would be caused.

(9) Presumption of Good Faith

Good faith is always presumed, and upon him who alleges bad faith rests the burden of proof. (*See Art. 527*).

(10) Case

**Heirs of Nicolas Y. Orosa v. Hon.
Eutropio Migrino and Goldenrod, Inc.
GR 99338-40, Feb. 1, 1993**

Under Article 447 of the Civil Code, the plaintiff in an action for quieting of title must at least have an equitable title to or an interest in the real property which is the subject matter of the action.

In the case at bar, evidence of Goldenrod's capacity on this point is in-existent because Goldenrod is not asserting a claim to the property. On the contrary, it had *admitted* having *alienated its interest* in the land referred to as Lot 9 Psu-11411 Amd-2 to the consortium. Thus, Goldenrod is not an interested party capable of instituting an action to quiet title, either by intervening in LRC 2839 or by instituting a separate action. The right to commence such as separate action pertains to its

Vendee, if the latter wishes to defend the validity of its 1987 purchase from Goldenrod and to hold the Vendor Goldenrod liable on its warranty of title.

Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

COMMENT:

- (1) **Rule When On the Land of a Person in Good Faith, Another Builds, Sows, or Plants in Bad Faith**

**Morales v. CA
83 SCAD 750
(1997)**

Clearly, Art. 448 applies only when the builder, planter or sower believes he has the right to so build, plant or sow because he thinks he owns the land or believes himself to have a claim of title.

Example:

On *O*'s land, *B* built in good faith a house. *O* is in good faith. What are *O*'s rights?

ANS.: *O* is entitled to an option. He is therefore allowed:

- (a) to *appropriate* for himself the house upon payment of the proper indemnity;

- (b) or to *compel* the builder *B* to *buy* the land upon which the house has been built, unless the value of the land be *considerably* more than the value of the house. (In the latter case, *rent* should be paid.)

[NOTE: Since the choice given the landowner is confined to either an *appropriation* of the house or to a *compulsory selling* of the land, he has *no right of removal or demolition*, UNLESS after having selected a compulsory sale, the builder fails to pay for the land. (*Ignacio v. Hilario*, 43 O.G. 140, 76 Phil. 605). The reason for the Ignacio case is clear. If the builder cannot pay for the land, he should not be allowed to continue using it to the owner's detriment. Hence this time, the builder *must* remove the construction. If the landowner chooses to get the house, he becomes indebted monetarily. Having exercised his option, his duty now becomes a *monetary obligation*. Failure to pay may result in execution. (*Tayag v. Yuseco*, L-14043, Apr. 16, 1959).].

[NOTE: There is nothing, however, in the law to prevent the parties from agreeing to adjust their rights in some other way. In this sense, the article is not mandatory. (*3 Manresa 219*).].

[NOTE: It is the owner of the land who has the choice or option, not the builder. Hence, the builder *cannot* compel the owner of the land to sell such land to him. Thus, the right of the builder in good faith is the right to reimbursement for the improvements, that is, if said improvements are appropriated by the owner of the land. (*Quemuel and Solis v. Olaes and Prudente*, L-11084, Apr. 29, 1961; see *Acuña and Diaz v. Furukawa Plantation Co.*, L-5833, Oct. 22, 1953).].

[NOTE: The option granted to the landowner is *not absolute*, as when it is *impractical* for the landowner to exercise the first alternative. In the case of *Leonor Grana and Julieta Torralba v. Court of Appeals, et al.*, L-12486, Aug. 31, 1960, a builder in *good faith* built a *portion* of his house on another's lot. In speaking of the landowner's remedy, the Court held that although an alternative is given by the law, still in this case, it would be impracticable for

the landowner to choose to exercise the first alternative, *i.e.*, buy that portion of the house standing on his land, for the whole building might be *rendered useless*. The workable solution is for him to select the second alternative, namely, to sell to the builder that part of his land on which was constructed a portion of the house. If the builder is *unwilling* to buy, he must vacate the land, and *pay rentals* until he does so. Prior to this exercise of choice, however, he will not be required to pay rents because of his good faith and consequent right of retention. (*See Miranda v. Fadullon, 51 O.G. 6226*).J.

**Inter-Regional Development Corporation
v. Court of Appeals
L-89677, July 22, 1975**

FACTS: On the land of someone, a person planted certain crops. Does the landowner automatically or *ipso facto* become the owner of said planted crops?

HELD: No, the owner of the land does not *ipso facto* become the owner of what had been planted on his land by another. *Firstly*, we have to determine whether the planter was in good faith or bad faith. *Secondly*, assuming that the planter was in good faith, the landowner, should he desire to get the crops, must first give the proper indemnification to the planter.

**Tan Queto v. CA, et al.
GR 35648, Feb. 27, 1987**

**(Resolution on a Motion for Reconsideration,
setting aside the S.C. decision dated May 19, 1983)**

The net result of mutual bad faith between the owner and the builder entitles the builder to the rights of a builder in good faith. (*Art. 448, Civil Code*). *Ergo*, reimbursement should be given to the builder if the owner decides to appropriate the building for herself.

The Chapter on Possession (*jus possessionis*, not *jus possidendi*) in the new Civil Code refers to a possessor other than the owner. The difference between a builder

(or possessor) in good faith and one in bad faith is that the former is NOT AWARE of the defect or flaw in his title or mode of acquisition while the latter is AWARE of such defect or flaw. (*Art. 526, Civil Code*). But in either case, there is a flaw or defect.

A person who builds in his own property is not merely a possessor or builder in good faith (this phrase presupposes ownership in another) much less is he a builder in bad faith. He is a builder-possessor (*jus possidendi*) because he is the owner himself.

Fernandez Del Campo v. Abeisa
L-49219, Apr. 15, 1988

Plaintiffs and defendant are co-owners *pro indiviso* of a lot in the proportion of 2/3 and 1/3 each, respectively. An appointed commissioner submitted a partition. The house built by defendants, however, happened to be in the portion given to plaintiffs. Plaintiffs contended and were upheld by lower court that defendant is not entitled to reimbursement of cost of house built because as a co-owner he is not a third person in contemplation of Art. 448 defining builder in good faith.

However, when as in this case, the co-ownership is terminated by the partition and it appears that the house of defendants overlaps or occupies a portion of 5 sq.m. of the land pertaining to plaintiffs which defendants obviously built in good faith, then the provisions of Art. 448 of the new Civil Code should apply.

(2) Bar

X purchased subdivision Lot 6. Instead of building on Lot 6, X in good faith built an apartment house worth P8 million on Lot 7, which is valued at P8.5 million belonging to Z and without Z's knowledge.

Questions:

- (a) Who has the preferential right of consolidating ownership on both land and building?

- (b) May *Z* compel *X* to remove the apartment house?
- (c) May *Z* compel *X* to buy the land?
- (d) If *X* agrees to pay *Z* for the latter's land but fails to comply, may *Z* demand removal of the apartment?
- (e) Before a settlement is reached between *X* and *Z*, may *Z* demand rental for his land? Explain your answers.

Answers:

- (a) *Z* has the preferential right, for he has the option referred to in Art. 448.
- (b) No, *Z* cannot compel the removal or demolition, for such alternative is not granted him under the Article.
- (c) Yes, *Z* can compel *X* to buy the land, since its value is not considerably more than the value of the apartment, the difference being only P.5 million.
- (d) This time the answer is YES, according to the case of *Ignacio v. Hilario*, 76 *Phil.* 605. Since the landowner *Z* has chosen to sell the land, the builder must pay. If he cannot pay, he should *not* be allowed to use the land to the owner's detriment. Hence, he must remove the building.
- (e) Before settlement is reached between *X* and *Z*, *Z* may not legally demand rental for his land, for after all *X* is a builder in good faith, and is entitled to retain in the meantime. This right of retention would be nugatory if he were to be made to pay.

[NOTE: The answers given hereinabove are based on the premise that the builder is in GOOD FAITH, as stated in the problem. Be it remembered, however, that if the problem had dealt with lots covered by Torrens Titles, *X* who erroneously builds on the adjoining lot in the subdivision should be considered a builder in BAD FAITH, there being *presumptive knowledge* of the Torrens Title, the area, and the extent of the boundaries. (*Tuason & Co. v. Lumanlan*, L-23497, Apr. 26, 1968, 23 SCRA 230, and *Tuason and Co. v. Macalindong*, L-15398, Dec. 29, 1962, reversing *Labajo v. Enriquez*, 102 *Phil.* 908).]

(3) Reason for the Provision

It is true as a *rule* that whatever is built, planted, or sown on the land of another should, by the principle of accession, belong to him (landowner). However, when the planter, builder, or sower has acted in *good faith*, a conflict of rights arises between the owners, and it becomes necessary to protect the owners of both without causing injustice to either. In view of the impracticability of creating what Manresa calls a state of forced co-ownership (*Vol. 3, 4th Ed., p. 213*), the law has provided a just and equitable solution. (*Bernardo v. Bataclan, 37 O.G. No. 74, p. 1382; see also Co Tao v. Chan Chico, L-49167, Apr. 30, 1949*). [NOTE: The builder is considered in good faith if he thought that the land was his: the landowner is in good faith if he did not know that somebody was building on his land, or even if he did know, if he expressed his objection. (*See Co Tao v. Chan Chico, Ibid.*)].

**Spouses Rafael Benitez and
Avelina Benitez v. CA
77 SCAD 793, GR 104828, Jan. 16, 1997**

The advantage in Art. 448 is accorded the landowner because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing.

There can be no preemptive right to buy even as a compromise, as this prerogative belongs solely to the landowner. No compensation can be legally forced on him, contrary to what petitioners ask from this Court. Such an order would certainly be invalid and illegal.

(4) Why Option Is Given to the Landowner and Not to the Planter or Builder

It is the owner of the land who is allowed to exercise the option because:

- (a) his right is *older*;
- (b) and because, by the *principle of accession*, he is entitled to the ownership of the accessory thing. (*3 Manresa, p. 213, cited in the case of Bernardo v.*

Bataclan, supra). In view of this, it is clear that the builder does not have the option. (*Acuña v. Furu-kawa Plantation, 49 O.G. 5382*). However, the lien of the builder on the constructions may be annotated in the certificate of title by means of a petition filed in the original case wherein the decree of registration under the Torrens system was entered. This is to protect the right of the builder to the indemnity, in case the property is sold to a purchaser for value. (*Atkins, Kroll and Co. v. Domingo, 46 Phil. 362*).

(5) Indemnity in Case of Appropriation

In case the owner chooses to appropriate the thing built, or sown, or planted, how much indemnity should be paid by him?

ANS.: The indemnity provided for in Arts. 546 and 548 of the new Civil Code. (*Mendoza and Enriquez v. De Guzman, 52 Phil. 1641*). Please note, however, that ownership over the thing built or sown or planted does *not* pass to the landowner till after payment therefor has been given. (*TS, Jan. 2, 1928*). Payment is to be made either on the date fixed by agreement or the date fixed by the Court. (*Bataclan v. CFI, 61 Phil. 428*).

[NOTE: After the owner of the land has given to the builder or possessor in good faith the proper indemnities, the builder or possessor may be ordered to VACATE the land. (*People v. Repato, L-17985, Sep. 29, 1962*).]

Fernandez v. Abeisa **GR 49219, Apr. 15, 1988**

FACTS: In an action for partition of a 45-square meter lot, Concepcion got $\frac{2}{3}$ or 30 square meters of the lot while Bernarda got $\frac{1}{3}$ or 15 square meters. After the houses of Concepcion and Bernarda were surveyed, it was found that the house of Bernarda occupied the portion of 5 square meters of the lot allotted to Concepcion. Concepcion and Bernarda manifested their conformity to the report of the Commissioners and asked the trial court to settle and adjudicate who between them should take possession of the 5 square meters of the

land in question. The trial court held that Art. 448 of the Civil Code does not apply to a case where the builder is a co-owner. Hence, it ordered Bernarda to remove part of the house which encroached on the lot of Concepcion and to deliver the 5-meter portion to the latter.

The Supreme Court modified the decision of the trial court by ordering Concepcion to indemnify Bernarda for the value of the portion of the latter's house in accordance with Art. 549 of the Civil Code, if Concepcion elects to appropriate it. Otherwise, Bernarda shall pay the value of the 5 square meters of land occupied by her house at such price as may be agreed upon with Concepcion. If its value exceeds the portion of the house that Bernarda built, the latter may choose not to buy the land but must pay a reasonable rental for the use of the portion of Concepcion's land as may be agreed upon by them. The Court thus —

HELD: Applying Article 448 of the Civil Code, Concepcion has the right to appropriate said portion of the house of Bernarda upon payment of indemnity to the latter as provided for in Article 546 of the Civil Code. Otherwise, Concepcion may oblige Bernarda to pay the price of the land occupied by her house, but if the price asked for is considerably much more than the value of the portion of Bernarda's house built thereon, then the latter cannot be obliged to buy the land. Bernarda shall then pay the reasonable rent to Concepcion upon such terms and conditions that they may agree. If they disagree, the trial court shall fix the terms thereof. Of course, Bernarda may demolish or remove the portion of her house, at her own expense if she so decides.

(6) The Indemnities to be Given

- (a) *Necessary Expenses.* (Art. 546, par. 1).
- (b) *Useful Expenses.* (Art. 546, par. 2).
- (c) *Luxurious Expenses* — if he desires to appropriate them for himself. (Art. 548).

[NOTE: Necessary expenses are those made for the preservation of the thing (*4 Manresa 270*) or those without

which the thing would deteriorate or be lost (*8 Scaevola 408*) such as those incurred for cultivation, production, and upkeep. (*Mendoza v. De Guzman, 52 Phil. 164*). Necessary expenses include necessary repairs (*Alburo v. Villanueva, 7 Phil. 277*). By *ordinary repairs* are understood such as are required by the wear and tear due to the natural use of the thing, and are indispensable for its preservation. (*Art. 529, Civil Code*).

Upon the other hand, *useful expenses* are those that augment the income of the thing upon which they are spent (*4 Manresa 274*), or add value to the property (*Aringo v. Arena, 14 Phil. 263*) but do not include the value of farming implements or work animals which do not remain on the land. (*Valenzuela v. Lopez, 51 Phil. 279*).]

(7) Problem

A builder constructed in good faith a house on the land of X. X elected to appropriate the house and bound himself to pay the proper indemnities. *Before* the indemnities are given

—

- (a) May the builder retain the house?
- (b) Is the builder entitled to the rents that accrue in the meantime (in case the building is leased to another)?
- (c) Is the builder entitled to the fruits that will accrue during the time he retains the premises?
- (d) Is the owner of the land entitled to collect rent from the builder while the latter retains the house?

ANS.:

- (a) Yes, the builder is entitled to retain the house until he is paid the full indemnities since he is a builder in good faith. (*See Art. 546; see also Grana and Torralba v. Court of Appeals, et al., L-12486, Aug. 3, 1960*). Incidentally, this right of retention may be recorded on the certificate of title, and thus constitute a lien on the property. (*See Atkins, Kroll and Co. v. Domingo, 46 Phil. 362*).

- (b) No, the builder is not entitled to the rents, since his possession is no longer that of a possessor in good faith. Note that election by the landowner had already been made. Therefore, if the builder receives the rents, he must deduct them from whatever indemnity is due him. (*See Mendoza v. De Guzman, 52 Phil. 164.*)
- (c) No, for again we may say that during said retention, he is not considered a possessor in good faith. (*Ibid.*).
- (d) No, otherwise the right of retention till indemnity is given would be rendered nugatory. [*Tufexis v. Chunaco, (CA) 36 O.G., p. 2455; Grana and Torralba v. Court of Appeals, et al., L-12486, Aug. 31, 1960; Miranda v. Fadullon, et al., 51 O.G. 6226*].

Pecson v. CA
61 SCAD 385
(1995)

It is the current market value of the improvements which should be made the basis of reimbursement to the builder in good faith.

Ballatan v. CA
304 SCRA 34
(1999)

The right to choose between appropriating the improvement or selling the land on which the improvement of the builder, planter, or sower stands is GIVEN to the OWNER of the land.

In the event that the owner elects to SELL to the builder, planter, or sower the land or which the improvement stands, the price must be FIXED at the prevailing MARKET VALUE at the time of payment.

(8) Rights of Landowner Before He Makes the Choice

Before the landowner exercises the option, it is evident that he is not yet the owner of whatever has been built, planted,

or sown, for his only right in the meantime is to exercise the option. (*TS, May 21, 1928*). Neither builder nor landowner can oust each other, for until indemnity is paid, the builder has the right of retention. (*See Martinez v. Baganus, 28 Phil. 500*). It has been held by the Spanish Supreme Court that ownership over the accessory passes only after payment of the indemnity. (*TS, Jan. 2, 1928*).

(9) Bar

A constructed a house on land belonging to B in the belief that the land was his own. Upon discovering the fact, B demanded that A should pay him the value of the land, but A failed to do so.

- (a) Did A's failure to pay automatically make B the owner of the house by right of accession? Reasons.
- (b) What remedies are available to the parties? Discuss.

ANS.:

- (a) A's failure did NOT automatically make B the owner of the house by the right of accession. *REASON*: No such right is given by Art. 448 of the Civil Code. Said Article merely gives the landowner an option to appropriate for himself the house upon payment of the proper indemnity, or to compel the builder to buy the land upon which the house has been built, unless the value of the land be considerably more than the value of the house (in which case, *rent* should be paid). Our Supreme Court has held that there is nothing in the language of the law (*Arts. 448 and 548*), which would justify the conclusion that upon failure of the builder to pay the value of the land when such is demanded by the landowner, the latter automatically becomes the owner of the improvements. (*Filipinas Colleges, Inc. v. Maria Garcia Timbang, L-12812, Sep. 13, 1959*). Indeed, ownership over the accessory passes only after payment of the indemnity. (*TS, Jan. 2, 1928*).
- (b) The parties have the following remedies:
 - 1) They may leave things as they are and assume the relation of lessor and lessee. The rent may be fixed

by the court in case of disagreement. (*Miranda v. Fadullon*, 51 O.G. 6226).

- 2) The landowner may have the house removed. This right of demolition exists because he has chosen to sell his land, and the builder has failed to pay. (*Ignacio v. Hilario*, 76 Phil. 605).
- 3) The landowner may consider the price of the land as an ordinary money debt of the builder. Therefore, he may enforce payment thru an ordinary action for the recovery of a money debt. The execution of the judgment may be done by levying on the land and the house both of which may be sold at a public auction. The landowner will then keep for himself the proceeds equivalent to the value of the land; the rest will be turned over to the builder, who cannot complain of any deficiency. (*Bernardo v. Bataclan*, 66 Phil. 598; *Tayag v. Yuseco*, L-14043, Apr. 16, 1959).

(10) Problem

If the landowner elects to compel the builder to buy the land, is the builder entitled to the right of retention?

ANS.: No, because he is the one required to pay. Had the landowner chosen to appropriate the building but has not yet paid the indemnity, the answer would be otherwise. (See *Bernardo v. Bataclan*, 37 O.G. 1382).

[NOTE: If the value of the land is *more* than the value of the building, can the landowner still avail himself of the option of compelling the builder to pay for the land? Yes, unless the value of the land is *considerably more* than the value of the building. The meaning of “*considerably more*” is to be determined by the facts of the case./

(11) When Art. 448 Is Applicable and When It Is Not Applicable

- (a) Art. 448 applies only when the builder, planter, or sower really believes he has the right to so build, plant, or sow

because *he thinks he owns the land*. (See *Alburo v. Villanueva*, 7 Phil. 277). He must, therefore, have a claim of title, *i.e.*, he must really be a possessor in *good faith*. (*Ibid.*) The same rule applies if the builder constructs with the consent of the landowner, the law treating both as possessors of good faith. (See *De Guzman v. Fuente*, 55 Phil. 501). Thus, Art. 448 applies if a son constructs a house on his father's land with the latter's knowledge and consent (*Javier v. Javier*, 7 Phil. 261) or if a stranger gets the owner's permission to build. (See *Aringo v. Arena*, 14 Phil. 263).

**Sagrada Orden de Predicadores v.
National Coconut Corp.
48 O.G. No. 7, p. 2468**

FACTS: Prior to the last war, A owned certain properties. During the Japanese Occupation, the properties were taken by a Japanese corporation, which eventually registered them in its name. At the end of the war, the Alien Property Administration took possession of the properties for a while, but eventually turned over their use and possession to the government. The Government collected rent from the lessee of the property. Eventually, the title of the Japanese corporation was annulled, and A was declared the owner of the properties involved. *Issue:* Is the Philippine Government entitled to keep the rent it had collected from the lessee?

HELD: Yes, for the Government can be considered a possessor in GOOD FAITH of the properties involved.

- (b) Art. 448 *does NOT* apply:
- 1) when the builder, planter, or sower does not claim ownership over the land, but possesses it as mere *holder, agent, usufructuary, or tenant*. Here, he knows that the land is not his. Upon the other hand, it may be that he thought he had the right to sow plant or construct. Hence, properly speaking, a *lessee*, for example, is *neither* a builder in *good faith* nor

in bad faith. His rights are governed by Art. 1678. (See *Alburo v. Villanueva*, 7 Phil. 277, and *Quemuel, et al. v. Olaes, et al.*, L-11084, Apr. 29, 1961; see also *Racaza v. Susana Realty, Inc.*, L-20330, Dec. 22, 1966). If the builder is a usufructuary, his rights will be governed by Arts. 579 and 580. In a case like this, the terms of the contract and the pertinent provisions of law should govern. (3 *Manresa* 215-216; see also *Montinola v. Bantug*, 71 Phil. 449).

Exception:

If a tenant (agricultural tenant) whose lease is about to expire, nevertheless still sows, not knowing that the crops will no longer belong to him, Art. 448 can be applied. (*TS*, Nov. 30, 1900; 3 *Manresa* 216).

- 2) when the builder, planter, or sower is not a stranger but a co-owner, even if later on, during the partition, the portion of land used is awarded to another co-owner. The reason is that such co-owner really builds, plants, or sows *on his own land*, and *not* on land not belonging to him. (*Viuda de Arias v. Aguilar*, [CA] O.G. Supp., Aug. 30, 1941, p. 126; 40 O.G. [5th Series p. 126].).
- 3) when a person constructs a building on *his own land*, and then sells the land but *not* the building to another, there can be no question of good faith or bad faith on the part of the builder. Here, he can be compelled to remove the building. (*Golengco v. Regalado, et al.*, 48 O.G. 5282). The new owner of the land will thus *not* be required to pay any indemnity for the building. (*Ibid.*).
- 4) when the builder is a belligerent occupant, such as for example, the Japanese Imperial Armed Forces, the constructions made by it during the war are owned *not* by the owner of the land but by the Philippines, since the latter emerged victor in the last war. (*Republic v. Lara*, May 29, 1954, 50 O.G. 5778).

Southwestern University v. Salvador
L-48013, May 28, 1979

A lessee who builds a house (useful improvement) on the land may remove the same, but cannot compel the lessor to sell to him the land. He is not considered a possessor in good faith or a possessor in bad faith.

Pecson v. CA
61 SCAD 385
(1995)

Art. 448 does not apply to a case where the owner of the land is the builder, sower, or planter who then later loses ownership of the land by sale or donation.

(12) Where Art. 448 Also Applies

Even if the land used be of public dominion. Here, it is the State that can exercise the option. Note that the law makes no distinction, as between use in this case of public or private land. (*See Insular Gov't. v. Aldecoa and Co., 19 Phil. 505*).

Insular Government v. Aldecoa and Co.
19 Phil. 505

FACTS: During the Spanish regime, a private company was orally given permission by the military governor of the province concerned to take possession of a piece of foreshore land. The company then constructed on said land a warehouse, a pier, and a retaining wall.

ISSUE: Is the company considered a builder in good faith under the provisions of Art. 448?

HELD: Yes, in view of the prior permission that had been granted to it by the proper authorities concerned.

(13) Rule if Landowner Refuses to Make the Choice

In the case of *Ignacio v. Hilario, 76 Phil. 605, 43 O.G. 1, p. 140*, the landowner refused either:

- (a) to pay for the building;

- (b) or to sell the land to the builder who was in good faith. The Court, when asked to order the removal of the building, refused to do so, on the ground that it was the duty of the landowner to exercise either alternative, and not to refuse both.

Moreover, even granting that the presence of the building causes annoyance or damage to the landowner, still he cannot ask indemnification for damages, since the law gives him no remedies except those provided in the law itself. Exceptions based on equitable considerations are not mentioned in the law. Note that the building had been constructed in good faith. (*See Gongon v. Tiangco*, [CA] 363 O.G. 882). Indeed, a landowner is entitled to have the construction removed by the builder only when after having chosen to sell his land, the other party fails to pay for the same. (*Ignacio v. Hilario*, 76 Phil. 605, 43 O.G. No. 1, p. 140). The landowner may even have his land and the house sold at public auction, keep for himself the proceeds from the land, and give the rest to the builder. Note that in this sale at public auction, the proceeds will first be applied to the land, and the rest will go to the owner of the improvement. (*See Filipinas Colleges v. Timbang*, L-12812, Sep. 29, 1959). Should this balance unfortunately be *less* than the value of the building, the builder cannot complain. He will indeed *not* be entitled to a reimbursement for the deficiency. (*See Bernardo v. Bataclan*, 66 Phil. 598).

(14) Problem

A public service corporation (the Manila Railroad Company) entered X's land with the intention of expropriating the same, and immediately began to undertake constructions thereon. X merely stood by, without any protest. Is X allowed to get back his property and the constructions thereon?

ANS.: No, because from one point of view, he may not be considered in good faith; and still from another viewpoint, the Railroad Company was merely trying to exercise its right to expropriate. The only remedy for X would be to recover damages for the just value of the property taken. (*See Manila Railroad Co. v. Paredes*, 32 Phil. 534; *See also De Ynchausti v. Manila Electric*, 36 Phil. 908).

(15) Rule in Case the Landowner Sells or In Any Other Way Alienates the Land

If the landowner sells or in any other way alienates the land in favor of a stranger, against whom will the builder have a right of action — against the original owner or the new owner? It has been held that the action should primarily be directed against the *new owner*, because he benefited from the accession.

- (a) Thus, if the new owner, in buying the land, *did not pay* for the construction, he alone is responsible, because it was he who profited by the accession (if he elects of course to get the construction). It is unjust for the original owner to be held responsible. This is particularly true if the new owner acquired the property in *bad faith*. That is, he knows that someone else had built the house. (*See Gongon v. Tiangco, CA, 36 O.G. 822*).
- (b) If the new owner *paid* for the construction, the action may still be directed against him, BUT this time, he can file a third-party complaint against the original owner, who ultimately will have to pay, since it is unfair to compel the new owner to pay twice (once to the old owner, and again to the builder). (*See 3 Manresa, 211-212; Gongon v. Tiangco, [CA] 36 O.G. 822*).

In the case of *Gongon (supra)*, a chapel was involved and the Court of Appeals held that a purchaser who buys lands with improvements belonging to another, and who knows such fact, places himself in the position of a person who has benefited by the accession. Thus, the buyer must pay for the chapel.

**Atkins, Kroll & Co. v. Domingo
46 Phil. 362**

FACTS: A built on B's land with the latter's consent. The land was later sold to C. Can C be entitled to the building without giving the proper indemnities?

HELD: Generally, C must give the proper indemnity, for it is he who would profit by the accession. However, if the land has a Torrens Title, which indicates B as

the owner of *both* the building and the lot, *C* is to be considered as a purchaser in good faith and should *not* be required to pay *A*. The *exception is of course when the buyer has actual knowledge* of the true ownership of the building.

- (c) If the original landowner had *not* yet made his choice (of appropriation or compulsory sale) at the time he sold the land to the *new* owner, the latter is given the right to exercise the option; that is, the new owner has the choice of paying for the value of the construction, or of requiring the builder to pay for the land. The value of the construction must therefore, in case of disagreement, be fixed by the court. (*Feliciano Martin v. Prudencio Martin, et al., L-12439, May 22, 1959*).

(16) When Art. 448 May be Applied in Ejectment Cases

If as a result of a *defective* donation of land, the “donee” (he is not really a donee because of the defect in the donation) constructs in good faith a building thereon, and if there is no dispute as to ownership of the building, the courts *may apply* — even in ejectment cases — the provisions of Art. 448 in order to avoid multiplicity of actions and to administer practical and speedy justice. This is true even if in *ordinary ejectment* cases, where the occupant has *not built* anything on the premises, the only judgment that may generally be rendered by the court is for the defendant to recover costs, in the event the complaint is not true, or if it finds the complaint to be true, to render judgment for the plaintiff for the restitution of the premises, for the payment of reasonable rent, and for costs. (*Tayag, et al. v. Yuseco, et al., 97 Phil. 712, cited also under Art. 428*).

(17) Irrevocability of Choice

Once a choice is made by the landowner, it is generally irrevocable. Thus, if the landowner has elected to get the building, but is finally unable to pay for the indemnity or value of the building, she cannot afterwards elect to sell the land. Her monetary obligation to indemnify can indeed be satisfied by a levy of execution on her properties. (*Tayag v. Yuseco, 97 Phil. 712*).

Tayag, et al. v. Yuseco, et al.
97 Phil. 712

FACTS: Joaquin Yuseco and his wife were given in 1930 a parcel of land by Maria Lim because of free legal services rendered to the latter. The donation was, however, void because it was not made in a public instrument. Yuseco then built a house on the land, complete with a garage and with servants' quarters, thinking all the time that the land had now become his. Shortly before Maria Lim died in 1945, she sold the same land to her daughter, who now asked Yuseco to either remove the house, or to pay rent for the land. Yuseco refused, so the daughter sued for ejectment. She won the ejectment case. (*See Tayag v. Yuseco, 97 Phil. 712, cited under Art. 428 and in Comment 15, Art. 448*). Later, she was asked by the lower court to make her choice between appropriating the house after payment of the proper indemnity (value), and compelling Yuseco to buy the lot upon which the house had been constructed. She filed a manifestation stating her desire to get the house after its value had been properly and fairly determined. The Court, after due hearing and consideration of the evidence presented before it, fixed the value at P50,000. When the decision ordered her to pay, she contended that she still had the right to make a choice, and that even if she had already chosen, she cannot pay the price fixed because of financial inability.

HELD: Since her first choice had already been communicated to the court, and she had already been ordered to pay, her duty has been converted into a monetary obligation. If she does not or cannot pay, execution on her properties would be proper. This is part of the judicial machinery of due process in action. Certainly, there is nothing wrong in it.

(18) Criticism on the Provision by Justice J.B.L. Reyes

Justice J.B.L. Reyes has criticized that portion of Art. 448 exempting the builder or planter from being required to pay for the value of the land if it is considerably more valuable than the building or construction on the following grounds:

- (a) The landowner would be forced to have constructions or plantings which he considers *useless*.

- (b) Squatters may be invited (since good faith is presumed).
- (c) A “forced lease” may result and this is not good because it would be compulsory, and moreover, the Court may not include the *lucrum cessans* (unrealized profit) as part of the rent (for this may, in some cases, be very large).
- (d) The rule is almost equivalent to deprivation of property for the benefit of another (private) person, *without just compensation*, and would thus be contrary to the Constitution.
- (e) Since it was the planter or builder who made the mistake, he must bear the losses resulting from his own actuations, regardless of his good or bad faith. (*Reyes, Observations on the new Civil Code, 15 Lawyer’s Journal 499*).

(19) Reply of the Code Commission

The purpose of the clause being questioned is to *prevent injustice*, such as when a building worth P800,000 is built on a P3,000,000 commercial parcel of land. The *lucrum cessans* may be included in the rent by the courts in case of the failure of the parties to agree. No lease is compulsory since the owner is allowed the remedy of appropriation. (*See Memorandum of the Code Com., Feb. 17, 1951, p. 3*).

[NOTE: Is not the lease *practically* compulsory since the landowner may find no use at all for the building and consequently does not wish to appropriate it? Upon the other hand, the landowner is partly to be blamed for where was he all the time when the building was being constructed?]

(20) Rule in Installment Sales

Roque v. Lapuz L-32811, Mar. 31, 1980

The fact that the installment buyer of a lot has erected a substantial improvement thereon such as a house does *not* justify the grant to him of a longer period within which to pay

the installments, otherwise the land will become an accessory to the house.

(21) Where Art. 448 May Apply By Analogy

**Pecson v. CA
61 SCAD 385
(1995)**

The provision of Art. 448 of the Civil Law may be applied by analogy to a case where one loses the ownership of the land on which he earlier built an apartment.

(22) What a Judicious Reading of Art. 448 Will Show

**Technogas Phil. Mfg. Corp. v. CA
79 SCAD 290
(1997)**

Petitioner did not lose its rights under Art. 448 of the Civil Code on the basis merely of the fact that some years after acquiring the property in good faith, it learned about and aptly recognized the right of private respondent in the instant case to a portion of the land occupied by its building, the supervening awareness of the encroachment by petitioner does not militate against its right to claim the status of a builder in good faith.

In fact, a judicious reading of said Art. 448 will readily show that the landowner's exercise of his option can only take place after the builder shall have come to know of the intrusion — in short, when both parties shall have become aware of it. Only then will the occasion for exercising the option arise, for it is only then that both parties have been aware that a problem exists in regard to their property rights.

(23) Writ of Demolition

**Esperanza Sales Bermudez v. Helen S. Gonzales,
et al. and Court of Appeals
GR 132810, Dec. 11, 2000**

FACTS: Petitioner submits that the lower court gravely abused its discretion when it issued a *writ of demolition* without

allowing her to prove her rights as a “builder in good faith” under Art. 448.

At the outset, it is necessary to state that in an appeal by *certiorari* to this Court (Supreme Court), only questions of law may be raised. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them. This Court is not a trier of facts.

In this appeal, the issue is one of law. Did the Court of Appeals err when it refused to issue a *writ of certiorari*?

HELD: Yes, it did err. For at the heart of this case is a factual controversy (*i.e.*, “When was the house subject of the *writ of demolition* built?”) which the trial court must first determine before issuing a *writ of demolition*. When it failed to do so, it disregarded basic principles of due process. Such error may be corrected by a *writ of certiorari*.

Before demolition could be effected, the parties concerned should at least be given a chance to be heard concerning the interest they claim to possess on said properties. If demolition is involved, there must be a *hearing* on the motion and *due notice*. The right to a hearing includes the right of the party interested to present his own case and to submit evidence in support thereof. The trial court denied petitioner this right. The trial court committed grave abuse of discretion as it evaded and virtually refused to perform a positive duty enjoined by law.

With the petition granted, the Court of Appeals’ decision is reversed, and the *writ of demolition* issued by the lower court (RTC Tarlac Branch 65) set aside — the case is remanded to the court of origin for determination of the question of when the house, subject of the writ of demolition, was actually built and when any additions, renovations, and improvements thereon were made, and whether petitioner has the right to be compensated or reimbursed for its value, with instruction that the court proceed with all deliberate dispatch.

Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

COMMENT:**(1) Effect of Building, Planting or Sowing in Bad Faith
– Loss of Object Without Indemnity**

See Comments under Art. 451.

(2) Case

**Arada Lumungo, et al. v. Asaad Usman, et al.
L-25359, Sep. 28, 1968**

FACTS: Jose Angeles purchased a parcel of land while it was still under litigation between two parties. In the meantime, he planted coconut trees thereon. If eventually, Angeles loses the land in favor of the prevailing party, would he (Angeles), be entitled to reimbursement for the value of said coconut trees?

HELD: Angeles is not entitled to reimbursement, for he was a purchaser and possessor of the land in BAD FAITH. Said coconut trees are *not necessary expenses* for preservation, which a builder, planter, or sower, even if in bad faith, may recover under Arts. 452 and 546 of the Civil Code. The applicable provision is Art. 449 which states that “he who builds, plants, or sows in bad faith on the land of another, loses what is built, planted, or sown *without* right to indemnity.”

(3) Applicability of the Article to Growing Crops

Art. 449 applies, in the case of planting or sowing, only to *growing or standing crops*, not to gathered crops, which are governed by Art. 443. (*See Dizon v. Rivera, CA, 39 O.G. 1744.*)

(4) Some Cases

**Felices v. Iriola
L-11269, Feb. 28, 1958**

FACTS: *Within* five years after he had acquired a homestead patent, *S* sold said homestead to *B*. Having been informed that such a sale was void, *S* sued *B* for the recovery of the land.

During the pendency of the case, *B* introduced improvements on the land. Should *B* be considered a possessor and builder in bad faith?

HELD: Yes, *B* should be considered a possessor and builder in bad faith. Ordinarily, since the sale is void, *both* sellers and buyers must be considered in bad faith, and in view of their *pari delicto* (mutual guilt), the law generally would regard both as if they were in good faith. BUT in this particular case, the improvements were introduced AFTER (*not* before) the pendency of the case for recovery. It is clear that *B* must be regarded as a possessor in *bad faith*.

Leonardo Santos v. Angel H. Mojica
L-25450, Jan. 31, 1969

FACTS: The parents of Leonardo Santos were possessing a parcel of land when they were sued in a civil case regarding the partition of the land and the annulment of certain conveyances of the same. The parents were later ordered to vacate the lot and deliver its possession to the plaintiffs in the case. Leonardo, who was *not* a party-defendant, although he was the son, owned at that time a house standing on the lot. Despite the final judgment against his parents, he not only refused to vacate the premises. He even reconstructed his house into a bigger one while the case was pending. *Issue:* Was Leonardo a builder in good faith?

HELD: Under the facts given, Leonardo, was bound by the judgment against his parents, being their successor-in-interest. His reconstruction of the house into a bigger one is deemed to have been made in *bad faith*, and therefore he loses the improvement made by him (consisting of the reconstructed house) to the owners of the land *without* right to indemnity, pursuant to Art. 449 of the Civil Code. Said landowners can, of course, select instead a demolition of said improvement under Art. 450.

De Leon v. Caluag
L-18722, Sep. 14, 1967

FACTS: The CFI (now RTC) of Quezon City found certain persons to be builders in *bad faith*, and ordered them to deliver

the improvements to the owner. But the builders appealed, alleging they had built in good faith and should therefore be entitled to *retention* till reimbursed. Pending appeal, are they entitled to retain?

HELD: No, they are not entitled to retain for the CFI (now RTC) findings are presumed correct until reversed by the higher court.

Art. 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

COMMENT:

Rights of Landowner if Builder, Planter, or Sower is in Bad Faith

See Comments under Art. 451.

Art. 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

COMMENT:

(1) The Three Articles on Bad Faith

Example:

If *B builds* in bad faith a house on *O's* land (*O* being in good faith), what are the three alternative rights of *O*?

ANS.: *O* is allowed to:

- (a) *get* the house without paying any indemnity for its value or expenses (but with the obligation to pay under Art. 452 necessary expenses for the preservation not of the house, but of the land) PLUS damages. (*Arts. 449, 451 and 453*);
or

- (b) demand the *demolition* of the house, at the builder's expense, PLUS *damages* (Arts. 450 and 451); or
- (c) compel the builder to buy the land, *whether or not* the value of the land is considerably more than the value of the house, PLUS *damages*. (Arts. 450 and 451).

[*Note*: Notice the punitive provisions, expressly made to penalize builders, planters, or sowers in BAD faith. (See 3 *Manresa* 218).].

(2) Cases

Roman Catholic Church v. Ilocos Sur **10 Phil. 1**

FACTS: During the Philippine Revolution of 1896, several squatters entered a parcel of land which they knew belonged to the Roman Catholic Church, and which had been temporarily abandoned by the latter. After the war, the Church sued to recover the land and the houses erected thereon.

HELD: The Church wins the case because the squatters were builders in bad faith, and can therefore be deprived of their buildings.

De Guzman v. Rivera **4 Phil. 620**

FACTS: A purchased a house from B. A knew that the land was owned by C and that B had built the house in bad faith. Can A be ejected from the land without first being given indemnity?

HELD: Yes, because A can be considered a possessor in bad faith of the land. He did not acquire more rights than what the seller had.

Ysrael v. Madrid **45 O.G. 2177 (CA), Prom. May, 1949**

FACTS: Madrid was leasing a building owned by Ysrael. During the battle for liberation, the building was completely burned. Madrid then asked Ysrael to lease the land to him, but

the latter refused. Without the owner's consent, Madrid built a P20,000 "*barong-barong*" on the land. Ysrael sued to eject Madrid.

HELD: Madrid can be ejected without indemnification, because from the facts given, he was a builder in bad faith.

Mindanao Academy, Inc., et al. v. Ildefonso D. Yap
L-17681-82, Feb. 26, 1965

If a buyer introduces improvements on the property after the filing of a suit against him for the annulment of the sale, he becomes a builder in bad faith without any right to reimbursement.

(3) Query: On Gathered and Growing Crops

If you plant and grow crops on the farm of your neighbor knowing fully well that the farm is *not yours*, what are your rights with reference to the crops if your neighbor is in good faith?

ANS.: I distinguish.

- (a) If the crops have already been *gathered*, then you have to return the value of the crops, or the crops themselves *minus* the expenses essential for their production, gathering, and preservation. (*Art. 443*).
- (b) If the crops have not yet *been gathered*, that is, if the crops are still standing, you completely forfeit them in favor of the owner of the land, without any right to indemnity (except of course for the necessary expenses for the preservation — not of the crops — but of the land). (*Arts. 449, 452*). The forfeiture works because of the principle of accession. (*See 3 Manresa 214-215*). These principles were gathered from the case of *Jison v. Fernandez*, (*S.C.*) 2 *O.G. No. 5, 492*, and the case of *Dimson v. Rivera*, (*CA*) 39 *O.G. 1744*, where the Court of Appeals, following Manresa, said:

“If at the time possession of the disputed property is returned to the owner thereof, the crops planted by the person (in bad faith) losing possession have *already been*

separated, the owner is under obligation to reimburse for the expenses of production, gathering, and preservation of the fruits in accordance with Art. 356 of the old Civil Code (*now Art. 443*); but, if at the time the owner obtains possession, the crops *have not yet been gathered*, the person who planted them in bad faith loses them *without any right to any reimbursement* (except for necessary expenses under Art. 452 for the preservation of the land) in accordance with Art. 362 (*now Art. 449*).”

(4) Rule Applicable if Builder is Enemy Country

In a case, the Supreme Court held that an *airfield* set upon *private* land by the Japanese Army in the Philippines belongs to the Republic of the Philippines, and not to the owner of the land. It is wrong to say that the Japanese Army was a possessor in bad faith and that therefore constructions by said Army belong to the owner of the land by industrial accession. This is because:

- (a) In the first place, the rules of the Civil Code concerning industrial accession are *not designed* to regulate relations between private persons and a sovereign belligerent, nor intended to apply to constructions made exclusively for prosecuting a war, when military necessity is temporarily paramount.
- (b) In the second place, international law allows the temporary use by the enemy occupant of private land and buildings for all kinds of purposes demanded by necessities of war. (*Republic v. Lara, et al., L-580, Nov. 29, 1954*). As a matter of fact, the belligerent occupant (the Japanese Army) had the right even to occupy buildings *already leased to others*, for the purpose of occupying the same as quarters for troops. If at all there was a disturbance, it was *not* a disturbance of a mere trespasser (*perturbacion de hecho derecho*), but a disturbance as of right (*perturbacion de derecho*). (*Vda. de Villaruel v. Manila Motor Co., Inc., L-10349, Dec. 13, 1958*).

[NOTE: In the *Lara case*, the government, in *expropriating* the land, was not *required* to pay for the improvements erected by the Japanese Army.]

Art. 452. The builder, planter or sower in bad faith is entitled to reimbursement for the necessary expenses of preservation of the land.

COMMENT:

(1) Reimbursement for Necessary Expenses to Preserve the Land

Example:

A builder in bad faith can lose the building, without indemnity for the necessary or useful expenses for the building, BUT he must be indemnified the necessary expenses for the *preservation of the land because*, after all, the true owner would have borne such expenses anyway, even if nothing had been built on the land.

(2) Criticism on Art. 452

The opinion has been given that Art. 452 is an inducement, rather than a deterrent to building, planting, and sowing on another's land in bad faith. The act is a trespass or forcible entry, under the law of which, when the trespasser is convicted, he is liable for the damages suffered by the offended party. In places where people own small parcels of land, the land being unirrigated, the preservation and cultivation thereof mean heavy expenses which may be higher than the value of the land entered into. In this case, because of Art. 452, a person may just plant or sow on another's land because he expects a higher compensation than what he can get out of the land entered into. (*See 15 L.J. 179*).

(3) Refutation of the Criticism

In the first place, the offended party is still entitled to recover damages. (*See Art. 451*). This right is *not* taken away by Art. 452. In the second place, it is doubtful if *irrigation* of an unirrigated parcel can be considered a "necessary expenses for the improvement of the land." It is safer to say, it must be considered a useful improvement. In the third place, even granting that the person in bad faith will be reimbursed said

irrigation expenses, these are all he can recover, and not “a higher compensation.”

(4) Land Taxes

Note that although “land taxes” are not exactly “necessary expenses” for the preservation of the land, still they are considered in the *category* of “necessary expenses” and must be reimbursed, regardless of the bad faith of the builder, planter, or sower.

Art. 453. If there was bad faith, not only on the part of the person who built, planted or sowed on the land of another, but also on the part of the owner of such land, the rights of one and the other shall be the same as though both had acted in good faith.

It is understood that there is bad faith on the part of the landowner whenever the act was done with his knowledge and without opposition on his part.

COMMENT:

(1) Bad Faith on the Part of Both Parties – Reason for the Law

The bad faith of one neutralizes the bad faith of the other (*3 Manresa 223*), so both will be considered in good faith.

(2) Example

On the land of A, B builds a house in bad faith without A making any objection despite knowledge of the construction. Since both are in bad faith, it is as if both are in good faith. Therefore, A has the right to get the house upon payment of the proper indemnity, or to compel B to buy the land, unless the value of the land be considerably more than that of the building, in which case, rent should be given. (*See Merchant v. City of Manila, et al., 11 Phil. 116; Mun. of Oas v. Roa, 7 Phil. 20; Martinez v. Baganus, 28 Phil. 50*).

Martinez v. Baganus
28 Phil. 50

FACTS: Baganus bought the land of Martinez from the latter's children, despite the former's *knowledge* that the children had *no authority to sell*. Later, Baganus introduced improvements on the land. Meanwhile, Martinez did *not oppose* the introduction of said improvements, despite his knowledge that they were being done. *ISSUE:* What rule should apply with respect to their rights?

HELD: It is clear that *both* Baganus and Martinez acted in *bad faith*; hence, both must be regarded as having acted in GOOD FAITH.

(3) Article Applicable to Sales in Violation of the Homestead Law

Art. 453 applies to sales made in violation of the Homestead Law, so that if a buyer *buys* a homestead within the period when it cannot yet be bought, both he and the seller are in bad faith. So both can be considered in good faith regarding what has been built, planted, or sown. (*See Galero v. Escueta, et al., [CA] 45 O.G. 4488*).

(4) Definition of 'Bad Faith'

- (a) The landowner is considered in *bad faith* "whenever the act was done with his knowledge and without opposition on his part." (*See 2nd paragraph, Art. 453*). A person who buys land knowing that a construction had been made thereon by a person other than the owner and who pays only for the land (and *not* for the construction) is in the same category as a landowner who has acted in bad faith. (*See Gongon v. Tiangco, [CA] 36 O.G. 822*).
- (b) "Bad faith" on the part of the builder, planter, or sower is not expressly defined in the law, but by analogy, we may say that the building, planting, or sowing made knowingly by one on land *not belonging* to him and *without authority* is done in bad faith. (*See Arts. 526 and 527*).

Art. 454. When the landowner acted in bad faith and the builder, planter or sower proceeded in good faith, the provisions of Article 447 shall apply.

COMMENT:**(1) Rule When Landowner is in Bad Faith but the Builder, Planter or Sower is in Good Faith***Example:*

In *good faith*, a builder, X built a house on the land of O who was in *bad faith*. Adjudicate their respective rights.

ANS.: The law says that in a case like this, we have to apply Art. 447. Therefore, it is as if O built on his land a house in bad faith with the materials of X. Consequently:

- (a) O must pay for the value of the house plus damages because of his *bad faith*;
- (b) If however X prefers to remove or destroy the house, O would still be liable for damages.

(2) Rule Followed by the Code Commission

The Code Commission followed the opinion of Manresa in framing this provision (3 Manresa 224) and disregarded the views of Sanchez Roman (3 Sanchez Roman 151) and Navarro Amandi (2 Navarro Amandi 87-88). Manresa, commenting on Art. 447 says that the article uses the words “personally,” or “through another.” The phrase “*through another*” may well refer to the owner of materials who in *good faith* uses them for BUILDING, PLANTING, or SOWING on someone else’s land (the landowner who is in BAD FAITH). (See 3 Manresa 223-225).

Art. 455. If the materials, plants or seeds belong to a third person who has not acted in bad faith, the owner of the land shall answer subsidiarily for their value and only in the event that the one who made use of them has no property with which to pay.

This provision shall not apply if the owner makes use of the right granted by Article 450. If the owner of the materials, plants or seeds has been paid by the builder, planter or sower, the latter may demand from the landowner the value of the materials and labor.

COMMENT:**(1) Rule When Three Parties are Involved**

In this article, three people are involved: the *landowner*, the *builder* (or planter or sower), and the *owner* of the materials. The rights of the first two remain *unaffected*, their rights being established by the preceding articles. The important thing under this article is the discussion of the rights of the *owner of the materials*.

(2) Rights of Owner of the Materials

- (a) If he acted in BAD FAITH, he loses all rights to be indemnified. Moreover, he can even be liable for consequential damages (as when the materials are of an inferior quality).
- (b) If he acted in GOOD FAITH, he is entitled to reimbursement from the builder (or planter or sower) *principally*, since it was the builder (or planter or sower) who FIRST made use of the materials. In case of insolvency on the part of the builder, the landowner is subsidiarily liable, *if he makes use* of the materials.

[NOTE: The landowner makes use of the materials only if he appropriates the construction. If he compels the builder to:

- 1) purchase the land;
- 2) or to demolish the construction, the landowner does *not make* use of the materials, hence, he *cannot* be held subsidiarily liable.]

(3) Bad Faith on the Part of the Three Parties

If all the three parties are in *bad faith*, all must be considered to have acted in *good faith*. (See 3 *Manresa*, pp. 226-227).

(4) Problem

Pedro in bad faith constructs a house with the materials of Jose, who is also in *bad faith*, on the land of Tomas who is in *good faith*. Give their rights and obligations.

ANS.:

- (a) Since both Pedro and Jose are in bad faith, as between them, good faith must govern. Hence, Jose, the owner of the materials, must be reimbursed by Pedro, but in case Pedro cannot pay, Tomas, the landowner, will not be subsidiarily liable, because as to him, Jose is in bad faith. If Pedro pays, Pedro cannot ask reimbursement from Tomas because as to Tomas, Pedro is in bad faith.
- (b) Tomas, the landowner, can ask damages from *both; moreover* –
 - 1) he may appropriate the house for his own, without payment of any indemnity for useful or necessary expenses for the house (*Art. 459*) but *with* indemnity for the necessary expenses for the preservation of the land (*Art. 452*); or
 - 2) demand the demolition of the house at Pedro's expense (*Art. 450*); or
 - 3) compel Pedro to pay the price of the land whether the land is considerably more valuable than the house or not. (*Art. 450*).

(5) When Builder May Demand Reimbursement from Landowner

Note that the law says “If the owner of the materials, plants, or seeds *has been paid by the builder, planter or sower*, the latter may demand from the landowner the value of the materials and labor.” It should be understood however that this reimbursement may be had only if the landowner *profits* by the accession, and not when he does not choose to appropriate the construction or planting for himself.

Art. 456. In the cases regulated in the preceding articles, good faith does not necessarily exclude negligence, which gives right to damages under Article 2176.

COMMENT:**(1) Good Faith May Co-Exist With Negligence**

It is possible that a person may be in *good faith*, and also *negligent*. In fact, in negligence, there is *no intent to do wrong*. On the other hand, *bad faith* presupposes an intent to cause damage or prejudice. In case there be negligence, damages for his *culpa* will arise under Art. 2176.

(2) Liability for Negligence

Under Art. 2176: “Whoever by act or omission causes damage to another, there being *fault or negligence*, is *obliged* to pay for the *damage* done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a *quasi-delict (culpa aquiliana)* and is governed by the provisions of this Chapter.”

Art. 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.

COMMENT:**(1) Forms of Accession Natural**

With this article begins *accession natural*, the principal forms of which are:

- (a) alluvium. (*Art. 457*).
- (b) avulsion. (*Art. 459*).
- (c) change of course of rivers. (*Arts. 461-462*).
- (d) formation of islands. (*Arts. 464-465*).

(2) ‘Alluvium’ Defined

Alluvium (or *alluvio*) is the soil deposited or added to (accretion) the lands adjoining the banks of rivers, and *gradually* received as an *effect of the current* of the waters. (*Ferrer v.*

Bautista, 49 SCAD 616 [1994]). By law, the accretion is owned by the owner of the estate fronting the river bank (riparian owner).

[NOTE: If a river bed *gradually* changes, the rules on alluvium can also apply. (*Cañas v. Tuazon, 5 Phil. 689*).]

[NOTE: Although often used synonymously in connection with Art. 457, there are technical differences between *alluvium* and *accretion*:

- a) *Accretion* is the process whereby the soil is deposited, while *alluvium* is the soil deposited on the estate fronting the river bank; the owner of such estate is the riparian owner. (*Heirs of Emiliano Navarro v. IAC, 79 SCAD 351 [1997]*).
- b) *Accretion* is a broader term because *alluvium*, strictly speaking, applies only to the soil deposited on *river banks*. It is possible that a soil deposit be made also on the banks of lakes. In this case, although it is an accretion, it is not called *alluvium*, although the rule as to ownership is the same. Thus, Art. 84 of the Spanish Law of Waters (still in force) states: “*Accretions* deposited gradually upon lands contiguous to *creeks, streams, rivers, lakes* by accessions or sediments from the waters thereof, belong to the owners of such lands.”

Director of Lands v. CA
GR 48265, Jan. 7, 1987

Lands formed by accretion belong to the riparian owner. Consequently, the Director of Lands has no jurisdiction over it and any conveyance made by him of any private land is null and void.

[NOTE: *Corpus Juris* makes mention of the terms *reliction* and *dereliction*, which refer to the land brought forth by the *withdrawal* of the water by which it had been covered. (*45 C.J., p. 542*).]

(3) Essential Requisites of Alluvium

- (a) The deposit should be gradual and imperceptible (as a process);
- (b) Cause is the *current* of the river (and not due to works expressly designed for the purpose);
- (c) Current must be that of a river (if a lake, the Spanish Law of Waters must apply; if the sea, the deposit belongs to the State). (*Gov't. of the Phils. v. Cabangis*, 53 Phil. 112).
- (d) The river must continue to exist (otherwise, if the river disappears, Art. 461 and not Art. 457 should apply). (*See Pinzon v. Rama*, [CA] 2 O.G. No. 3, p. 307).
- (e) The increase must be comparatively *little*, and not, for example, such as would increase the area of the riparian land by over one hundred fifty per cent. (*De Lasa v. Juan, et al.*, CA, L-3076-R, May 25, 1950).

[NOTE: It is not necessary, however:

- 1) that the riparian owner should make an express act of possession, the accession being *automatically* his the moment the soil deposit can be seen. (*See Cortez v. City of Manila*, 10 Phil. 567; *Roxas v. Tuason*, 9 Phil. 408; 3 *Manresa* 236).
- 2) that the riparian owner has completely paid for the value of the riparian estate (in case of purchase), as long as he has already the *equitable or beneficial title*. (*See Director of Lands, et al. v. Rizal, et al.*, L-2925, Dec. 29, 1950; 16 *Lawyer's Journal* 363).

[NOTE: *Alluvium*, caused by *artificial* means is prohibited and penalized, unless made with the authorization of the Government. (*See Com. Act No. 383*). If the alluvium is caused by "fish traps" in a river, would this be *artificial alluvium*? No, unless there was a deliberate desire to cause *alluvium*. (*Zapata v. Director of Lands*, L-17645, Oct. 30, 1962).]

Reynante v. CA
207 SCRA 794
(1992)

Accretion benefits a riparian owner when the following requisites are present:

- (1) That the deposit be gradual and imperceptible;
- (2) That it resulted from the effects of the current of the water; and
- (3) That the land where accretion takes place is adjacent to the bank of a river.

Failure to register the acquired alluvial deposit by accretion for a period of 50 years subjects said accretion to acquisition thru prescription by third persons.

(4) Reasons Why Alluvium Is Granted the Riparian Owner

- (a) to compensate him for the loss he may suffer due to erosion or the destructive force of the water and danger from floods;
- (b) to compensate him because the property is subject to encumbrances and legal easements (*Cortez v. City of Manila, 10 Phil. 567; Guison v. City of Manila, 40 O.G. No. 19, p. 3835*);
- (c) the interests of agriculture require that the soil be given to the person who is in the best position to cultivate the same (*3 Manresa 231-232*);
- (d) since after all, it cannot be said with certainty from whom the soil came (indeed, the identification of previous owners is impossible), it may just as well be logically given to him who can best utilize the property. (*See 2 Navarro Amandi 93; Cortez v. City of Manila, 10 Phil. 567*).

ILLUSTRATIVE CASE:

**Guizon v. City of Manila,
40 O.G. No. 19, p. 3835
(CA) affirmed in 72 Phil. 437**

A house near a river was enclosed by a high wall which protected the estate. Should the *alluvium* immediately outside the wall belong to the owner of the house?

HELD: No, the alluvium here does not belong to the owner of the house or land because the reason why alluvium is allowed by the law does not exist here. The presence of the wall hardly makes possible any loss from the waters that the estate may suffer. Hence, the alluvium cannot be given to the owner of the estate.

(5) Accretion on the Bank of a Lake

Accretions on the bank of a lake, like Laguna de Bay, belong to the owners of the estate to which they have been added. (*See Gov't. v. Colegio de San Jose, 53 Phil. 423 which applied the Spanish Law of Waters*).

**Republic of the Phils. v. Lat Vda. De Castillo, et al.
GR 69002, June 30, 1988**

Lakeshore land or lands adjacent to the lake must be differentiated from foreshore land or that part of the land adjacent to the sea which is alternately covered and left dry by the ordinary flow of the tides. Such distinction draws importance from the fact that accretions on the bank of a lake belong to the owners of the estate to which they have been added, while accretion on a sea bank still belongs to the public domain, and is not available for private ownership until formally declared by the government to be no longer needed for public use.

(6) Accretion on the Bank of an Island Formed in a Non-navigable River

This accretion also belongs to the owner of the island. (*See Banatao v. Dabbay, 38 Phil. 612*).

(7) Accretion on a Sea Bank

Neither Art. 457 of the Civil Code, nor the Spanish Law of Waters of Aug. 3, 1866 can apply here because accretion on a sea bank is *neither* an accretion on a *river bank* or a *lake bank*. (See *Pascual v. Angeles*, 13 *Phil.* 441). Manila Bay is a sea, for a bay is a part of the sea, being a mere indentation of the same. Thus, accretion caused by the action of Manila Bay still belongs to the public domain, and Art. 457 cannot apply. (*Faustino Ignacio v. Dir. of Lands and Laureano*, L-12958, May 30, 1960; see also *Gov't. v. Cabangis*, 53 *Phil.* 112; *Ker and Co. v. Cauden*, 223 *U.S.* 268).

(8) Effect of Public Service Constructions or Easements on River Banks

- (a) If a public service construction, like a railroad or a road, is made on a river bank, it is evident that the owner of the land can no longer be considered a riparian owner. Therefore, it is the government or the railroad company which will own the accretion. (See 3 *Manresa* 232). Here, the strip of land used is no longer the property of the former riparian owner.
- (b) If instead of a public service construction, there is only an easement for the benefit of navigation, floatage, fishing and salvage, the right of the riparian owner to the accretion subsists, because in easements, the owner of the servient estate does not lose his ownership over the portion occupied. (See 3 *Manresa* 233). It is believed that this principle remains even if under the new Civil Code, the last paragraph of Art. 638 states that: "If it be necessary for such purpose to occupy land of private ownership, the proper indemnity shall *first be paid*." Payment of the indemnity does not extinguish ownership over the land. (See for reference *Ayala de Roxas v. City of Manila*, 9 *Phil.* 215).

(9) Loss by Alluvium Not Affected by Registration Under the Land Registration Act

In one case, the land owned by a riparian owner, and covered by a Torrens Title, gradually diminished, while the land on the opposite bank gradually increased due to the current of the river. It was alleged by the registered owner that the land added

to the opposite side still remains his by virtue of the Torrens Certificate of Title. Upon the other hand, the benefited owner countered that no protection was offered by the Title against alluvium. The Supreme Court rendered judgment *against* the registered owner (and in favor of the opposite owner) on the ground that accretions of the character of alluvium are natural incidents of land bordering running streams, and are therefore not affected by registration laws. (*Payatas Estate Improvement Co. v. Tuason*, 53 Phil. 55). Indeed, registration does not protect the riparian owner against the diminution of the area of his land thru gradual changes in the course of the adjoining stream. (*C.N. Hodges v. Garcia*, L-12730, Aug. 22, 1960).

It is thus clear that if a portion of land protected by a Torrens Certificate of Title is lost by alluvium, the registered owner is NOT protected by the registration: he loses said portion. (*Payatas Estate Improvement Co. v. Tuason*, 53 Phil. 65). Upon the other hand, an alluvial deposit does NOT automatically become registered land simply because the lot which receives it is covered by a Torrens Title. Although the owner of the land on which the alluvial deposit is made becomes automatically the owner of said deposit, the law not requiring any act of possession on his part from the moment the deposit becomes manifest, still ownership of a piece of land is one thing, and registration under the Torrens System of that ownership is quite another. Ownership over the accretion received is governed by the Civil Code. Imprescriptibility of registered land is provided in the registration law. In order that said alluvial property may be entitled to the protection of imprescriptibility, the same must be placed under the operation of the Land Registration Law. An unregistered alluvial property is therefore subject to acquisition through prescription by third persons. (*Grande, et al. v. Court of Appeals, et al.*, L-17652, June 30, 1962).

(10) Subdivision Plan for Land Obtained by Accretion Not Enough to Make the Land Registered Land

**Republic v. Heirs of Luisa Villa Abrille
L-39248, May 7, 1976**

FACTS: A parcel of land with a Torrens Title was adjoining a river that eventually dried up. The lot owner claimed

that the dried-up river bed was his by accretion, so he drew up a subdivision plan that included the river bed. The plan was approved both by the Land Registration Commission and by the CFI, and two titles were issued, there being two parcels in the subdivision. State now sues to have the subsequent title over the river bed cancelled. Can cancellation be made?

HELD: Yes, for to make the former river bed come under the Torrens System, the ordinary approval of a subdivision plan is not sufficient; there must be a judicial application for the registration of the land.

(11) Bar

Subsequent to the original registration under the Torrens System of a parcel of land bordering a river, its area was increased by accession. Having been acquired subsequent to the registration proceedings, the additional area was NOT INCLUDED in the technical description appearing on the certificate of title. May such additional area be acquired by third persons through adverse possession? Why?

ANS.: Yes, for while the additional area automatically became property of the owner of the original parcel (by accession), still, said area did *not automatically become* registered land; hence, the same may be acquired by prescription. (*See Grande, et al. v. Court of Appeals, et al., supra.*)

(12) Effect of Purchase of a Lot on the Installment Plan

If X buys a parcel of land on the installment plan (ownership over the land being reserved by the owner till after full payment), who will own the alluvial deposit that may accrue before full payment is made?

ANS.: The buyer, for it is he who has the beneficial and equitable title over the property. (See by analogy *Director of Lands v. Rizal, L-2925, Dec. 29, 1950* — a case involving the purchase of friar lands under Act 1120).

Art. 458. The owners of estates adjoining ponds or lagoons do not acquire the land left dry by the natural decrease of the waters, or lose that inundated by them in extraordinary floods.

COMMENT:**(1) Land Adjoining Ponds and Lagoons***Example:*

A's land bordered a lagoon. Because of an extraordinary flood, a portion of the land was inundated (covered with water). Has he lost said portion of land?

ANS.: No, because of Art. 458. However, in time, he may lose it by prescription. (*See 3 Manresa 235-236*).

[NOTE: Strictly speaking, Art. 458 does not deal with alluvium, for there is no deposit of soil sediment.]

(2) When Art. 458 Is Applicable and When Not Applicable

Art. 458 applies when the estate *adjoins*:

- (a) a pond;
- (b) or a lagoon.

It does *not apply* when the estate adjoins a lake, a river, a creek, or other streams. (*Gov't. of the P.I. v. Colegio de San Jose, 53 Phil. 423*). In such a case, the land left uncovered reverts to the adjoining estate which owned it at the very beginning. (*Gov't. v. Colegio de San Jose, supra*).

(3) Definitions

- (a) *Pond* — a body of stagnant water without an outlet, larger than a puddle and smaller than a lake, or a like body of water with a small outlet. (*Black's Law Dictionary, 3rd Ed., p. 1377*).
- (b) *Lagoon* — a small lake, ordinarily of fresh water, and not very deep, fed by floods, the hollow bed of which is bounded by the elevations of the land. (*Encyclopedia, Juridical Española, Vol. 21, pp. 124-125, quoted with approval in Gov't. v. Colegio de San Jose, supra*).
- (c) *Lake* — a body of water formed in depressions of the earth; ordinarily fresh water, coming from rivers, brooks, or springs and connected with the sea by them. (*Ibid.*).

Example: The Laguna de Bay, since it fulfills the definition of a lake and is connected with Manila de Bay and the outer seas by the Pasig River. (*Ibid.*).

(4) Cases

Government v. Colegio de San Jose **53 Phil. 423**

FACTS: This case involved the ownership of a strip of land adjoining the Colegio de San Jose and the Laguna de Bay, and which was claimed both by the College and the Government. Both admitted that the strip was formerly covered by water (though originally owned by the College) but since the Bay receded, it was now uncovered. The government tried to apply Art. 458 which states that the adjoining estate (the College) *does not acquire* the land left dry by the natural decrease of the waters.

HELD: The government is wrong. It would have been correct had the Laguna de Bay been a pond or a lagoon, but it is a lake, and therefore not governed by Art. 458. Instead, the Spanish Law of Waters should apply, and under said law, the College acquires ownership. Art. 77 of said law states: "Lands accidentally inundated by the waters of lakes, or by *creeks, rivers, or other streams* shall continue to be the property of their respective owners." This is because no real *alluvial deposit* is made.

Paredes v. Laureta **(CA) GR 7748, Mar. 24**

When a parcel of land is accidentally inundated and for a period of time said land becomes part of the river bed, such fact *does not permanently deprive* the owner of the ownership, and ownership is reverted to the owner when the land subsequently appears, and is left dry by the construction of river control work.

Art. 459. Whenever the current of a river, creek or torrent segregates from an estate on its bank a known portion of land and transfers it to another estate, the owner of the

land to which the segregated portion belonged retains the ownership of it, provided that he removes the same within two years.

COMMENT:

(1) Avulsion

This Article treats of *avulsion*.

(2) 'Avulsion' Defined

- (a) the process whereby the current of a river, creek, or torrent segregates from an estate on its bank a *known* portion of land and transfers it to another estate. (*See Art. 459*).
- (b) the removal of a considerable quantity of earth upon or annexation to the land of another, suddenly and by the perceptible action of the water. (*See Wood v. McAlpine, 85 Kan. 657*).

[NOTE: It is also called the “force of the river,” since avulsion implies a violent tearing or breaking away. Avulsion may also be referred to as “delayed accession” in the sense that if the owner *abandons* the soil involved, or *fails to remove the same within two years*, the land to which it has been attached acquires ownership thereof.]

(3) Definition of River, Creek, Torrent

- (a) *River* — a natural stream of water, of greater volume than a creek or rivulet flowing, in a more or less permanent bed or channel, between defined banks or walls, with a current which may either be continuous in one direction or affected by the ebb and flow of the tide. (*Black's Law Dictionary, 3rd Ed., p. 1564, citing with approval, Howard v. Ingersoll, 13 How. 391*).
- (b) *Creek* — a small stream less than a river. (*Baker v. The City of Boston, 12 Pick 184*); a recess or inlet in the shore of a river, and not a separate or independent stream, though it is sometimes used in the latter meaning. (*Schemerborn v. Railroad Co., 38 N.Y. 103*).

- (c) *Torrent* — a violent, rushing, or turbulent stream (*Webster*).

(4) Distinctions Between Alluvium and Avulsion (Bar Question)

ALLUVIUM	AVULSION
(1) the deposit of the soil here is gradual.	(1) <i>sudden</i> or <i>abrupt</i> process may be seen. (<i>Canas v. Tuason</i> , 5 <i>Phil.</i> 688).
(2) soil cannot be identified.	(2) <i>identifiable</i> or <i>verifiable</i> .
(3) <i>belongs to owner</i> of property to which it is <i>attached</i> .	(3) belongs to owner from whose property it was detached.

[NOTE: In the absence of evidence that the change in the course of the river was sudden or that it occurred through alluvium, the presumption is that the change was gradual and was caused by alluvium and erosion. (*Payatas-Estate Improvement Co. v. Tuason*, 53 *Phil.* 55; *Hodges v. Garcia*, L-12730, Aug. 22, 1960).].

(5) Decided Case

**Martinez v. Mun. of San Mateo
6 Phil. 3**

FACTS: A and B owned lands fronting a river. Thru the force of the current, an identifiable portion of B’s estate was suddenly transferred to A’s land. Who owns said portions?

HELD: B, the original owner since this is a case of avulsion.

[NOTE: Under the Civil Code, to retain his ownership, B must *remove* (not merely claim) the property.].

(6) Comments of the Code Commission RE “Removal Within Two Years”

Under Art. 368 of the old Civil Code, the clause “provided that he removes the same within two years” was *not found*. Under Art. 459 of the new Civil Code, the clause has been inserted. The reasons for the insertion of the clause appear to be the following (as stated by the Code Commission):

“(a) The segregated portion is usually very small. It is thus useless to the owner of the land from which it originated because of the distance between the two lands. Therefore, after two years, if it is not removed by the original owner, it should be adjudicated to the owner of the land to which the portion has been transferred.

It may be asked whether the removal is practicable. The answer is that the known portion of land may either be sold to persons who may have use for it, such as for filling a low place, or the original owner may restore it to his land.

“(b) If the land is of rather large area, and its removal cannot be effected, a reasonable interpretation of the article would require that the original owner should make a claim for its value within two years, otherwise, he will be deemed to have renounced his right thereto.

“(c) The principle involved is similar to that underlying the next article (460), whereby the owner of uprooted trees must claim them within six months.

“(d) There is a peculiar situation created by the perpetual retention of ownership by the original owner of this small portion of land, which has been segregated and transferred to another estate. The original owner would have a right to enter the other estate at any time, and this may create ill-feeling between two neighbors.

“(e) Even if there should be established an easement of right of way in favor of the original owner, such right of way must, of course, be paid, according to Art. 649. In most cases, the cost of the easement of right of way, would probably be too much for the possible benefit that the

original owner may derive by cultivating the segregated small portion, if it is tillable at all.

- “(f) Legal absurdities would otherwise be created.
- “(g) One of the purposes of fixing a period within which the original owner may claim the portions segregated is to prevent its becoming *permanently* attached, physically speaking, to the land to which it has been transferred. The original owner should therefore remove it as soon as possible and within two years.
- “(h) For all the above reasons, the Code Commission preferred the solution found in some foreign civil codes, specifying a period within which the original owner must remove the segregated portion.

For all the foregoing reasons, the Code Commission cannot agree to the elimination of the period of two years within which the owner of the segregated portion must remove or claim the same. *Thereafter*, if he has abandoned his right, the portion belongs to the owner of the estate to which it has been transferred by the river.” (*Memorandum of the Code Commission, Feb. 17, 1951, 8 Lawyer’s Journal, 217*).

(7) Comment on the Propositions Stated by the Code Commission

- (a) The Code Commission states that if removal is not made within two years, the segregated land should belong to the owner of the land to which it has been attached. It may be so, but it would have been better if this intention (*i.e.*, to make avulsion a case of “delayed accession”) had been expressly or clearly stated in the law itself, otherwise, some may claim that the property itself has become *res nullius* or it has become part of *public dominium*.
- (b) The Code Commission has stated that “if the land is of rather large area, and its removal cannot be effected, a reasonable interpretation of the article would require that the original owner should make a claim for its value, within two years, otherwise he will be deemed to have renounced his right thereto.” It would seem that this is

a *far-fetched* view of the law, for the law says “remove” and not merely “claim.” Moreover, why should a claim be made for its value, when after all, for the period of two years, ownership is recognized in the claim? Thirdly, the law does not distinguish whether the portion segregated be large or small, nor does it excuse non-removal on account of practical difficulties. It is thus believed that if “removal” is not made, ownership would be lost by one, and acquired by another (the person upon whose land the soil has been deposited).

- (c) The Code Commission has stated that “the principle involved is *similar* to that underlying the next article (460) whereby the owner of uprooted trees must *claim* them within six months.” Why then is the word “remove” used, instead of “claim”? Moreover, why may “remove” be interpreted to mean “claim for its *value*” and not merely “claim,” if indeed the principles involved be similar?

(8) Queries

- (a) Suppose the detached portion is placed on TOP and not merely *alongside* or *adjacent* to another’s land, will the article apply?

ANS.: In avulsion, it is essential that the detached portion be known or identifiable. Therefore, mere placing on top will not make the article *inapplicable* as long as identification is still possible. But if because of some force, say continuous rain, the two have so *mixed* with each other that identification cannot take place, the article should not apply. In this case, the principles of commixtion or confusion (although generally used only in connection with personal property) should, it is believed, apply.

- (b) Suppose the detached portion is not attached to another’s land but simply is in the middle of the river, what rule applies?

ANS.: Ownership still remains with the person from whose land it had been detached, as in Art. 463. (*See 3 Manresa 347*).

Art. 460. Trees uprooted and carried away by the current of the waters belong to the owner of the land upon which they may be cast, if the owners do not claim them within six months. If such owners claim them, they shall pay the expenses incurred in gathering them or putting them in a safe place.

COMMENT:

(1) Rule on Uprooted Trees

Example:

Because of the force of the river current, some trees on the estate of *A* were uprooted and cast on the estate of *B*. Who owns the trees?

ANS.: *A* should still be considered as the owner of the uprooted trees, but if he does not claim them within six months, *B* will become the owner. If *A* makes the claim, he will have to shoulder the expenses for gathering or putting them in a safe place. Failure to make the *claim* within six months will bar any future action to recover the trees.

(2) Rule if Trees Have Been Transplanted

In the example given above, even if the trees have been *transplanted* by the owner of the land upon which they have been cast on his own land — ownership still pertains to the person who lost the trees provided that the claim was made properly. (*See 3 Manresa 244*). Incidentally, the owner of the land upon which the trees have been cast, does *not* have to wait for six months before he can temporarily set them aside to make proper use of his own land.

(3) Effect if Claim Is Made But Trees Are Not Removed

If say within 4 months a *claim* is made, but no steps are yet taken to recover the trees, may an action still be filed afterwards for recovery of the trees?

ANS.: It is submitted that the answer is YES, provided the action is brought within the period set by law for prescription

of movable (since uprooted) property. (*Art. 1140 — 4 years for ordinary prescription*). The six-month period given in Art. 460 should be considered only as a *condition precedent*; in other words, A has to make the claim within six months. The recovery (as distinguished from the claim) can be made within the period for prescription. If no claim is made within six months, the ownership changes.

(4) Article Applies Only to Uprooted Trees

If instead of being uprooted, the trees still remain attached to land that has been carried away, it is Art. 459 that must govern. (*See 3 Manresa, pp. 243-244*).

(5) Must Owner of Land Upon Which the Uprooted Trees Have Been Cast Be Given Compensation?

It depends. If he has incurred expenses for preserving them, as when he gathered them in a safe place for eventual return, or when he transplants them, only for preservation purposes, he is doubtless entitled to indemnification. If he has done nothing, he cannot demand indemnification (*See 3 Manresa, pp. 243-244*) unless he has *suffered* in any way, and the real owner has benefited, in that, for example, they were not carried away by the current. (*See Art. 22*).

Art. 461. River beds which are abandoned through the natural change in the course of the waters *ipso facto* belong to the owners whose lands are occupied by the new course in proportion to the area lost. However, the owners of the lands adjoining the old bed shall have the right to acquire the same by paying the value thereof, which value shall not exceed the value of the area occupied by the new bed.

COMMENT:

(1) Change of Course of Rivers

Example:

Jose's and Maria's estates face each other and adjoin a river. Later, the river naturally changes its course and the river

bed is abandoned. The new river bed happens to be in the land of Maximo. Who owns the abandoned river bed?

ANS.: Maximo owns the ENTIRE abandoned river bed to compensate him for the loss of the land now occupied by the new river bed.

[NOTE: "In proportion to the area lost" has no application if only one owner has lost; here, he gets the entire abandoned river bed. The "proportion" applies when there are two or more owners who have lost a portion of their lots; in this case, the ENTIRE abandoned bed will go to them proportionately, that is, in proportion to the area each has lost.]

[NOTE: Under the old law (Art. 370 of the old Civil Code), the adjoining riparian owners became the owners of the abandoned bed; but under the new Civil Code, said bed belongs to the owner of the property the river now occupies. In justifying the change, the Code Commission said: "The purpose of this provision is to compensate for the loss of the land occupied by the new bed. It is more equitable to compensate the actual losers than to add land to those who have lost nothing." (Report of the Code Commission, p. 96).]

(2) Bar Questions

- (a) A and B each own a parcel of land on opposite sides of a river. The river changed its course and passed thru D's land not adjoining either A's or B's land. As a result of this change of course, D lost 10 hectares of land. Assuming that the area of the abandoned river bed between the lands of A and B is also 10 hectares, who is entitled to the accession, and why?

ANS.: D, in view of his loss. (Art. 461).

- (b) The Director of Lands sold to A 24 hectares of public land at P200 per square meter. The land was adjoining a river, which, after the sale changed its course and left its bed dry, the area of which is two hectares. The purchaser A claimed and occupied this portion, alleging the right of accretion. The Director of Lands claimed that the sale covered only 24 hectares, hence, A has no right to the two hectares. Decide.

ANS.: Under the old Law, A would be correct but under the new Civil Code a distinction has to be made. If the river in its new course occupies private land, then the owner of the private land becomes the owner of the abandoned river bed without prejudice to A's right to buy it from him. If the new river bed is on land of the public domain, the abandoned river bed is of public domain, and is thus, in a sense, owned by the government. (See Art. 461).

- (c) A owns a parcel of land adjoining the bank of the Pam-panga River. The land on the opposite bank is owned by B. The river suddenly changed its natural course, and the new river bed passed through more than one-half of the land of B.

The ownership of the abandoned river bed is claimed by:

- 1) A as owner of the adjacent land;
- 2) B who lost more than one-half of his land to the new river bed; and
- 3) The government on the ground that the abandoned river bed is part of the public domain.

Determine the rights, if any, of each of the claimants. Explain fully, giving reasons.

ANS.: It is clear under Art. 461 that B *ipso facto* owns the abandoned river bed in proportion to the area which B lost (unless of course the government takes steps to bring back the river to its old course). Insofar as there is an excess, the excess still belongs to the property of public dominion. Under the law, the owners of the adjacent or adjoining lands are given in the "interest of agriculture" the right to reimburse the "prejudiced owner" the value of the area lost, hence, *strictly speaking*, A, as owner of the adjacent land is given the right to so reimburse B for HALF of the abandoned river bed (HALF only, because it should be remembered that B *himself* is an adjacent owner, entitled to the same right of reimbursement). While it

may seem *more just, under a liberal interpretation of the law, to refuse A the right of reimbursement since after all B, himself an adjacent owner, is in a position to cultivate the abandoned river bed, and since he was the one who lost over half of his land; and while indeed the right of reimbursement under Art. 461 obviously contemplates a situation where the landowner who lost land is NOT himself an adjacent owner; still it should not be forgotten that A himself has been deprived of the use of the river, and to partly indemnify him, he should be given the right to pay for the value of the HALF hereinabove referred to. Equity cannot afford to be one-sided.*

(3) Requisites for Art. 461 (Change of River Bed) to Apply

- (a) The change must be *sudden* in order that the old river bed may be identified. (There must be sufficient evidence showing that the river changed its course not gradually or imperceptively, but abruptly.) (*Eguia v. Eguia, CA-G.R. No. 2575-R, June 9, 1949*).
- (b) The changing of the course must be more or less permanent, and not temporary overflowing of another's land. (*Decision of the Supreme Court of France on Feb. 26, 1896*).
- (c) The change of the river bed must be a *natural one, i.e.,* caused by natural forces (and not by *artificial* means such as those used by private individuals authorized by the government — in which case the State may give the old river bed to the persons responsible for the change. (*See 3 Manresa 251-252*).
- (d) There must be a definite *abandonment* by the government. If the government shortly after the change decides and actually takes steps to bring the river to its old bed, Art. 461 will not apply, for here, we cannot say that there was an abandonment. The government is not compelled to stand by idly and let nature take its course. Thus, the government may redirect the course even in the face of opposition from those who may be affected. (*Panlilio v. Mercado, 44 Phil. 695*).

- (e) The river must *continue to exist*, that is, it must not completely dry up or disappear. If indeed there is a complete drying up, who would own the dried up river bed? Under the old Code, the Court of Appeals, applying Art. 370 (old Code) to this case of disappearance, held that the old bed belonged to the *riparian* owners if the government did not claim it. Under the new Code, it would seem that it should belong to *public dominion*, since *no private lands* are injured and since as a rule under Art. 502, a river bed belongs to *public dominion*, unless otherwise provided by the law. (*See Pinzon v. Rama, [CA] 2 O.G. [Rep.], No. 3, p. 307.*)

(4) Reason for Inserting the Phrase ‘Ipsa Facto’

According to Dean Francisco Capistrano, member of the Code Commission, “the words *ipso facto* were inserted in order to make it clear that the rule applies by the *mere fact* of the occurrence of a natural change in the course of the waters. The Code Commission was of the opinion that the contrary doctrine of the case of *Panlilio v. Mercado, supra* (concerning the right of the government to take steps to bring back the river to its old course) was erroneous and should not be followed.”

The validity of this observation is doubted by Justice J.B.L. Reyes and Justice Ricardo C. Puno who have written that: “The validity of this observation may be doubtful. *To illustrate:* Suppose the government spent huge sums for the building of a dam for the benefit of the public, then a change of bed occurs. Would not the government be entitled to bring back the river to the old course? It would seem unreasonable to require the government to go thru the process of eminent domain proceedings before doing so.”

The writer is inclined to agree with Reyes and Puno for “abandonment” implies an “intent not to return.” If steps are undertaken to restore the river to its original course, there is no “abandonment.”

What “*ipso facto*” (automatically) should mean as used in Art. 461 is that the prejudiced landowner automatically becomes the owner of the abandoned river bed, once the condi-

tions stated in the article are fulfilled or manifest, *without the necessity of any action or exercise of possession on their part*. In other words, their mode of *acquisition* would be by virtue of the law. (*See Villanueva v. Claustro, 23 Phil. 54*). The acquisition would thus be *ipso facto* — *provided there is really an abandonment*.

(5) Proposal of then Congressman Arturo Tolentino (later Senate President) and the Answer of the Code Commission

Dr. Arturo Tolentino has proposed the repeal of Art. 461 and the restoration of Art. 370 of the old Civil Code which reads:

“Art. 370 — Beds of rivers abandoned because of a natural change in the course of the water belong to the owners of the lands bordering thereon throughout their respective extents. If the abandoned bed divides estates belonging to different owners, the new dividing line shall be equidistant from the former boundaries.”

The Code Commission has answered the criticism in this way:

“The sources of Art. 461 of the new Code are Art. 563(3) of the French Civil Code; and the Codes of Guatemala (*Art. 607*), Louisiana (*510*), Holland (*647*), other Codes, as well as Art. 412 of the Spanish Project of Civil Code of 1851. The reason ... in preferring this rule is: The new solution is by way of compensation for the loss of the land occupied by the new bed. It is believed more equitable to compensate the actual losers than to add land to those who have lost nothing.

“According to Manresa, Art. 370 of the Spanish Civil Code is aimed to promote the interest of agriculture, because the riparian owners of the old course can better cultivate the same. The reply to this is that they may purchase the same, so as to compensate the proprietors whose lands are occupied by the new bed, and who have actually suffered loss as the new bed becomes of public dominion, as per Art. 462 of the new Code.” (*Memoran-*

dum of the Code Com., Feb. 19, 1951; 16 Lawyers' Journal 270).

[NOTE: "The rule of our present Art. 461 is that of Art. 563 of the French Civil Code. It is interesting to note that by a Law of Apr. 8, 1898, the French abandoned such rule as *impractical*, and adopted that of our old Civil Code (1889) Art. 370, granting the abandoned bed to the old riparian owners. We have reversed the process." (*J.B.L. Reyes and R. Puno, An Outline of Phil. Civil Law, Vol. II, p. 54*).]

(6) Observation of Justice J.B.L. Reyes

According to the learned Justice, Art. 461 is "unworkable if the old bed left dry does not adjoin the lands of the new owner, unworkable because *distance* may make its economic development difficult." Justice Reyes offers a new solution: The old bed should be given to the riparian owners, who will now have the duty to indemnify the owners of the land flooded, but never to exceed the value of either the new or the old bed, whichever be *smaller*. (*Justice J.B.L. Reyes, Observations on the new Civil Code, 15 Lawyers' Journal, p. 499*).

(7) Answer of the Code Commission to the Proposed Amendment by Justice J.B.L. Reyes

The amendment may work an injustice if the riparian owner does not have enough money for indemnification, in which case no compensation may be had for the loss, unlike in Art. 461 which makes the prejudiced party the owner of the abandoned river bed. Furthermore, in most cases, the distance would not be very long. (*Memorandum of the Code Com., Feb. 17, 1951*).

Art. 462. Whenever a river, changing its course by natural causes, opens a new bed through a private estate, this bed shall become of public dominion.

COMMENT:

(1) Rule if New River Bed is on Private Estate

Even if the new bed is on private property the bed becomes property of public dominion, just as the old bed had been of public dominion before the abandonment.

[NOTE: The new river *banks* shall likewise be of public dominion. (*Hilario v. City of Manila, L-19570, Apr. 27, 1967*).]

(2) Phraseology in the Old Civil Code

Under the old law, the river had to be “navigable or floatable.” (*Art. 372 of the old Civil Code*). The words were eliminated because all rivers, whether navigable or not, as well as their natural beds are of public dominion. (*See Art. 502, new Civil Code; Art. 72, Spanish Law of Waters, Aug. 3, 1866*).

(3) Rule if New River Bed is Itself Abandoned

Under the old Code also, the law provided that if the new river bed is *itself abandoned* because of a new change of course, the former owner of the flooded land regained ownership. (*See Sanchez v. Pascual, 11 Phil. 395 which applied the rule*). It is interesting to observe that under the new Code, no such provision is found. In view of its elimination, what rule governs? It is believed that the following solution would be just: apply Art. 461, that is, the owner of the land flooded by the *new change of course would own the newly abandoned* bed. Upon the other hand, if the river goes back to its old course (thus, flooding the original bed), the owner of the land originally flooded would get back the ownership of the land (bed) which he had lost. Thus, it would only be in this latter case when the case of *Sanchez v. Pascual (supra)* would still apply.

In the case of *Salvador Crespo v. Maria Bolandos, et al., L-13267, July 26, 1960*, the court held that when for the first time, a flood moved the Pampanga River into the lots of the plaintiffs, the bed thus newly covered by its water became property of public ownership. But when the next flood transferred the river bed farther south into plaintiff's lands, they *ipso facto* recovered the bed they had first lost, even as the new bed on their property accrued to the public domain.

[NOTE: The abandoned river bed is given to the owner(s) of the land(s) onto which the river changed its course instead

of the riparian owner(s). (*Celestial v. Cachopero*, 413 SCRA 469 {2003}).].

Art. 463. Whenever the current of a river divides itself into branches, leaving a piece of land or part thereof isolated, the owner of the land retains his ownership. He also retains it if a portion of land is separated from the estate by the current.

COMMENT:

(1) Rule if River Divides Itself into Branches

Example: A's estate adjoins a river, but the river divides itself into branches, thus affecting A's property. A however remains the owner of the portion (this time — an island) which:

- (a) may be *isolated* from the rest (here, the portion has not physically moved, but there is ISOLATION).
- (b) or may be *separated* from the rest (here, the portion *has* physically moved — hence, the SEPARATION).

[NOTE: The Article refers to the “*formation of island by the branching off of a river*” as distinguished from the “*formation of islands by successive accumulation of alluvial deposits (unidentifiable sediment)*” referred to in Arts. 464 and 465. In the *first*, *no accession* takes place, the owner retaining his ownership of the segregated portion; in the *second*, *accession* takes place. (*See 3 Manresa 268*).].

(2) Rule is Applicable Whether River is Navigable or Not

Art. 463 applies whether the river is navigable or not, for in both cases, the owner should not be deprived of his dominion over the segregated or isolated property. (*3 Manresa, pp. 267-268*).

Art. 464. Islands which may be formed on the seas within the jurisdiction of the Philippines, on lakes, and on navigable or floatable rivers belong to the State.

COMMENT:**Islands Formed on the Seas, Lakes, and Navigable Rivers**

See Comments under Art. 465.

Art. 465. Islands which through successive accumulation of alluvial deposits are formed in non-navigable and non-floatable rivers, belong to the owners of the margins or banks nearest to each of them, or to the owners of both margins if the island is in the middle of the river, in which case it shall be divided longitudinally in halves. If a single island thus formed be more distant from one margin than from the other, the owner of the nearer margin shall be the sole owner thereof.

COMMENT:**(1) Ownership of Islands**

Who owns island formed by unidentifiable accumulated deposits?

ANS.: It depends.

- (a) If formed on the *sea* —
 - 1) Within the territorial waters or maritime zone or jurisdiction of the Philippines — *STATE*. (*Art. 464*). (*This is patrimonial property — Manresa*).
 - 2) *Outside of our territorial jurisdiction — The FIRST COUNTRY TO EFFECTIVELY OCCUPY the SAME*. (*This is in accordance with the principles of Public International Law for “discovery and occupation considered as a definite mode of acquiring territory.”*)
- (b) If formed on *lakes, or navigable or floatable rivers* — the *State*. (*This is also patrimonial property — Manresa*).
- (c) If formed on *non-navigable or non-floatable rivers* —
 - 1) If *NEARER* in margin to one bank, owner of nearer margin is *SOLE* owner. (*Art. 465*).

- 2) If EQUIDISTANT, the island shall be divided longitudinally in halves, each bank getting half. (*Art. 465*).

(2) Definitions

- (a) *Navigable or floatable river* — if useful for floatage and commerce, whether the tides affect the water or not (*45 C.J. 403-404*); should benefit trade and commerce. (*U.S. v. Oregon, 295 U.S. 1*).
- (b) *Non-Navigable* — opposite of (a).

(3) Duty of State to Define Navigable and Non-Navigable Rivers

State has duty to declare which rivers are *navigable* and which are not. (*Spanish Law of Waters, Art. 175*).

(4) Reason for Preference to Nearer Margin

The nearer margin has better chances of developing the island in the interest of agriculture. (*3 Manresa 263*).

(5) Rule to Follow if a New Island is Formed Between the Older Island and the Bank

In this case, the owner of the older island is considered a riparian owner, and if the new island is nearer in margin to the older island, the owner of the older island should be considered also the owner of the new island. (*See Manresa 262-263, 265*).

Section 3. — RIGHT OF ACCESSION WITH RESPECT TO MOVABLE PROPERTY

INTRODUCTORY COMMENT:

There are usually three types of accession with respect to movable property:

- (a) adjunction

- (b) mixture (commixtion or confusion)
- (c) specification

Art. 466. Whenever two movable things belonging to different owners are, without bad faith, united in such a way that they form a single object, the owner of the principal thing acquires the accessory, indemnifying the former owner thereof for its value.

COMMENT:

(1) ‘Adjunction’ Defined

It is the process by virtue of which two movable things belonging to different owners are united in such a way that they form a single object.

Example: A varnishes his chair with the varnish of B.

(2) Good and Bad Faith

Adjunction may be done:

- (a) in good faith;
- (b) or in bad faith.

(3) Another Name for Adjunction

Another name for *adjunction* is *conjunction*. (See 3 *Manresa* 275).

(4) Different Kinds of Adjunction

- (a) *inclusion* (example: sapphire set on a ring).
- (b) *soldering* (example: joining legs made of lead to a body also made of lead).

[NOTE:

- 1) *ferruminatio* — objects are of the *same* metal
- 2) *plumbatura* — objects are of *different* metals

- (c) *escritura* (or writing)
- (d) *pintura* (or painting)
- (e) *weaving*

(5) Problem

A in good faith uses the varnish of B in varnishing his (A's) table. What are their rights?

ANS.: A will become the owner of the varnish (in fact, of the whole varnished table) but he must indemnify B for the value of the varnish.

[NOTE: A is considered in good faith if he reasonably believed that the varnish was his when as a matter of fact, it was not. The law says: "He is deemed a possessor in *good faith* who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it x x x. Mistake upon a *doubtful* or *difficult* question of law may be the basis of *good faith*." (Art. 526, 1st and 3rd paragraphs).]

Art. 467. The principal thing, as between two things incorporated, is deemed to be that to which the other has been united as an ornament, or for its use or perfection.

COMMENT:

'Principal' and 'Accessory' Defined

See Comments under Art. 468.

Art. 468. If it cannot be determined by the rule given in the preceding article which of the two things incorporated is the principal one, the thing of the greater value shall be so considered, and as between two things of equal value, that of the greater volume.

In painting and sculpture, writings, printed matter, engraving and lithographs, the board, metal, stone, canvas, paper or parchment shall be deemed the accessory thing.

COMMENT:**(1) Test to Determine Which Is the Principal and Which Is the Accessory**

The *principal* is (in the order of *preference*):

- (a) that to *which* the other has been united as an ornament, or for its use, or perfection (*Art. 467*);

[*NOTE*: The accessory is that which has been united as an ornament, etc. (This is the test of INTENTION).]

- (b) that of *greater value* (*Art. 468*);
- (c) that of *greater volume* (*Art. 468*);
- (d) *finally* that which has *greater merits* (from the combined consideration of *utility* and *volume*). (*See 3 Manresa 285-286*).

[*NOTE*: With reference to a motor vehicle, the *engine* may be considered as the *principal*, all the other parts of the vehicle being regarded as mere accessories. (*See A.C. Ransom v. Puzon and Lazo, CA, 49 O.G. 2, 598*).]

(2) Special Rule

“In *painting* and *sculpture*, *writings*, *printed matter*, *engraving* and *lithographs*, the board, metal, stone, canvas, paper or parchment shall be deemed the accessory thing.” (*Art. 468*). This is because what has been written, printed, etc. is considered of greater importance.

[*NOTE*: Since the special rule specifies the special cases, analogous cases which are not *enumerated* should not be solved analogously, but in accordance with the *general tests* provided for in Arts. 467 and 468, first paragraph. “When certain things are enumerated, those *not included* are deemed excluded.” (*See 3 Manresa 286*).]

(3) Rule to Follow if the Adjunction Concerns Three or More Things

In this case, determine which is really the *principal*. All the rest should be considered accessories. If there be two prin-

cipals, still it should be determined which, as *between them*, should be considered the principal, and which is the accessory. (*3 Manresa 279*).

Art. 469. Whenever the things united can be separated without injury, their respective owners may demand their separation.

Nevertheless, in case the thing united for the use, embellishment or perfection of the other, is much more precious than the principal thing, the owner of the former may demand its separation, even though the thing to which it has been incorporated may suffer some injury.

COMMENT:

(1) Rule when there can be Separation Without Injury

Here, there is no real accession. (*3 Manresa 288*). Hence, we have the rule indicated in the first paragraph.

[NOTE: It is understood that the first paragraph can apply only to soldering and inclusion because in all the rest, separation would result in substantial injury. (*Ibid.*)].

(2) Rule if Accessory is More Precious than the Principal

In the *second paragraph* of the article, separation, *although with injury* (but not destruction) is allowed, if the thing united for the use, embellishment, or perfection of the other is much *more precious than the principal*.

Example: When a valuable diamond (the accessory — because it is for embellishment of the ring) is set in good faith on a silver ring, the owner of the diamond can ask for separation, even though there will be injury to the ring. Expenses for the separation must of course be borne by the person who caused the union, considering that both parties are in good faith. (*See 3 Manresa 289*).

Art. 470. Whenever the owner of the accessory thing has made the incorporation in bad faith, he shall lose the thing incorporated and shall have the obligation to indemnify the owner of the principal thing for the damages he may have suffered.

If the one who has acted in bad faith is the owner of the principal thing, the owner of the accessory thing shall have a right to choose between the former paying him its value or that the thing belonging to him be separated, even though, for this purpose it be necessary to destroy the principal thing; and in both cases, furthermore, there shall be indemnity for damages.

If either one of the owners has made the incorporation with the knowledge and without the objection of the other, their respective rights shall be determined as though both acted in good faith.

COMMENT:

(1) Rules in Case of Bad Faith in the Adjunction

- (a) *Example of the First Paragraph (Owner of Accessory Is in Bad Faith).*

If I, in bad faith, will use my varnish on the chair of my brother, I loses all rights to the varnish. Moreover, I will be responsible for damages.

- (b) *Example of the Second Paragraph (Owner of the Principal is in Bad Faith).*

If I, in bad faith, will use my brother's *lead* in soldering my pipes, my brother has the right to ask for *payment* of the lead *plus* damages; or, he may choose to have the lead *removed* from the pipes even if the pipes be destroyed, *plus* damages.

(2) Effect of Bad Faith on the Part of Both

Both should be considered in good faith. (*Art. 470, 3rd par.*)

Art. 471. Whenever the owner of the material employed without his consent has a right to an indemnity, he may demand that this consist in the delivery of a thing equal in kind and value, and in all other respects, to that employed, or else in the price thereof, according to expert appraisal.

COMMENT:

(1) Indemnity — How Paid

Either by (a) *delivery* of a thing equal in kind and value (quantity, quality); (b) or *payment* of price as appraised by experts.

(Here, sentimental value must be considered). (*Art. 475*).

(2) Rule Applicable Only if Consent of Owner Had Not Been Obtained

The right to indemnity applies only if material was employed *without* the owner's consent. The material may have been the principal or the accessory.

Art. 472. If by the will of their owners two things of the same or different kinds are mixed, or if the mixture occurs by chance, and in the latter case the things are not separable without injury, each owner shall acquire a right proportional to the part belonging to him, bearing in mind the value of the things mixed or confused.

COMMENT:

Rules in Case of Mixture

See Comments under Art. 473.

Art. 473. If by the will of only one owner, but in good faith, two things of the same or different kinds are mixed or confused, the rights of the owners shall be determined by the provisions of the preceding article.

If the one who caused the mixture or confusion acted in bad faith, he shall lose the thing belonging to him thus

mixed or confused, besides being obliged to pay indemnity for the damages caused to the owner of the other thing with which his own was mixed.

COMMENT:

(1) Articles Governing Mixture

Arts. 472 and 473 deal with MIXTURE, which is the combination or union of materials where the respective identities of the component elements are lost. [As distinguished from *adjunction*, there is in *mixture* greater *inter-penetration* or *decomposition* of the objects that have been mixed. (3 *Manresa* 277).]

(2) Two Kinds of Mixture

- (a) COMMIXTION (if solids are mixed).
- (b) CONFUSION (if liquids are mixed). (3 *Manresa* 277).

(3) Rules for Mixture

- (a) If the mixture is caused by one *owner in good faith*, or by *the will of both owners*, or by chance (accident), or by a common agent, *then CO-OWNERSHIP* results, each owner acquiring an interest or right proportional to the value of his material. (*Example*: If *A's* palay was by chance mixed with *B's* rice, *A* and *B* are now co-owners of the mixture in proportion to the value of their respective materials. [*Santos v. Bernabe*, 54 *Phil.* 19]).
- (b) If the mixture is made by one owner in BAD FAITH, then —
 - 1) he loses his material (in favor of the other);
 - 2) and is liable for damages.

(This is to penalize his bad faith.)

(*Example*: If a thief steals some cattle belonging to another, mixes them with his own, but can no longer identify which is his or the others and does not remember how many were stolen, the thief should *lose* all the cattle he originally had, because

this is a case of commixtion in bad faith and everything must therefore belong to the offended party. [*Siari Valley Estate, Inc. v. Lucasan, L-7046, Aug. 31, 1955*].).

(4) Mutual Bad Faith

Both must be considered in good faith. (*Manresa 300*).

(5) When Mixture Is Made by Common Consent

It is understood that in this case, the stipulations of the parties should be controlling. (*3 Manresa 299*).

(6) Rule if Parts Mixed Are of Same Kind, Quantity, and Quality

When the things mixed or confused are of exactly the same kind, quantity, and quality, all that is needed would be to divide the mixture into two equal parts.

(7) Rule in Case Mixture Was Caused by the Negligence of One of the Parties

The party negligent is liable for his *culpa aquiliana* and should indemnify for damages. (*Art. 2176*). Note that good faith does not necessarily exclude negligence. (*Art. 456*).

Art. 474. One who in good faith employs the material of another in whole or in part in order to make a thing of a different kind, shall appropriate the thing thus transformed as his own, indemnifying the owner of the material for its value.

If the material is more precious than the transformed thing or is of more value, its owner may, at his option, appropriate the new thing to himself, after first paying indemnity for the value of the work, or demand indemnity for the material.

If in the making of the thing bad faith intervened, the owner of the material shall have the right to appropriate the work to himself without paying anything to the maker, or to demand of the latter that he indemnify him for the

value of the material and the damages he may have suffered. However, the owner of the material cannot appropriate the work in case the value of the latter, for artistic or scientific reasons, is considerably more than that of the material.

COMMENT:

(1) Specification

This article deals with SPECIFICATION. In general, the rule of “accessory follows the principal” applies here, with LABOR being considered the principal.

(2) Rules to Follow in Specification

(a) If the WORKER (principal) is in *good faith* —

- 1) he appropriates the new thing;
- 2) but he must indemnify for the materials.

(Examples: If I bake a cake, using the flour of my brother, and I am in good faith, I can get the cake but I must pay for the flour).

EXCEPTION: If the materials (accessory) is more *precious* than the new thing or is more *valuable*, the owner of the material has an *option* —

- 1) to get the new thing but he pays for the work;
- 2) or to demand indemnity for the material.

(b) If the WORKER is in BAD FAITH, the owner of the material has an option; thus, he —

- 1) can appropriate the work *without* paying for the labor;
- 2) or he can demand indemnity for the material *plus* damages.

EXCEPTION: The option of appropriation is *not* available if the value of the resultant work is more valuable for *artistic* or *scientific* reasons.

(3) ‘Specification’ Defined

Specification (*specificatio*) is the giving of a new form to another’s material thru the application of labor. (*See 3 Sanchez Roman 100*). The material undergoes a transformation or change of identity. (*See 3 Manresa 303*).

Examples:

- (a) baking a cake with the flour of another.
- (b) using the *paint* of another to make a painting on *your own canvas*. (*See 3 Manresa 303*).

[NOTE: If you use your own paint on the *canvas of another*, this is adjunction. Reason: the *canvas* is considered the *accessory*, in Article 468 on adjunction.]

- (c) using clothing materials of another to make a suit.

[NOTE: In the case of *Aguirre v. Pheng, L-20851, Sep. 3, 1966*, the Supreme Court considered the *reconditioning* of a tank (in good faith) as a case of SPECIFICATION, with the entity making the reconditioning entitled to *indemnity* for its work or labor. It should be observed, however, that under Art. 474, it is generally the *worker*, not the owner of the material who is entitled to appropriate the *finished product*. It is only when the *material is more precious* (or of more value) than the transformed thing that the owner of the material is given the preference or choice.]

(4) ‘Specification’ Distinguished from ‘Mixture’ and ‘Adjunction’

ADJUNCTION	MIXTURE	SPECIFICATION
1. involves at least <i>two</i> things	1. involves at least <i>two</i> things	1. may involve only one thing (may be more) but form is changed
2. as a rule, accessory follows principal	2. as a rule, <i>co-ownership</i> results	2. as a rule, accessory follows principal
3. the things joined retain their nature	3. the things <i>mixed</i> or <i>confused</i> may <i>either retain</i> or <i>lose</i> their respective natures	3. the new object <i>retains</i> or <i>preserves</i> the nature of the original object

Art. 475. In the preceding articles, sentimental value shall be duly appreciated.

COMMENT:

Consideration of the Sentimental Value

It is often that a thing for some sentimental reasons (as a gift on account of graduation) may be worth (to its owner) much more than its actual value.

Chapter 3

QUIETING OF TITLE (N)

(All provisions in this Chapter are new.)

Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

COMMENT:

(1) Statement of the Code Commission Explaining the Reason for the Chapter on Quieting of Title

- “(a) Section 377 of the Code of Civil Procedure provides that actions to *remove a cloud from the title* to real estate shall be brought in the *province* where the *land* is situated.
- “(b) But *no provision* of the substantive law states under what *conditions* the action may be brought.
- “(c) This is a well-established remedy in American Law. The reason is that equity comes to the aid of him who would suffer if the instrument (*as described in Art. 476*) were enforced. He is in good conscience entitled to a removal of the cloud or doubt upon his title. Upon the other hand, the respondent has no legal or moral ground to hold the instrument against the petitioner’s title.” (*Report of the Code Commission, p. 55*).

Severino Baricuatro, Jr. v. CA, et al.
GR 105902, Feb. 9, 2000
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Quieting of title is a common-law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property. (*Vda. de Aviles v. CA, 76 SCAD 396 [1966]*).

Originating in equity jurisprudence, its purpose is to secure “an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim.” (*Arturo Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. 2, p. 137*).

In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and other claimants, “not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best.” (*Edgardo Paras, Civil Code of the Philippines Annotated, 13th ed. [1994], p. 270*).

(2) Kinds of Action Referred To

- (a) *Remedial* — (action to *remove the cloud* or to *quiet* title). (*Art. 476, par. 1*).
- (b) *Preventive* — (action to prevent a future cloud or doubt — *actio quia timet*).

(3) Existence of the ‘Cloud’

The “cloud” (or doubt) on title exists because:

- (a) of an *instrument* (deed, or contract) or *record* or *claim* or *encumbrance* or *proceeding*.

- (b) which is APPARENTLY *valid* or effective.
- (c) BUT is, in *truth* and in *fact*, *invalid*, *ineffective*, *voidable*, or *unenforceable*, or *extinguished* (or *terminated*) or *barred by extinctive prescription*. (*Arts. 476-478*).
- (d) AND may be prejudicial to the title. (*Art. 476*).

Example:

An agent, whose authority was *not in writing*, sold land belonging to his principal to another person, in representation of said principal. The deed of sale was a *public instrument*. Under Art. 1874, a sale by an agent of land is *not valid* if the authority is not in writing. If the buyer insists on claiming the property as his own, may the principal bring an action to quiet title?

ANS.: Yes. On the face of the deed of sale, nothing appears to be wrong. It is therefore *apparently valid*, *although in reality*, it is *null* and *void* because of Art. 1874.

[NOTE: Had the deed of sale provided that the authority given the agent was *not in writing*, it is *clear* on the FACE of the contract that it is *invalid* (when the law is considered). Hence, there being no “cloud,” it is *not proper* to bring the action.]

Example:

O's land was sold by *F* (a forger) to *B* (a buyer in good faith). *O*'s name had been forged by *F* on the deed of sale. The sale, on its face, is apparently valid, with *O*'s name indicated as the seller. In truth, however, the sale is defective because of the forgery. *O*'s remedy is an action to quiet title.

[NOTE: Please observe that when the instrument is *not valid* on its face, the remedy does not apply. In one case, it was held that the test is this: if a person were sued for ejectment on the strength of the contract, does he have to produce evidence in order to defeat the action? If no evidence other than the contract is needed, it is because the contract is *invalid* on its face. If evidence is still

required, it is because the contract is apparently valid. (*See Pixley v. Huggins, 15 Cal. 127*). Stated otherwise, the test is: would the owner of the property in an action at law brought by the adverse party, and founded upon the instrument or claim, be required to offer evidence to defeat a recovery? If proof would be essential, the cloud exists; if proof is not needed, no cloud is cast. (*See Thompson v. Pac, 219 Fed. 624*).J.

National Grains Authority v. IAC
GR 68741, Jan. 28, 1988

The real purpose of the Torrens System is to quiet title to land and to stop forever any question as to its legality. Once a title is registered, the owner may rest secure, without the necessity of waiting in the portals of the court, or sitting on the *mirador su casa*, to avoid the possibility of losing his land. An indirect or collateral attack on a Torrens Title is not allowed.

The only exception to this rule is where a person obtains a certificate of title to a land belonging to another and he has full knowledge of the rights of the true owner. He is then considered as guilty of fraud and he may be compelled to transfer the land to the defrauded owner so long as the property has not passed to the hands of an innocent purchaser for value.

Heirs of Uberas v. CFI of Negros Occidental
L-48268, Oct. 30, 1978

The ruling in *Foja v. Court of Appeals (75 SCRA 441 [1977])*, that an action to quiet title to property in the possession of the plaintiff is imprescriptible is hereby reiterated.

(4) Rights of a Property Owner to Have Clouds Eliminated

When one is disturbed in any form in his rights of property over an immovable by the unfounded claim of others, he has the right to ask from the competent courts:

- (a) that their *respective rights* be determined,
- (b) not only to place *things in their proper place*, to make the one who has no rights to said immovable *respect and not disturb* the other,
- (c) but also for the *benefit of both*,
- (d) so that he who has the right would see every *cloud of doubt over* the property dissipated,
- (e) and he could afterwards without fear *introduce the improvements* he may desire, to *use*, and even to *abuse* the property as he deems best. (*Bautista v. Exconde*, 40 O.G. [8th S., No. 12, p. 231]).

(5) Reasons for Allowing the Action

- (a) the prevention of litigation (eventual litigation);
- (b) the protection of the true title and possession;
- (c) the promotion of right and justice. (*Lebman v. Shook*, 69 Ala. 486).

(6) Nature of the Action

The result is *not binding* upon the whole world, therefore, not *in rem*. It is really "*in personam*" because it is enforceable only against the defeated party, or privies. (See *Sabina Santiago, et al. v. J.M. Tuason and Co., Inc.*, L-14223, Nov. 23, 1960, where the Court said that a suit to quiet title brought against one co-owner, is NOT *res judicata* with respect to the other co-owners who were not made parties thereto). In fact, an action for conveyance, which is really *in personam*, has, in at least one case, been considered by our Supreme Court, as an *action to quiet title*. (*Sapto, et al. v. Fabiana*, 103 Phil. 683). Technically, it is *quasi in rem*, which is an action *in personam* concerning *real property*.

(7) Query

Are personal (movable) properties referred to in the action to quiet title?

ANS.: As the law is worded, NO, because the law says “real property or any interest therein.” But by analogy, the same principles should apply to personal property, particularly vessels, which although *movable*, *partake* of the nature of real property.

(8) Some Decided Doctrines Where It was Held that There Existed a Cloud Over the Title

- (a) An agent, with the written authority of his principal to sell the latter’s property, sold the same AFTER the death of the principal but antedated the contract of sale. (*Saltmarsh v. Smith*, 32 Ala. 404).
- (b) If the contract is *forged*. (*Briggs v. Industrial Bank*, 197 N.C. 120).
- (c) A contract by an incapacitated person. (*Alvey v. Reed*, 115 Ind. 148).
- (d) A mortgage *valid on its face* and will cause prejudice although in reality invalid. (*Vasket v. Moss*, 115 N.C. 448).

(9) Requisite Needed to Bring an Action to Prevent a Cloud (Action or Bill QUIA TIMET).

To authorize an action to prevent a cloud being cast on title, it must be made clear that there is a fixed determination on the part of the defendant to create a cloud (*Clark v. Dav-enport*, 95 N.Y. 477), and it is not sufficient that the danger is merely speculative. (*Sanders v. Yonkers*, 63 N.Y. 489).

Example: If the sheriff threatens to attach property which is exempted from attachment, an action to prevent a cloud on title will prosper. (Webb v. Hayner, 49 Fed. 605).

(10) Does the Action to Quiet Title Prescribe?

It depends:

- (a) If the plaintiff is *in possession* of the property, the action DOES NOT PRESCRIBE. (*See Foja v. Court of Appeals*,

75 SCRA 441, reiterated in *Heirs of Uberas v. CFI of Negros Occidental*, L-48268, Oct. 30, 1978, 86 SCRA 145).

Reason: While the owner continues to be liable to an action, proceeding, or suit upon the adverse claim, he has a continuing right to be given aid by the court to ascertain and determine the nature of such claim and its effect on his title, or to assert any superior equity in his favor. He may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. (44 *Am. Jur.* 47; *Cooper v. Rhea*, 39 L.R.A. 930; *Sapto, et al. v. Fabiana*, 103 *Phil.* 683). Thus, a buyer of land in 1931, who possesses it from that date may still compel the seller's successors-in-interest to execute the proper deed of conveyance in 1954, so that the deed may be registered. (*Sapto, et al. v. Fabiana*, 103 *Phil.* 683).

- (b) If the plaintiff is NOT in possession of the property, the action MAY PRESCRIBE. (*Sapto, et al. v. Fabiana*, 103 *Phil.* 683). Moreover, even if the action is brought within the period of limitations, it may be barred by LACHES, where there is *no* excuse offered for the failure to assert the title sooner. (*Ongsiako, et al. v. Ongsiako, et al.*, L-7510, Mar. 30, 1957; 44 *Am. Jur.* 47, 50). If somebody else has possession, the period of prescription for the recovery of the land is either 10 or 30 years, depending on ordinary or extraordinary prescription. (See *Ford v. Clendenmin*, 215 *N.Y.* 10). And even if brought within the prescriptive period, the action may no longer prosper if there has been an unreasonable or unjustified delay in filing the suit — estoppel by laches. (See 44 *Am. Jur.* 51).

NOTE: As a general rule, it is settled that an action to quiet title does not prescribe. (*Berico v. CA*, 44 *SCAD* 84 [1993]).

(11) Cases

Gallar v. Hussain **L-20954, May 24, 1967**

FACTS: Hussain sold *a retro* in a private instrument, a parcel of land protected by a Torrens Title to Chichirita, but

the right to repurchase was never exercised. The buyer sold the land to another who in turn *sold* and *delivered* the property in 1919 to Gallar. These subsequent sales were in private instruments. Gallar who had been in possession since 1919, sued in 1960 (or 41 years later) the heirs of Hussain to compel them to execute a formal deed of conveyance so that Gallar could obtain a transfer certificate of title. The heirs interposed the defense of prescription.

ISSUES:

- (a) Is Gallar's suit one for specific performance or one for the quieting of title?
- (b) Has the action prescribed?
- (c) If the heirs of Hussain had been the possessors of the property (instead of Gallar), would the answer be the same?

HELD:

(a) Gallar's suit should be considered an action to quiet title because Gallar was the owner and the sale had been consummated, despite the fact that the transactions had all been merely in private instruments.

(b) Gallar's suit had *not* prescribed. In an action to quiet title, if the plaintiff is in possession, the suit *does not* prescribe. (*See also Sapto v. Fabiana, 103 Phil. 683*).

(c) If the heirs of Hussain had been in possession, Gallar's suit would have prescribed for then the action would *not* be one to quiet title, but one to recover real property. The latter must of course be brought within the proper legal period (depending on ordinary or extraordinary prescription).

**Simeon A. Lee, et al. v.
Court of Appeals, et al.
L-37135, Dec. 28, 1973**

ISSUE: Just because probate proceedings are instituted, is it proper to archive an action to quiet title (between parties each of whom claims to have purchased the same properties from an heir) to certain properties involved in said probate proceedings?

HELD: No, it would not be proper to do the archiving simply because probate proceedings are begun in court. After all, probate proceedings do not delve into the ownership of the properties involved. Indeed, probate courts have no jurisdiction to determine with finality, conflicts of ownership. Such conflicts must be litigated in a *separate action*, except where a party merely prays for the inclusion or exclusion from the inventory of any particular property, in which case the probate court may pass upon *provisionally* the question of inclusion or exclusion, but without prejudice to its final determination in an appropriate action.

Vda. de Cabrera v. CA
78 SCAD 705
(1997)

An action for reconveyance of a parcel of land based on implied or constructive trust prescribes in 10 years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property.

But this rule applies only when the plaintiff or the person enforcing the trust is not in possession of the property, since if a person claiming to be the owner thereof is an actual possession of the property, as the defendants are in the instant case, the right to seek reconveyance, which, in effect, seeks to quiet title to the property, does not prescribe.

Art. 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action. He need not be in possession of said property.

COMMENT:

(1) Necessity for Title of the Plaintiff

The plaintiff must either have the *legal* (registered) own-

ership or the *equitable* (beneficial) ownership. Otherwise, the action will not prosper.

[NOTE: In *Nieto v. Quines, et al.*, L-14643, Jan. 28, 1961, the Supreme Court had occasion to rule that one who has complied with all the terms and conditions which would entitle him to a homestead patent, even without a right on the land is to be regarded as the *equitable* owner thereof. (*Balboa v. Farrales*, 51 *Phil.* 498).].

(2) Non-necessity of Possession

The plaintiff may be in possession or not in possession. The differences in effects are tabulated below:

<i>If Plaintiff Is In Possession</i>	<i>If Plaintiff Is Out of Possession</i>
a) period does not prescribe b) only right is to remove or prevent cloud. (<i>See 44 Am. Jur.</i> 46-47).	a) period prescribes b) aside from being given the right to remove or prevent cloud, he may also bring the ordinary actions of ejectment, <i>publiciana</i> or <i>reivindicatoria</i> within the proper prescriptive periods. (<i>See 44 Am. Jur.</i> , 46-47).

(3) Illustration as to Who May Be the Plaintiff

With my brother’s authority, and as a result of a trust agreement, I registered the land of my brother in my name. Neither of us is in actual possession. Who may bring an action to quiet title against, for example, a stranger?

ANS.: Either my brother or me, since my brother has the equitable title, while I have the legal title. Neither of us needs possession before the action is brought.

Art. 478. There may also be an action to quiet title or remove a cloud therefrom when the contract, instrument or other obligation has been extinguished or has terminated, or has been barred by extinctive prescription.

COMMENT:

(1) Two Instances Where the Action May Be Used

Two cases are mentioned in this article:

- (a) when the contract, etc., has *ended*;
- (b) when the action is *barred by extinctive prescription*.

(2) Example of (a)

X was given by *Y* the right of ownership over a piece of land for 5 years. At the end of that time, if *X* insists on his continued ownership, *Y* may bring the action to quiet title. (See 78 ALR 127). In one case, a piece of land was given to a husband and his wife on condition that if the wife later on deserts unjustifiably the husband, the latter would be the sole owner thereof. The wife, after a few months, deserted unjustifiably the husband, but insisted on her co-ownership. The husband may now bring the action because the resolutive condition has been fulfilled. (*Brooks v. Kearns*, 86 Ill. 547).

(3) Examples of (b)

- (a) *A* possessed *B*'s land in bad faith adversely, publicly, and continuously for 30 years. *A* is now, therefore, the owner. If *B* still insists on his ownership, *A* may bring the action to quiet title. In this case, *B* can really not recover the land anymore from *A*.
- (b) *A* owns a piece of land mortgaged to *Y*. If later the mortgage is extinguished because of the statute of limitations, *A* may bring the action to quiet title or remove the cloud for it is evident that the mortgage no longer exists. (See *Bank v. Steward*, 8 Kan. A. 22).

Art. 479. The plaintiff must return to the defendant all benefits he may have received from the latter, or reimburse him for expenses that may have redounded to the plaintiff's benefit.

COMMENT:

(1) Duty of Plaintiff to Make Certain Reimbursement

Example:

A bought land thru an *agent* whose authority was not in writing. A then built a fence around the land. In an action to quiet title, the *principal* will *win* (since under Art. 1874, the sale is really void) but he must reimburse A for the expenses for the fence, since this has redounded to his (the principal's) benefit.

[NOTE: Moreover, in the above case for instance, any expenses made by A for the execution or registration of the contract (in case he paid such expenses) must be reimbursed. (See *Taylor v. Rawlins*, 86 Fla. 279).]

(2) General Rule Based on Equity

In general, it may be said that whenever the plaintiff is shown to be *legally* or *morally* bound to restore or reimburse, he must do so. (See 44 Am. Jur. 53; see also *Nellis v. Minton*, 91 Okla. 75). This is because "he who comes to equity must do equity" and because the *precise* purpose of the action is merely to *quiet title* and *not* to obtain some pecuniary benefits.

Art. 480. The principles of the general law on the quieting of title are hereby adopted insofar as they are not in conflict with this Code.

COMMENT:

(1) Conflict Between the Civil Code and the Principle of the General Law on the Subject

In case of conflict between the Civil Code and the princi-

ples of the general law on the quieting of title, the *former* shall prevail.

(2) Principles of General Law

What is meant by “*principles of general law*” (on the subject)?

ANS.: These are the general principles developed on the subject in Anglo-American jurisprudence, where this remedy is well-known. (*Memorandum of the Code Com., Feb. 17, 1951*).

(3) Some of the Principles

(a) *Regarding Defenses*: The defendant can win if he can prove:

- 1) that the plaintiff does not have legal or equitable title. (*51 C.J. 197*). (This is because under Art. 477, title is required.)
- 2) that the defendant has acquired the ownership by, for example, adverse possession. (*44 Am. Jur. 46*).
- 3) that the case has already been previously decided between the parties on the same issue — *res judicata*. (*44 Am. Jur. 46*).
- 4) that the defendant became the *owner* after the action had been filed, but before he filed his answer (as by succession, donation, etc.). (*See 44 Am. Jur. 45-46*).
- 5) that the action has prescribed, the plaintiff being outside of possession. (*44 Am. Jur. 46-47*).

(b) *Regarding the Reliefs Given*:

- 1) Unauthorized mortgages may be cancelled. (*Brown v. Brown, 97 Ga. 531*).
- 2) In an *ordinary* case, the defendant may in his counter-claim ask for quieting of title as against the plaintiff. (This can be done if the court has jurisdiction, in order to settle all conflicting claims.) (*See 44 Am. Jur. 57; see also Flourney v. Lastrapes, 25 L. ed. 406*).

- 3) Injunction may be availed of such as a prohibition to destroy certain properties or to gather fruits from the land in question. (*See 44 Am. Jur. 57*).

Art. 481. The procedure for the quieting of title or the removal of a cloud therefrom shall be governed by such rules of court as the Supreme Court shall promulgate.

COMMENT:

(1) Rules of Procedure To Be Framed By Supreme Court

The Article explains itself.

(2) Some Rules of Procedure (Pertinent to the Subject) as Enunciated by American Courts

- (a) The venue of the action is determined by the situation or location of the premises, and not by the residence of the party. (*Nugent v. Parsel, 63 Miss. 99*).
- (b) The process or notice should accurately describe the property and state in general terms the nature and extent of the plaintiff's claim. (*Richards v. Moran, 137 Iowa 220*).
- (c) The suit cannot be brought in the name of one party for the use and benefit of another (*Peck v. Sims, 120 Ind. 345*); is not only may (*New Orleans Nat. Bank v. Raymond, 29 La. Ann. 355*) but must be prosecuted in the name of the real party in interest. (*Peck v. Sims, 120 Ind. 345*).
- (d) In a suit for the quieting of title, the actual possessor at the time of the filing of the action must be respected in his possession until after there is an adjudication on the merits. If said actual possessor is disturbed in the meantime by the other party, the former is entitled to a writ of preliminary injunction against said disturbers. (*Catalino Balbino, et al. v. Hon. Wenceslao M. Ortega, et al., L-14231, Apr. 28, 1962*).

(3) Problem

A died intestate, leaving no debts and no administrator of the estate. During his lifetime, A executed an invalid mortgage with B. May the heirs of A bring an action to cancel the deed of mortgage because it is void and is a cloud on their title?

ANS.: Yes. Where one dies in the manner set forth above, all the heirs of the decedent may jointly maintain an action to cancel a deed of their ancestor, upon the ground that it is illegal and void, and is a cloud upon their title.

(4) When the Action to Quiet Title Will Not Prosper

- (a) if it is merely an action to settle a dispute concerning boundaries. (*78 ALR 58; Anastacia Vda. de Aviles v. CA, 76 SCAD 396, GR 95748, Nov. 21, 1996.*)
- (b) if the case merely involves the proper interpretation and meaning of a contract or document. (*78 ALR 21.*)
- (c) if the plaintiff has no title, either legal or equitable. (*Art. 477.*)
- (d) if the action has prescribed and the plaintiff is not in possession of the property. (*Ford v. Clendennim, 215 N.Y. 10.*)
- (e) if the contract, instrument, etc. is void on its face. (*Thompson v. Peck, 219 Fed. 624.*) (For instance, assume that X, armed with a certain document, seeks to eject Y. If the document on its face is so *defective* that Y does *not* even have to present rebuttal evidence, the document may be said to be void on its face. In a case like this, Y, to protect his rights, does not have to bring an action to quiet title. (*See Pixley v. Huggins, 15 Cal. 127.*)
- (f) if it is a mere claim or assertion (whether oral or written) unless such claim has been made in a court action (*78 ALR 83*) or the claim asserts that an instrument or entry in behalf of the plaintiff is not really what it appears to be. (*See 78 ALR 55.*)

(5) What the Court's Task Is

**Rumarate v. Hernandez
487 SCRA 317 (2006)**

In an action for quieting of title, the court is tasked to determine the respective rights of the parties so that the complaint and those claiming under him may be forever free from any danger of hostile claim.

Chapter 4

RUINOUS BUILDINGS AND TREES IN DANGER OF FALLING

Art. 482. If a building, wall, column, or any other construction is in danger of falling, the owner shall be obliged to demolish it or to execute the necessary work in order to prevent it from falling.

If the proprietor does not comply with this obligation, the administrative authorities may order the demolition of the structure at the expense of the owner, or take measures to insure public safety.

COMMENT:

(1) Rule in Case of Building, Etc. in Danger of Falling

Example:

On A's estate is a wall facing the street. The wall is in danger of falling. May the owner be compelled to demolish or repair it? Yes, and if he does not do so, the administrative authorities may either order its demolition at A's expense or take measures to insure public safety.

(2) The Complainant

The complainant who brings the case must either have his property adjacent to the dangerous construction, or must have to pass by necessity in the immediate vicinity. (*Manresa*). If the construction falls, the owner would be liable for damages, as a general rule. (*Art. 2190*).

Art. 483. Whenever a large tree threatens to fall in such a way as to cause damage to the land or tenement of another or to travelers over a public or private road, the owner of the tree shall be obliged to fell and remove it; and should he not do so, it shall be done at his expense by order of the administrative authorities.

COMMENT:

Rule With Respect to Large Trees About to Fall

Failure on the owner's part to act accordingly will be met with expenses shouldered by him.

Title III. — CO-OWNERSHIP

Art. 484. There is co-ownership whenever the ownership of an undivided thing or right belongs to different persons.

In default of contracts, or of special provisions, co-ownership shall be governed by the provisions of this Title.

COMMENT:

(1) 'Co-ownership' Defined

Co-ownership is that state where an undivided thing or right belongs to two or more persons. (*Art. 484*). It is “the right of common dominion which two or more persons have in a *spiritual* (or *ideal*) part of a thing which is not physically divided.” (*3 Sanchez Roman 162*). A co-ownership is *not* a juridical person, nor is it granted any form of juridical personality. Thus, it *cannot* sue in court. Co-owners may, of course, litigate in their individual capacities. (*See Smith v. Lopez, 5 Phil. 78*).

Sanchez Roman defines “*co-ownership*” as the right of common dominion which two or more persons have in a spiritual part of a thing, not materially or physically-divided. (*See Sanchez v. CA, 408 SCRA 540 [2003]*).

Manresa defines the term as the “manifestation of the private right of ownership, which instead of being exercised by the owner in an exclusive manner over the things subject to it, is exercised by two or more owners and the undivided thing or right to which it refers to one and the same.” (*See Ibid.*).

Cases

Salvador v. CA
60 SCAD 303
(1995)

Possession of a co-owner is like that of a trustee and shall not be regarded as adverse to the other co-owners but in fact as beneficial to all of them.

[NOTE: There is no co-ownership when the different portions owned by different people are already concretely determined and identifiable, even if not yet technically described. (See De la Cruz v. Cruz, L-27759, Apr. 17, 1970).].

Nufable v. Nufable
108 SCAD 204, 309 SCRA 692
(1999)

A co-owner can only alienate his *pro indiviso* share in the co-owned property. Thus, a co-owner does not lose his part ownership of a co-owned property when his share is mortgaged by another co-owner without the former's knowledge and consent.

Sanchez v. Court of Appeals
404 SCRA 540
(2003)

Issue: May a co-owner validly lease his undivided interest to a third party?

Held: Yes, independently of the other co-owners.

[NOTE: A co-owner of an undivided parcel of land is an owner of the whole, and over the whole he exercises the right of dominion but he is at the same time the owner of a portion which is truly ABSTRACT. However, there is NO co-ownership when the different people are already concretely determined and are separately identifiable even if not yet technically described. (De Guia v. CA, 413 SCRA 114 {2003}).].

[NOTE: Any co-owner may file an action under Art. 487 not only against a third person but also against another co-

owner who takes exclusive possession and asserts exclusive ownership of the property. (*De Guia v. CA, supra.*).

(2) What Governs Co-ownership?

- (a) contracts
- (b) special legal provisions
- (c) provisions of the Title on Co-ownership

In default of the 1st, apply the 2nd; in the absence of the 2nd, apply the 3rd. (*Art. 484*).

(3) Sources of Co-ownership (How It Arises)

- (a) *By law* — [party walls, party ditches; the co-ownership of earnings by a man and a woman whose marriage is void, or who are living together without benefit of marriage — Art. 144, but here there must be no existing and valid *conjugal partnership*, as when either is already married to someone else (*Victor Juaniza v. Eugenio Jose, L-50127-28, Mar. 30, 1979*), in a way, the *conjugal partnership*, though in the last case, the rules on the conjugal partnership apply as a rule].

Mariano Adriano, et al. v. CA, et al.
GR 124118, Mar. 27, 2000
123 SCAD 634

Property acquired by a man while living with a common-law wife during the subsistence of his marriage is conjugal property, even when the property was titled in the name of the common-law wife. In such a case, a *constructive trust* is deemed to have been created over the property which lawfully pertains to the conjugal partnership of the subsisting marriage.

Tumlos v. Spouses Mario Fernandez
GR 137650, Apr. 12, 2000
125 SCAD 445

If the actual contribution of a party is not proved, there will be no co-ownership and no presumption of equal shares.

- (b) *By contract* — (two cousins buy a parcel of land, share in the price, and agree not to divide for 10 years). (*See Gallemit v. Tabiliran, 20 Phil. 241*).
- (c) *By chance* — (commixtion, confusion, hidden treasure).
- (d) *By occupation* or *occupancy* (as when a wild beast is caught by several persons). (*Punzalan v. Boon Liat, 44 Phil. 320*). (It would seem that this ruling is erroneous, because while it is occupation, still the co-ownership must have been presumed because of an *implied* agreement or contract between the two hunters.)
- (e) *By succession* or *will* [as in the case of intestate heirs before partition (*Javier v. Javier, 6 Phil. 493*), the *successional estate* being a co-ownership prior to partition]. (*See Decision of the Supreme Court of Spain, June 27, 1949*).

[NOTE: It has been held, however, that although in one sense, the *co-heirs* are really *co-owners*, still in the exercise of the right of legal redemption, the rule concerning co-heirs (*Art. 1067*) must apply, and not that concerning co-owners. If, *however, after* partition of the hereditary estate, it is decided that some of the co-heirs will continue to be *co-owners* of a certain portion of the estate (for example, a house or a car), the rule for legal redemption will now be the rule concerning *co-owners*. (*See Castro, et al. v. Castro, L-7464, Oct. 24, 1955*).]

Del Mundo v. Court of Appeals
L-25788, Apr. 30, 1980

If a father and his daughter declare in a deed of partition that they are co-owners of a parcel of land which is really paraphernal land of his second wife, co-ownership is NOT necessarily created, for the lot remains paraphernal.

Republic v. Estenzo
L-35376, Sep. 11, 1980

Res judicata generally applies in cadastral proceedings, including adjudications of co-ownership therein. (*De Velayo v. Court of Appeals, 99 SCRA 110*).

Romana v. PCIB
L-56479, Nov. 15, 1982

There can be *res judicata* even if the doctrine or issue involved was resolved not in the decision of the first case but only in an incidental order issued after the promulgation of said decision (here, the doctrine was in a resolution of a motion to quash the writ of execution issued in the case). After all, the requisites of *res judicata* are all present, including the *finality* of the resolution adverted to. [NOTE: In the resolution, the motion to quash was denied.].

Cuizon v. Remoto
486 SCRA 196 (2006)

FACTS: The portion sold by Placida Tabada–Lambo to respondents under the 1968 Deed of Sale of Real Property went beyond that legally permissible? *Issue:* Should this be allowed?

HELD: No, such should pertain only to 4,000 square meters as the sale can affect only her 1/4 share in the 16-hectare co-owned property.

(4) Kinds of Co-ownership

- (a) From the viewpoint of *subject matter*:
 - 1) Co-ownership of an *undivided thing*
 - 2) Co-ownership of an *undivided right* (like a lease right inherited from a deceased father). (*Samaniego, et al. v. Villajin, [CA] 43 O.G. 3137*).
- (b) From the viewpoint of *source*:
 - 1) Contractual co-ownership (an agreement not to divide for ten years allowed — *Art. 494*).
 - 2) Non-contractual co-ownership (if the source is *not* a contract).
- (c) From the viewpoint of the *rights of the co-owners*:
 - 1) *Tenancy in common (or ownership in common or just co-ownership as contemplated in Art. 484)*.

2) *Joint tenancy* (also called *joint ownership*).

(5) ‘Tenancy in Common’ Distinguished from ‘Joint Tenancy’

<p>TENANCY IN COMMON <i>(Co-ownership)</i></p>	<p>JOINT TENANCY</p>
<p>1. This involves a physical whole. BUT there is an IDEAL (abstract) division; each co-owner being the <i>owner</i> of his own <i>ideal</i> share.</p> <p>2. Each co-owner may dispose of his ideal or <i>undivided share</i> (without boundaries) <i>WITHOUT</i> the other’s consent.</p> <p>3. If a co-owner dies, his share goes to <i>his own heirs</i>.</p> <p>4. If a co-owner is a minor, this does not benefit the others for the purpose of prescription, and prescription therefore <i>runs against</i> them.</p>	<p>1. This also involves a physical whole. BUT there is <i>no IDEAL</i> (abstract) division; each and ALL of them own the WHOLE thing.</p> <p>2. Each co-owner may not dispose of his own share without the consent of ALL the rest, because he really has NO IDEAL share.</p> <p>3. If a joint-tenant dies, his share goes by accretion to the other joint-tenants by virtue of their survivorship or <i>jus accrecendi</i>.</p> <p>4. If one joint-tenant is under a legal <i>disability</i> (like <i>minority</i>), this benefits the other against whom prescription will <i>not</i> run.</p>

(See *Tagarao v. Garcia*, 61 Phil. 5; *Layones v. Bolivar*, [CA] 40 O.G. [4th S] No. 8, p. 198; *Salmond, Jurisprudence*).

(6) Characteristics of Co-ownership

(a) There must be *more than one* subject or owner.

- (b) There is one physical whole divided into *IDEAL (undivided) shares*.
- (c) Each *IDEAL* share is definite in amount, but *is not physically* segregated from the rest.
- (d) Regarding the physical whole, each co-owner must respect each other in the common use, enjoyment, or preservation of the *physical whole*. (*See Scaevola*). [Thus, a co-owner *cannot* sell a *definite* (with boundaries) part of the property]. (*See Lopez v. Illustre, 5 Phil. 568-569*). The interest of the others must indeed not be disregarded. (*Art. 486*).
- (e) Regarding the *IDEAL* share, each co-owner holds *almost absolute control* over the same. [Thus, he is *full owner of his part*, and of the *fruits and benefits* thereof; and he may *alienate, assign, or mortgage* it, but he *cannot substitute another person in its enjoyment, when personal rights are involved*. (*Art. 493*).].
- (f) It is not a juridical person, *i.e.*, it has no juridical personality. (*Smith v. Lopez, 5 Phil. 78*).
- (g) A co-owner is in a sense a *trustee* for the other co-owners. (*See Castrillo v. Court of Appeals, L-18046, Mar. 31, 1964*). Thus, he may not ordinarily acquire exclusive ownership of the property held in common thru prescription. (*Ibid.*).

(7) ‘Co-ownership’ Distinguished from an ‘Ordinary Partnership’

CO-OWNERSHIP	CONJUGAL PARTNERSHIP
(a) no legal personality	(a) has legal or juridical personality
(b) created by contract or by other things	(b) created by contract <i>only</i> (express or implied)
(c) purpose — collective enjoyment	(c) purpose is profit

<p>(d) agreement for it to exist for 10 years — valid. (If more than 10 years, the excess is void.)</p> <p><i>[NOTE: 20 years is the maximum if imposed by the testator or the donee of the common property. (Art. 949).]</i></p> <p>(e) as a rule, <i>no</i> mutual representation</p> <p>(f) not dissolved by death or incapacity of co-owner</p> <p>(g) can dispose of his share without consent of others</p> <p>(h) profits must always depend on proportionate shares. (Art. 485).</p>	<p>(d) there is no term limit set by the law</p> <p>(e) as a rule, there is mutual representation</p> <p>(f) is dissolved by the death or incapacity of partner</p> <p>(g) cannot substitute another as partner in his place without consent of the others</p> <p>(h) profits may be stipulated upon</p>
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(8) ‘Co-ownership’ Distinguished from ‘Conjugal Partnership’ (BAR)

<p style="text-align: center;">CO-OWNERSHIP</p>	<p style="text-align: center;">CONJUGAL PARTNERSHIP</p>
<p>(a) may arise by an <i>ordinary</i> contract</p> <p>(b) sex of the co-owners is immaterial</p> <p>(c) co-owners may be <i>two or more</i></p> <p>(d) profits are proportional to respective interests</p>	<p>(a) arises only <i>because</i> of the <i>marriage</i> contract</p> <p>(b) one must be a male, the other a female</p> <p>(c) conjugal owners are always <i>only two</i></p> <p>(d) profits are generally 50-50 unless a contrary stipula-</p>

<p>(e) death of one does <i>not</i> dissolve the co-ownership</p> <p>(f) generally all the co-owners administer</p> <p>(g) co-ownership is <i>discouraged</i> by law</p>	<p>tion is in a marriage settlement</p> <p>(e) death of either husband or wife dissolves the conjugal partnership</p> <p>(f) generally, the husband is the administrator</p> <p>(g) <i>encouraged</i> by law to provide for better family solidarity</p>
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Art. 485. The share of the co-owners, in the benefits as well as in the charges, shall be proportional to their respective interests. Any stipulation in a contract to the contrary shall be void.

The portions belonging to the co-owners in the co-ownership shall be presumed equal, unless the contrary is proved.

COMMENT:

(1) Shares in Benefits and Charges

- (a) The *share* in the *benefits* and *charges* is proportional to the interest of each. Hence, if one co-owner owns two-thirds, he shares two-thirds of the taxes.
- (b) Contrary stipulation is VOID. To do so would be to run against the nature of co-ownership. (*Manresa*).
- (c) Each co-owner shares proportionately in the accretion or alluvium of the property. This is because an increase in area benefits all. (*Tarnate v. Tarnate, [CA] 46 O.G. 4397*).

(2) Taxes

If a co-owner has paid the taxes to prevent forfeiture of the common property for tax delinquency, he could compel contribution from his co-owners. But if he has not yet paid, he

cannot compel them to pay the overdue and unpaid taxes to him himself, for after all, the taxes are due, not to him, but to the government. (*Jalandoni and Ramos v. Guanzon and Guanzon, L-10423, Jan. 1958*).

Art. 486. Each co-owner may use the thing owned in common, provided he does so in accordance with the purpose for which it is intended and in such a way as not to injure the interest of the co-ownership or prevent the other co-owners from using it according to their rights. The purpose of the co-ownership may be changed by agreement, express or implied.

COMMENT:

(1) Right to Use Property Owned in Common

This article grants each co-owner the right to use the property for the purpose intended (said *purpose* being alterable by express or implied agreement). BUT —

- (a) the interest of the co-ownership must not be injured or prejudiced;
- (b) and the other co-owners must *not* be prevented from using it.

Pardell v. Bartolome
23 Phil. 450
(BAR)

FACTS: A and B owned in common a two-story house. The upper floor was used as a dwelling; the lower was available for rent by stores. If A lives in a room of the upper floor, and uses a room of the lower floor as an office, can B demand rent?

HELD: (a) No rent for the upper floor can be demanded, for A was exercising her right as co-owner, without prejudicing B who, had she wanted, could have also lived in another room of said floor, and who therefore could not have been prejudiced.

(b) Half-rental may be demanded for the use of the lower floor. Rent could be asked because others could have rented the same, but only half should be given because A was co-owner. (*See also 3 Manresa 441*).

(2) Apartment Houses

Accessorias or apartments are built either for residential purposes or for stores; accordingly, the occupant may generally use them for either of such purposes. (*Villaroman v. Arriola, CA-GR No. 710-R, June 11, 1948; 46 O.G. 152, Jan. 1950*).

Art. 487. Any one of the co-owners may bring an action in ejectment.

COMMENT:

(1) Art. 487 Now Allows a Co-Owner To Bring An Action For Ejectment Which Covers All Kinds of Actions for the Recovery of Possession, Including Forcible Entry and Unlawful Detainer, Without the Necessity of Joining All the Other Co-Owners As Co-Plaintiffs, Because the Said Is Deemed to be Instituted For the Benefit of All

**Mendoza v. Coronel
482 SCRA 353 (2006)**

Since Art. 487 of the new Civil Code authorizes any one of the co-owners to bring an action for ejectment and the suit is deemed to be instituted for the benefit of all, without the owners actually giving consent to the suit, it follows that an attorney-in-fact — of the plaintiff co-owner does not need authority from all the co-owners he needs authority only from the co-owner instituting the ejectment suit.

(2) Right of Co-owners to Bring an Action in Ejectment

One right of a co-owner is to defend in court the interests of the co-ownership. In the old case of *Palarca v. Baguisi, 38 Phil. 177*, it was held that to bring an action for ejectment, all the co-owners must institute the suit. Art. 487 *reverses* said

ruling, hence today, one co-owner may himself bring the action.

(3) Reason for the Article

The presumption is that the case instituted by one was really in behalf of ALL. (*TS, June 5, 1918*). After all, in one sense, a co-owner owns and possesses the *whole*; moreover, ejectment cases are *urgent* and *summary* in character.

[*NOTE: It is understood, of course, that the action is being instituted for all. Hence, if the co-owner expressly states that he is bringing the case only for himself, the action should not be allowed to prosper. (TS, June 17, 1927).*].

(4) Actions Covered by the Term ‘Ejectment’

It is believed that “ejectment” here covers the following actions:

- (a) forcible entry;
- (b) unlawful detainer;
- (c) *accion publiciana*;
- (d) *accion reivindicatoria*;
- (e) quieting of title;
- (f) replevin.

Lao v. CA 84 SCAD 341 (1997)

As a general rule, the main issue in an ejectment suit is possession *de facto*, not possession *de jure*. In the event the issue of ownership is raised in the pleadings, such issue shall be taken up only for the limited purpose of determining who between the contending parties has the better right to possession.

Where neither party, however, objects to the allegation of the question of ownership — which may be initially improvident or improper — in an ejectment suit and, instead, both present evidence thereon, argue the

question in their various submissions and participate in all aspects of the trial without objecting to the Metropolitan (or Municipal) Trial Court's jurisdiction to decide the question of ownership, the Regional Trial Court — in the exercise of its original jurisdiction as authorized by Sec. 11, Rule 40 of the Rules of Court — may rule on the issue and the corollary question of whether the subject deed is one of sale or of equitable mortgage.

Gachon v. Devera, Jr.
84 SCAD 12
(1997)

In ejectment cases, the only issue for resolution is physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants. Anyone of them who can prove prior possession *de facto* may recover such possession even from the owner himself.

This rule holds true regardless of the character of a party's possession, provided that he has in his favor priority of time which entitles him to stay on the property until he is lawfully ejected by a person having a better right by either *accion publiciana* or *accion reivindicatoria*.

It has been ruled that the institution of a separate action for quieting of title is not a valid reason for defeating the execution of the summary remedy of ejectment.

Corpuz v. CA
83 SCAD 744
(1997)

The inferior court may look into the evidence of title or ownership and possession *de jure* insofar as said evidence would indicate or determine the nature of possession. It cannot, however, resolve the issue of ownership, *i.e.*, by declaring who among the parties is the true and lawful owner of the subject property, because the resolution of said issue would effect an adjudication on owner-

ship which is not sanctioned in the summary action for unlawful detainer.

With this as premise and taking into consideration the amendment introduced by Batas Pambansa Blg. 129, it may be suggested that inferior courts are now conditionally vested with adjudicatory power over the issue of title or ownership raised by the parties in an ejectment suit.

The prevailing doctrine is that suits or actions for the annulment of sale, title, or document do not abate any ejectment action respecting the same property.

Sabina Santiago, et al. v. J.M. Tuason & Co., Inc.
L-14223, Nov. 23, 1960

(a) A decision in a suit to quiet title brought against one co-owner by a 3rd party is not RES JUDICATA with respect to the other co-owners because co-owners as such are *not privies inter se* in relation to the property owned in common.

(b) HOWEVER, a statement in said suit stating that the document relied upon by the co-owners' *predecessor-in-interest* did NOT give title to said predecessor, is BINDING on said co-owners, for regarding this aspect, they may be considered as PRIVIES or successors-in-interest. If their predecessor-father was NOT the owner of the land, they, the children cannot be considered as co-heir or co-owners.

De Guia v. CA
413 SCRA 114
(2003)

Facts: A co-owner of an undivided parcel of land is an owner of the whole, and over the whole he exercises the right of dominion but he is at the same time the owner of a portion which is truly abstract. *Issue:* Considering such circumstance, is there co-ownership when the different portions owned by different people are already concretely determined and separately identifiable even if not yet technically described?

Held: No. For that matter, any co-owner, may file an action under Art. 487 not only against a third person but also against another co-owner who takes exclusive possession and asserts exclusive ownership of the property. Each co-owner may demand at any time the partition of the common property unless a co-owner has repudiated the co-ownership under certain conditions.

Art. 488. Each co-owner shall have a right to compel the other co-owners to contribute to the expenses of preservation of the thing or right owned in common and to the taxes. Any one of the latter may exempt himself from this obligation by renouncing so much of his undivided interest as may be equivalent to his share of the expenses and taxes. No such waiver shall be made if it is prejudicial to the co-ownership.

COMMENT:

(1) Expenses for Preservation

A co-owner has the right to compel the others to share in the expenses of preservation, even if incurred without prior notification to them (since the expenses are necessary) BUT he must *notify if practicable*. (Art. 489).

(2) How a Co-owner May Exempt Himself

A co-owner may exempt himself from this duty to reimburse by RENOUNCING (abandoning for the benefit of the others) *so much of his undivided share* as may be equivalent to his share of the *expenses and taxes*.

[NOTE: The one renouncing DOES NOT necessarily renounce his entire interest in the co-ownership.]

[NOTE FURTHER that the renouncing cannot be done if the co-ownership will be prejudiced.]

(3) What the Renouncing Requires

- (a) If the renouncing is in favor of the *creditor*, said creditor must give his consent (for this would be a case of *adjudi-*

cacion en pago or *datio in solutum*, where a debtor gives something else in payment of his debt).

- (b) If the renouncing is in favor of the *other co-owners*, a novation (in the form of substitution of debtor) would result — necessitating the consent of said other co-owners AND of the creditor.

[NOTE: The creditor's consent would of course be needed only if the expenses have already been incurred, otherwise, there would as yet be no creditors.]

(4) What Reimbursement Covers

Reimbursement covers only NECESSARY EXPENSES, like those for the preservation of a house in a ruinous condition (*Trinidad v. Ricafort, et al., 7 Phil. 449*) and not for useful improvements, even if the value of the property is thereby increased, the purpose of the co-ownership not being for profit. (*See 3 Manresa 446*).

(5) Reimbursement from the Estate of a Deceased Co-owner

Reimbursement can be had from the *estate* of a deceased co-owner, provided no renunciation has been made. (*Hibberd v. Estate of McElroy, 25 Phil. 164*).

(6) When Renunciation Cannot be Implied

Renunciation cannot be implied by mere refusal to pay the proportionate share. (*3 Manresa 452*). If there is refusal to pay, but no renunciation, the creditors can *still collect* from the delinquent co-owner. Here, the other co-owners do not have to intervene, for they are not the ones prejudiced.

(7) Example When Renunciation or Waiver Cannot be Made Because it is Prejudicial to the Co-ownership

X and Y are co-owners of a house badly in need of repairs in order to prevent a collapse. BEFORE expenses are incurred, X cannot renounce if Y does not have enough money

to cover all expenses. *Y* can therefore go ahead, contract with the repairmen, and *X* would still be liable despite his previous “renunciation.” This is because if *Y* does not go ahead, prejudice would be caused to the co-ownership.

Art. 489. Repairs for preservation may be made at the will of one of the co-owners, but he must, if practicable, first notify his co-owners of the necessity for such repairs. Expenses to improve or embellish the thing shall be decided upon by a majority as determined in Article 492.

COMMENT:

(1) Number of Co-owners Who Must Consent

- (a) Repairs, ejectment action — ONE. (*Art. 489*).
- (b) Alterations or acts of OWNERSHIP — ALL. (*Art. 491*).
- (c) All others, like useful improvements, *luxurious embellishments, administration* and better enjoyment — FINANCIAL MAJORITY (not numerical). (*Art. 492 and Art. 489*).

(2) Rule as to Necessary Repairs

Can a co-owner go ahead with necessary repairs even against the opposition of all the rest?

ANS.: Yes, because the negligence of the others should not prejudice him. (*3 Manresa 448*). If he has money, he may advance the funds, and recover later from the others. (*3 Sanchez Roman 177*). If he has NO money in the meantime, he can contract with the repairmen, and all the co-owners will be liable proportionately to the creditors. Here, they may *renounce* their shares in the co-ownership (equivalent to their share of the expenses) IN FAVOR of the CREDITORS (provided the latter agree — DATIO IN SOLUTUM); or make the renouncing in favor of the *conscientious co-owner* (provided that said co-owner agrees to assume that obligation — DATIO EN PAGO; and provided that the creditors agree — NOVATION or *change of debtor, Arts. 1244, 1245*). Otherwise, no renouncing can be done and they would still be indebted.

(3) Problem (Where Necessary Repairs Are Not Undertaken)

Because of the unjustified opposition of the *majority* of the co-owners, necessary repairs urged by one were not undertaken, and damage resulted. Who will be responsible for said damages?

ANS.: Those who made the unjustified opposition. (*3 Manresa 448*).

(4) Rule If No Notification Was Made

The law says: "But he must, if *practicable*, first notify his co-owners ..." Suppose, though it was practicable to do so, no *notification* was made, would the rest still be liable?

ANS.: Yes, since the repairs were essential. It must be remembered that even if the rest would *expressly* object, the repairs can go on just the same. However, in view of the lack of notification, the others may state in their behalf, that had they been notified, they could have helped look for cheaper labor and materials, and that therefore they should *pay* less than what is being charged them. In such a case, the co-owner who neglected to make the notification must take care of the difference.

[*NOTE: "Practicable" means that something can be done; "practical" means useful.*].

Art. 490. Whenever the different stories of a house belong to different owners, if the titles of ownership do not specify the terms under which they should contribute to the necessary expenses and there exists no agreement on the subject, the following rules shall be observed:

(1) The main and party walls, the roof and the other things used in common, shall be preserved at the expense of all the owners in proportion to the value of the story belonging to each;

(2) Each owner shall bear the cost of maintaining the floor of his story; the floor of the entrance, front door, com-

mon yard and sanitary works common to all, shall be maintained at the expense of all the owners *pro rata*;

(3) The stairs from the entrance to the first story shall be maintained at the expense of all the owners *pro rata*, with the exception of the owner of the ground floor; the stairs from the first to the second story shall be preserved at the expense of all, except the owner of the ground floor and the owner of the first story; and so on successively.

COMMENT:

(1) Perpendicular Co-ownership

This is *not* an ordinary case of co-ownership where all the floors and everything else belong to all co-owners. Here, we have a case of “perpendicular co-ownership” where the *different* stories belong to *different* persons. This is still co-ownership for there is some unity in the use or ornamentation of the property, particularly in the main and common walls, roof, stairs, etc. This is *uncommon* in our country.

[NOTE: The rules enumerated in the Article apply only if there is no *contrary* provision in the *titles of ownership or agreement*.]

[NOTE: If the various units are in one plane — as when one-story units all set on the ground — the co-ownership may be referred to as a horizontal co-ownership. A combination of both perpendicular and horizontal co-ownership can result in a situation very similar to a condominium which may be in the form of a building consisting of several stories, each story being by itself divided into different units, owned by different persons. Note that each unit cannot be considered owned in common. Under the Condominium Law, a condominium corporation can be formed — to take care of common property, like the common stairs, common halls, etc.].

(2) The Rules Themselves

(a) Proportionate contribution is required for the preservation of —

- 1) the main walls;

- 2) the party walls;
 - 3) the roof (this is really used by ALL); and
 - 4) the other things used in common.
- (b) Each floor owner must bear the expenses of his floor.
 - (c) Stairs are to be maintained from story to story, by the users.

(3) Ground Floor Distinct from the First Story

Under Art. 490, it is evident that the *ground floor*, if there is any, is distinguished from the *first story*.

(4) The Condominium Act (Republic Act 4726, effective upon its approval. The Act was approved by Congress on June 18, 1966.)

Republic Act 4726

THE CONDOMINIUM ACT

AN ACT TO DEFINE CONDOMINIUM, ESTABLISH REQUIREMENTS FOR ITS CREATION, AND GOVERN ITS INCIDENTS.

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

Section 1. The short title of this Act shall be "*The Condominium Act.*"

Section 2. A condominium is an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common directly or indirectly, in the land on which it is located and in other common areas of the building. A condominium may include, in addition, a separate interest in other portions of such real property. Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the hold-

ers of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas.

The interests in condominium may be ownership or any other real right in real property recognized by the law of property in the Civil Code and other pertinent laws.

Section 3. As used in this Act, unless the context otherwise requires:

(a) "Condominium" means a condominium as defined in the next preceding section.

(b) "Unit" means a part of the condominium project intended for any type of independent use or ownership, including one or more rooms or spaces located in one or more floors (or part or parts of floors) in a building or buildings and such accessories as may be appended thereto.

(c) "Project" means the entire parcel of real property divided or to be divided in condominiums, including all structures thereon.

(d) "Common areas" means the entire project excepting all units separately granted or held or reserved.

(e) "To divide" real property means to divide the ownership thereof or other interest therein by conveying one or more condominiums therein but less than the whole thereof.

Section 4. The provisions of this Act shall apply to property divided or to be divided into condominiums only if there shall be recorded in the Register of Deeds of the province or city in which the property lies, and duly annotated in the corresponding certificate of title of the land, if the latter had been patented or registered under either the Land Registration or Cadastral Acts, an enabling or master deed which shall contain, among others, the following:

(a) Description of the land on which the building or buildings and improvements are or to be located;

(b) Description of the building or buildings, stating the number of stories and basements, the number of units and their accessories, if any;

(c) Description of the common areas and facilities;

(d) A statement of the exact nature of the interest acquired or to be acquired by the purchaser in the separate units and in the common areas of the condominium project. Where title to or the appurtenant interests in the common areas is or is to be held by a condominium corporation, a statement to this effect shall be included;

(e) Statement of the purposes for which the building or buildings and each of the units are intended or restricted as to use;

(f) A certificate of the registered owner of the property, if he is other than those executing the master deed, as well as of all registered holders of any lien or encumbrance on the property, that they consent to the registration of the deed;

(g) The following plans shall be appended to the deed as integral parts thereof:

1. A survey plan of the land included in the project, unless a survey plan of the same property had previously been filed in said office;

2. A diagrammatic floor plan of the building or buildings in the project, in sufficient detail to identify each unit, its relative location and approximate dimensions;

(h) Any reasonable restriction not contrary to law, morals, or public policy regarding the right of any condominium owner to alienate or dispose of his condominium.

The enabling or master deed may be amended or revoked upon registration of an instrument executed by a simple majority of the registered owners of the property: *Provided*, That in a condominium project exclusively for either residential or

commercial use, simple majority shall be on a per unit of ownership basis and that in the case of mixed use, simple majority shall be in a floor area of ownership basis: *Provided, further,* That prior notifications to all registered owners are done: *and Provided, finally,* That any amendment or revocation already decided by a simple majority of all registered owners shall be submitted to the Housing and Land Use Regulatory Board and the city/municipal engineer for approval before it can be registered. Until registration of a revocation, the provisions of this Act shall continue to apply to such property. (*As amended by RA No. 7899*).

Section 5. Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include the transfer or conveyance of the undivided interest in the common areas or, in a property case, the membership or shareholdings in the condominium corporation; PROVIDED, However, that where the common areas in the condominium project are held by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens or corporations at least 60% of the capital stock of which belong to Filipino citizens, except in cases of hereditary succession. Where the common areas in a condominium project are held by a corporation, no transfer or conveyance of a unit shall be valid if the concomitant transfer of the appurtenant membership or stockholding in the corporation will cause the alien interest in such corporation to exceed the limits imposed by existing laws.

Section 6. Unless otherwise expressly provided in the enabling or master deed or the declaration of restrictions, the incidents of a condominium grant are as follows:

(a) The boundary of the unit granted are the interior surfaces of the perimeter walls, floors, ceilings, windows and door thereof. The following are not part of the unit; bearing walls, columns, floors, roofs, foundations and other common structural elements of the building; lobbies, stairways, hallways, and other areas of common use; elevator equipment and shafts, central heating, central refrigeration and central airconditioning equipment, reservoirs, tanks, pumps and other central services and

facilities, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit.

(b) There shall pass with the unit, as an appurtenance thereof, an exclusive easement for the use of the air space encompassed by the boundaries of the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. Such easement shall be automatically terminated in any air space upon destruction of the unit as to render it untenable.

(c) Unless otherwise provided, the common areas are held in common by the holders of units, in equal shares one for each unit.

(d) A non-exclusive easement for ingress, egress and support through the common areas is appurtenant to each unit and the common areas are subject to such easements.

(e) Each condominium owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surface of the walls, ceilings, floors, windows and doors bounding his own unit.

(f) Each condominium owner shall have the exclusive right to mortgage, pledge or encumber his condominium and to have the same appraised independently of the other condominium but any obligation incurred by such condominium owner is personal to him.

(g) Each condominium owner has also the absolute right to sell or dispose of his condominium unless the master deed contains a requirement that the property be first offered to the condominium owners within a reasonable period of time before the same is offered to outside parties.

Section 7. Except as provided in the following section, the common areas shall remain undivided, and there shall be no judicial partition thereof.

Section 8. Where several persons own condominiums in a condominium project, an action may be brought by one or more such persons for partition thereof by sale of the entire project, as if the owners of all the condominiums in such project were co-owners of the entire project in the same proportion as their interests in the common areas: *PROVIDED, however*, That a partition shall be made only upon a showing:

(a) That three years after damage or destruction to the projects which render a material part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or

(b) That damage or destruction to the project has rendered one-half or more of the units therein untenable and that condominium owners holding in aggregate more than 30 per cent interest in the common areas are opposed to repair or restoration of the projects; or

(c) That the project has been in existence in excess of 50 years, that it is obsolete and uneconomic, and that condominium owners holding in aggregate more than 50 per cent interest in the common areas are opposed to repair or restoration or modelling or modernizing of the project; or

(d) That the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the condominium owners holding in aggregate more than 70 per cent interest in the common areas are opposed to continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or

(e) That the conditions for such partition by sale set forth in the declaration of restrictions duly registered in accordance with the terms of this Act, have been met.

Section 9. The owner of a project shall, prior to the conveyance of any condominium therein, register a declaration of restrictions relating to such project, which restrictions shall constitute a lien upon each condominium in the project, and shall inure to and bind all condominium owners in the projects.

Such liens, unless otherwise provided, may be enforced by any condominium owner in the project or by the management body of such project. The Register of Deeds shall enter and annotate the declaration of restrictions upon the certificate of title covering the land included within the project, if the land is patented or registered under the Land Registration or Cadastral Acts.

The declaration of restrictions shall provide for the management of the project by anyone of the following management bodies: a condominium corporation, an association of the condominium owners, a board of governors elected by condominium owners, or a management agent elected by the owners or by the board named in the declaration. It shall also provide for voting majorities, quorums, notices, meeting date, and other rules governing such body or bodies.

Such declaration of restrictions, among other things, may also provide:

- (a) As to any management body
 1. For the powers thereof, including power to enforce the provisions of the declarations of restrictions;
 2. For maintenance of insurance policies insuring condominium owners against loss by fire, casualty, liability, workmen's compensation and other insurable risks, and for bonding of the members of any management body;
 3. Provisions for maintenance, utility, gardening and other services benefiting the common areas, for the employment of personnel necessary for the operation of the building, and legal, accounting and other professional and technical services;
 4. For purchase of materials, supplies and the like needed by the common areas;
 5. For payment of taxes and special assessments which would be a lien upon the entire project or common areas, and for discharge of any encumbrance levied against the entire project or the common areas;

6. For reconstruction of any portion or portions of any damage to or destruction of the project;

7. The manner for delegation of its powers;

8. For entry by its officers and agents into any unit when necessary in connection with the maintenance or construction for which such body is responsible;

9. For a power of attorney to the management body to sell the entire project for the benefit of all of the owners thereof when partition of the project may be authorized under Section 8 of this Act, which said power shall be binding upon all of the condominium owners regardless of whether they assume the obligations of the restrictions or not.

(b) The manner and procedure for amending such restrictions: *Provided*, That the vote of not less than a majority in interest of the owners is obtained;

(c) For independent audit of the accounts of the management body;

(d) For reasonable assessments to meet authorized expenditures, each condominium unit to be assessed separately for its share of such expenses in proportion (unless otherwise provided) to its owner's fractional interest in any common areas;

(e) For the subordination of the liens securing such assessments to other liens either generally or specifically described;

(f) For conditions, other than those provided for in Sections 8 and 13 of this Act, upon which partition of the project and dissolution of the condominium corporation may be made. Such right to partition or dissolution may be conditioned upon failure of the condominium owners to rebuild within a certain period or upon specified percentage of damage to the building, or upon a decision of an arbitrator, or upon any other reasonable condition.

Section 10. Whenever the common areas in a condominium project are held by a condominium corporation, such corporation shall constitute the management body of the project. The corporate purposes of such a corporation shall be limited to the holding of the common areas; either in ownership or any other interest in real property recognized by law, to the management of the project, and to such other purpose as may be necessary, incidental or convenient to the accomplishment of said purposes. The articles of incorporation or by-laws of the corporation shall not contain any provision contrary to or inconsistent with the provisions of this Act, the enabling or master deed, or the declaration of restrictions of the project. Membership in a condominium corporation, regardless of whether it is a stock or non-stock corporation, shall not be transferable separately from the condominium unit of which it is an appurtenance. When a member or a stockholder ceases to own a unit in the project in which the condominium corporation owns or holds the common areas, he shall automatically cease to be a member or stockholder of the condominium corporation.

Section 11. The term of a condominium corporation shall be coterminous with the duration of the condominium project, the provisions of the Corporation Law to the contrary notwithstanding.

Section 12. In case of involuntary dissolution of a condominium corporation for any of the causes provided by law, the common areas owned or held by the corporation shall, by way of liquidation, be transferred *pro-indiviso* and in proportion to their interest in the corporation to the members or stockholders thereof, subject to the superior rights of the corporation's creditors. Such transfer or conveyance shall be deemed to be a full liquidation of the interest of such members or stockholders in the corporation. After such transfer or conveyance, the provisions of this Act governing undivided co-ownership of, or undivided interest in, the common areas in condominium projects shall fully apply.

Section 13. Until the enabling or the master deed of the project in which the condominium corporation owns or holds the common areas is revoked, the corporation shall not be

voluntarily dissolved through an action for dissolution under Rule 104 of the Rules of Court except upon a showing:

(a) That three years after damage or destruction to the project in which the corporation owns or holds the common areas, which damage or destruction renders a material part thereof unfit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or

(b) That damage or destruction to the project has rendered one-half or more of the units therein untenable and that more than 30 per cent of the members of the corporation, if non-stock, or the share-holders representing more than 30 per cent of the capital stock entitled to vote, if a stock corporation, are opposed to the repair or reconstruction of the project; or

(c) That the project has been in existence in excess of 50 years, that it is obsolete and uneconomical, and that more than 50 per cent of the members of the corporation, if non-stock, or the stockholders representing more than 50 per cent of the capital stock entitled to vote, if a stock corporation are opposed to the repair or restoration or remodelling or modernizing of the project; or

(d) That the project or material part thereof has been condemned or expropriated and that the project is no longer viable or that the members holding in aggregate more than 70% interest in the corporation, if non-stock, or the stockholders representing more than 70% of the capital stock entitled to vote, if a stock corporation, are opposed to the continuation of the condominium regime after expropriation or condemnation of a material portion thereof; or

(e) That the conditions for such a dissolution set forth in the declaration of restrictions of the project in which the corporation owns or holds the common areas, have been met.

Section 14. The condominium corporation may also be dissolved by the affirmative vote of all the stockholders or members thereof at a general or special meeting duly called for

the purpose: *PROVIDED*, That all the requirements of Section 62 of the Corporation Law are complied with.

Section 15. Unless otherwise provided for in the declaration of restrictions, upon voluntary dissolution of a condominium corporation in accordance with the provisions of Sections 13 and 14 of this Act, the corporation shall be deemed to hold a power of attorney from all the members or stockholders to sell and dispose of their separate interests in the project and liquidation of the corporation shall be effected by a sale of the entire project as if the corporation owned the whole thereof, subject to the rights of the corporation and of individual condominium creditors.

Section 16. A condominium corporation shall not, during its existence, sell, exchange, lease or otherwise dispose of the common areas owned or held by or in the condominium project unless authorized by the affirmative vote of a simple majority of the registered owners: *Provided*, That prior notifications to all registered owners are done: *and Provided, further*, That the condominium corporation may expand or integrate the project with another upon the affirmative vote of a simple majority of the registered owners, subject only to the final approval of the Housing and Land Use Regulatory Board. (*As amended by RA No. 7899*).

Section 17. Any provision of the Corporation Law to the contrary notwithstanding, the by-laws of a condominium corporation shall provide that a stockholder or member shall not be entitled to demand payment of his shares or interest in those cases where such right is granted under the Corporation Law unless he consents to sell his separate interest in the project to the corporation or to any purchaser of the corporation's choice who shall also buy from the corporation the dissenting member or stockholder's interest. In case of disagreement as to price, the procedure set forth in the appropriate provision of the Corporation Law for valuation of shares shall be followed. The corporation shall have two years within which to pay for the shares or furnish a purchaser of its choice from the time of award. All expenses incurred in the liquidation of the interest of the dissenting member or stockholder shall be borne by him.

Section 18. Upon registration of an instrument conveying a condominium, the Register of Deeds shall, upon payment of the proper fees, enter and annotate the conveyance on the certificate of title covering the land included within the project and the transferee shall be entitled to the issuance of a “condominium owner’s” copy of the pertinent portion of such certificate of title. Said “condominium owner’s” copy need not reproduce the ownership status or series of transactions in force or annotated with respect to other condominiums in the project. A copy of the description of the land, a brief description of condominium conveyed, name and personal circumstances of the condominium owner would be sufficient for purposes of the “condominium owner’s” copy of the certificate of title. No conveyance of condominiums or part thereof, subsequent to the original conveyance thereof from the owner of the project, shall be registered unless accompanied by a certificate of the management body of the project that such conveyance is in accordance with the provisions of the declaration of restrictions of such project.

In cases of condominium projects registered under the provisions of the Spanish Mortgage Law or Act 3344, as amended, the registration of the deed of conveyance of a condominium shall be sufficient if the Register of Deeds shall keep the original or signed copy thereof, together with the certificate of the management body of the project, and return a copy of the deed of conveyance to the condominium owner duly acknowledged and stamped by the Register of Deeds in the same manner as in the case of registration of conveyances or real property under said laws.

Section 19. Where the enabling or master deed provides that the land included within a condominium project are to be owned in common by the condominium owners therein, the Register of Deeds may, at the request of all the condominium owners and upon surrender of all their “condominium owner’s” copies, cancel the certificates of title of the property and issue a new one in the name of said condominium owners as *pro-indiviso* co-owners thereof.

Section 20. An assessment upon any condominium made in accordance with a duly registered declaration of restrictions

shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interests, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, shall be and become a lien upon the condominium assessed when the management body causes a notice of assessment to be registered with the Register of Deeds of the city or province where such condominium project is located. The notice shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions, a description of the condominium unit against which same has been assessed, and the name of the registered owner thereof. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration of restrictions. Upon payment of said assessment and charges or other satisfaction thereof, the management body shall cause to be registered a release of the lien.

Such lien shall be superior to all other liens registered subsequent to the registration of said notice of assessment except real property tax liens and except that the declaration of restrictions may provide for the subordination thereof to any other liens and encumbrances.

Such lien may be enforced in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgages of real property. Unless otherwise provided for in the declaration of the restrictions, the management body shall have power to bid at foreclosure sale. The condominium owner shall have the same right of redemption as in cases of judicial or extra-judicial foreclosure of mortgages.

Section 21. No labor performed or services or materials furnished without the consent of or at the request of a condominium owner or his agent or his contractor or subcontractor, shall be the basis of a lien against the condominium of any other condominium owner, unless such other owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the owner of any condominium in case of emergency repairs to his condominium

unit. Labor performed or services or materials furnished for the common areas, if duly authorized by the management body provided for in a declaration of restrictions governing the property, shall be deemed to be performed or furnished with the express consent of each condominium owner. The owner of any condominium may remove his condominium from a lien against two or more condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his condominium unit.

Section 22. Unless otherwise provided for by the declaration of restrictions, the management body, provided for herein, may acquire and hold, for the benefit of the condominium owners, tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the condominium owners in the same proportion as their respective interests in the common areas. A transfer of a condominium shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property.

Section 23. Where, in an action for partition of a condominium project or for the dissolution of condominium corporation on the ground that the project or a material part thereof has been condemned or expropriated, the court finds that the conditions provided in this Act or in the declarations have not been met, the court may decree a reorganization of the project, declaring which portion or portions of the project shall continue as a condominium project, the owners thereof, and the respective rights of the remaining owners and the just compensation, if any, that a condominium owner may be entitled due to deprivation of his property. Upon receipt of a copy of the decree, the Register of Deeds shall enter and annotate the same on the pertinent certificate of title.

Section 24. Any deed, declaration or plan for a condominium project shall be liberally construed to facilitate the operation of the project, and its provisions shall be presumed to be independent and severable.

Section 25. Whenever real property has been divided into condominiums, each condominium separately owned shall be

separately assessed, for purposes of real property taxation and other tax purposes, to the owners thereof and tax on each such condominium shall constitute a lien solely thereon.

Section 26. All Acts or parts of Acts in conflict or inconsistent with this Act are hereby amended insofar as condominiums and its incidents are concerned.

Section 27. This Act shall take effect upon its approval.

Approved, 18 June 1966.

(5) When Is Ownership Acquired?

**Condominium Corporation v. Campos, Jr.
104 SCRA 295**

The buyer of a unit in a condominium acquires ownership over the unit only after he has paid in full its purchase price.

(6) 'Separate Interest'

**Condominium Corporation v. Campos, Jr.
(Supra)**

The ownership of a condominium unit is the "separate interest" of the owner which makes him automatically a shareholder in the condominium.

(7) Other Instances

**Union Bank v. Housing and
Land Use Regulatory Board
210 SCRA 558
(1992)**

The act of a subdivision developer of mortgaging the subdivision without notifying an installment buyer is violative of PD 957. Said case falls under the exclusive jurisdiction of the Housing and Land Use Regulatory Board.

**Skyworld Condominium Owners
Association v. SEC
211 SCRA 565
(1992)**

All incorporators of a condominium corporation must be an owner of a condominium unit.

**Casa Filipina Realty
Corp. v. Office of the President
58 SCAD 773
(1995)**

PD 947 was designed to stem the tide of “fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to buyers or titles free from liens and encumbrances.”

**G.O.A.L., Inc. v. CA
85 SCAD 159
(1997)**

In a condominium, common areas and facilities are “portions of condominium property not included in the units,” whereas, a unit is “a part of the condominium property which is to be subject to private ownership.”

Inversely, that which is not considered a unit should fall under common areas and facilities. Hence, the parking spaces not being subject to private ownership form part of the common area over which the condominium unit owners hold undivided interest.

Art. 491. None of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. However, if the withholding of the consent by one or more of the co-owners is clearly prejudicial to the common interest, the courts may afford adequate relief.

COMMENT:**(1) Alterations**

This article deals with ALTERATIONS (whether or not common benefits would result).

(2) 'Alteration' Defined

An *alteration* is a *change*

- (a) which is more or less permanent;
- (b) which changes the *use* of the thing; and
- (c) which prejudices the condition of the thing or its enjoyment by the others. [Alteration is an act of *ownership*; may be *material* or *metaphysical* (change in use); and gives rise to a *real* right over the property owned in common]. (See 3 *Manresa* 465-466).

(3) Examples of Alterations

- (a) Sale, donation, or mortgage, etc. of the *whole* property — Thus, if the entire property is sold without the consent of some of the co-owners, the *sale would not be valid except* with respect to the share of the co-owner-seller; and this is true even if the non-consenting co-owners did not do anything immediately to oust the buyer. (*Mindanao Academy, Inc., et al. v. Ildefonso D. Yap, L-17681-82, Feb. 26, 1965*).
- (b) Sale, donation or mortgage, etc. of a *part* of the property but with *definite boundaries*. (The sale is not void; however, it is subject to the result of the subsequent partition). (*Lopez v. Cuaycong, 74 Phil. 601*).
- (c) A voluntary easement. (See *Art. 691, par. 1*).
- (d) Lease of real property if
 - 1) the lease is recorded (registered)
 - 2) or the lease is for *more than one year* (whether recorded or not). (See *Enriquez v. Watson and Co., 22 Phil. 632* and *Melencio v. Dy Tiaco Lay, 55 Phil. 99*).

(Here the leases involve REAL RIGHTS.)

[NOTE: The reason is because said leases are considered not mere acts of administration but acts of ownership — requiring the consent of ALL the CO-OWNERS. Note however the existence of a contrary opinion which states that even if the lease is a REAL RIGHT, still the same should be considered as a mere act of administration. (See *Enriquez v. Watson and Co.*, 22 Phil. 623).]

- (e) The construction of a house on a lot owned in common. (See *Javier v. Javier*, 6 Phil. 493).
- (f) Any other act of strict dominion or ownership. (See *Gala v. Rodriguez*, 70 Phil. 124, where any encumbrance or disposition was held implicitly to be an act of alteration).
- (g) Impliedly, contracts of long duration. (*Melencio v. Dy Tiaco Lay*, 55 Phil. 99).

Castro, et al. v. Atienza
L-25014, Oct. 17, 1973

ISSUE: If a co-owner desires to *cancel*, with respect to his *ideal share*, a lease of the property owned in common (participation in a certain business) and *then lease said share in favor of another*, does he need the approval of the *other co-owners*?

HELD: The approval, concurrence, or consent of the other co-owners is *not essential*. [NOTE: Bear in mind that this deals only with the *undivided or ideal share*; on the other hand, a lease of real property, if registered OR if for over a year, is an act of ownership requiring *unanimous consent* on the part of the co-owners.]

(4) BAR

R, *S* and *T* are co-owners of a ten-hectare agricultural land in Quezon City. *R* is the administrator. *S* and *T* are in Spain. May *R* convert that land to a memorial park without the knowledge and consent of *S* and *T*? Explain.

ANS.: No, for clearly this conversion constitutes an ALTERATION which by law requires UNANIMITY on the part

of all the co-owners unless a judicial order to the contrary is obtained. (*See Art. 491*).

(5) Unanimous Consent (Express or Implied)

The law requires *unanimous* consent for alterations. May the consent be given *impliedly*?

ANS.: Yes, but only for the purpose of making the alteration legal. (*See 3 Manresa 469-470*). Thus, if a co-owner knows that a house is being *constructed* on land owned in common but offers no objection thereto, he cannot demand the demolition of the building. BUT implied or tacit consent is *not enough* to make the other co-owners liable for the expenses for the construction of the house. (*See Javier v. Javier, 6 Phil. 493*). To recover a share of the expenses, the express consent of the others would be needed. This express consent must be proved by the one who made the alteration if he desires proportionate reimbursement. (*Javier v. Javier, 6 Phil. 493*).

**Philippine National Bank v. Court of Appeals
L-34404, June 25, 1980**

Conjugal property which is inherited by the surviving spouse and the children is *co-owned*. Therefore, the surviving spouse cannot by herself alone mortgage the property.

(6) 'Replacement'

"*Replacement*" is not considered an alteration. (*Enriquez v. Watson and Co., 22 Phil. 623*).

(7) When an Alteration Is ILLEGAL (Un Verdadero Despojo)

An alteration is *illegal* when made without the *express* or *implied* consent of the other co-owners. (*2 Sanchez Roman 180*).

(8) Effects of an Illegal Alteration

(a) The co-owner responsible may lose what he has spent;

- (b) Demolition can be compelled;
- (c) He would be liable for losses and damages;
- (d) BUT whatever benefits the co-ownership derives will belong to it (*3 Manresa 468, 471-472*);
- (e) In case a house is constructed on common lot, *all* the co-owners will be entitled to a proportionate share of the rent. (It is wrong to give all to the person who made the alteration and just let her pay rent on the land). (*Singson, et al. v. Ch. Veloso, et al., [CA] 52 O.G. 370*).

Art. 492. For the administration and better enjoyment of the thing owned in common, the resolutions of the majority of the co-owners shall be binding.

There shall be no majority unless the resolution is approved by the co-owners who represent the controlling interest in the object of the co-ownership.

Should there be no majority, or should the resolution of the majority be seriously prejudicial to those interested in the property owned in common, the court, at the instance of an interested party, shall order such measures as it may deem proper, including the appointment of an administrator.

Whenever a part of the thing belongs exclusively to one of the co-owners, and the remainder is owned in common, the preceding provisions shall apply only to the part owned in common.

COMMENT:

(1) Administration and Better Enjoyment

This article concerns:

- (a) administration;
- (b) better enjoyment.

[NOTE: In both cases, a FINANCIAL majority is sufficient.]

(2) Acts of Administration or Management

They are those:

- (a) that do *not* involve an alteration;
- (b) those that may be renewed from time to time;
- (c) those that have *transitory* effects, that is, do not bind the co-ownership for a long time in the future;
- (d) those that do *not* give rise to a *real* right over the thing owned in common;
- (e) those, which even if called an alteration, do *not* affect the substance or nature of the thing (*2 Castan 200-203*);
- (f) those for the common benefit of all the co-owners and not for only one or some of them. (*Singson v. Veloso, supra*).

[NOTE: All the requisites mentioned must CONCUR.]

(3) Examples of Acts of Administration

- (a) Lease of *one year or less* (of real property) provided it is not registered. (*See Enriquez v. Watson, 22 Phil. 623; Melencio v. Dy Tiaco Lay, 55 Phil. 99; Arts. 1647, 1648, 1878, Civil Code*).
- (b) Acts of management (such as when by resolution of the financial majority, one of them is appointed manager or administrator, and is entrusted with the custody of jewels owned in common). (*Lavadia v. Cosme, 72 Phil. 196; 40 O.G. No. 18, p. 3640*). (Also the right of co-heirs to manage *inherited* property). (*See Alcala v. Pabalan, 19 Phil. 520*). (Also, the right to appoint even a *stranger* as *administrator* or *agent* of the co-ownership, with the rights and obligations of an agent). (*See Gala v. Rodriguez, 70 Phil. 124*).

(4) Limitations on the Right of the Financial Majority

- (a) Although they can approve resolutions for administration and better enjoyment, still before a decision is made, there should first be a notice to the *minority* so that they can be heard. (*3 Manresa 488; Singson, et al. v. Veloso, et al., [CA] 52 O.G. 870*).

- (b) The majority would be justified in proceeding only when the *urgency* of the case and the *difficulty* of *meeting* with them render impracticable the giving of such notice. (*Singson v. Veloso, supra*).
- (c) The minority may APPEAL to the court against the decision of the majority when, for example —
 - 1) there is no real majority (*Art. 492*);
 - 2) the resolution is *seriously prejudicial* to the rights of an individual co-owner (*Art. 492*);
 - 3) when the majority refuses to correct abuse of administration or maladministration;
 - 4) when the minority is made the victim of fraud (*Manresa*);
 - 5) when an alteration (instead of mere act of administration) is agreed upon.

[NOTE: The court may even appoint an administrator. (*Art. 492*).].

- (d) *Examples of Acts Seriously Prejudicial*
 - 1) When loans are made without sufficient security;
 - 2) When an encumbrance or disposition is made since this would be an alteration (*See 3 Manresa 481-482; Gala v. Rodriguez, 70 Phil. 124*);
 - 3) When an abusive or inefficient administrator is not replaced. (*3 Manresa 481-482*).

Art. 493. Each co-owner shall have the full ownership of his part and the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

COMMENT:**(1) Right With Respect to the Ideal or Proportionate Share**

This article deals not with the right to the *whole* property *but only* with the right to the *IDEAL* or metaphysical share of each co-owner.

Cabrera v. CA
GR 108547, Feb. 3, 1997
78 SCAD 705

Under Article 493 of the Civil Code, the heirs as co-owners shall each have the full ownership of his part and the fruits and benefits pertaining to it. An heir may, therefore, alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. (*Go Ong v. CA, GR 75884, Sep. 24, 1987*).

(2) Rules Regarding the Ideal Share

- (a) Each co-owner has FULL ownership of his part, and of his share of the fruits and benefits. (*Art. 493*).
- (b) And *therefore*, he may ALIENATE, ASSIGN, or MORTGAGE his (ideal) share (not one with boundaries). (This is, of course, without prejudice to the exercise by the others of their right of LEGAL REDEMPTION in the proper case.) (*See Art. 493*).

Pamplona v. Moreto
L-33187, Mar. 31, 1980

A co-owner may validly sell his undivided share of the property owned in common. (If the part sold happens to be his allotted share after partition, the transaction is entirely valid). Now then, if there has been no express partition as yet, but the co-owner who sells, points out to

his buyers the boundaries of the part he was selling, and the other co-owners make no objection, there is in effect already a *partial partition*, and the sale of the *definite portion* can no longer be assailed.

Caro v. Court of Appeals
L-46001, Mar. 25, 1982

Redemption of share of co-owner cannot be effected if there has already been a partition of the property formerly owned in common. And this is so even if the share had been sold while the co-ownership was still existing.

- (c) He may even SUBSTITUTE another person in its enjoyment, *except* when *personal* rights are involved.
- (d) He may exempt himself from necessary expenses and taxes by renouncing part of his interest in the co-ownership. (*Art. 488*).

[NOTE: In case of alienation or mortgage, the effect is limited to the actual portion which may be given each when the co-ownership ends. Hence, the transferee does not get any specific portion (with boundaries) till after partition. (Lopez v. Ilustre, 5 Phil. 567; Cabuniog v. Magundayao, 26 Phil. 248).]

(3) Unauthorized Sale of the Entire Property

If a co-owner sells the *entire* common property, the sale is valid only insofar as his share is concerned, unless the other co-owners consented to the sale. (*Punzalan v. Boon Liat, 44 Phil. 320; Halili v. Lloret, et al., 50 O.G. 2493*).

(4) Participation in the Partition in Case of the Alienation of a Co-owner's Share

When a co-owner sells his share to a stranger, it is the stranger who should participate in the partition, and *not* the original co-owner, since the vendor has ceased to have an interest in the co-ownership. (*Lopez v. Ilustre, supra*).

(5) Problems

- (a) *A*, a co-owner was indebted to *B*. *B* sued to recover the debt, and *attached A's* share even if *A's* share had not yet been concretely determined. Was the attachment proper?

HELD: Yes. Attachment was proper though no liquidation, inventory, or participation computation had been made yet. (*See Codag v. Trinamos, [CA] 40 O.G. [4th S.] No. 8, p. 324*).

- (b) A co-owner cannot sell his share to a stranger, if thereby, there would be a change in the use of the common property.

Example: *A, B,* and *C* are the owners respectively of the 1st, 2nd, and 3rd floors of a house used as a residence. *A* cannot sell the ground floor (without the others' consent) to a stranger who desires to convert it into a factory, for here, the interests of the others would be jeopardized. (*See 3 Manresa 496-497*).

(6) Personal Rights in the Real Rights of Co-ownership

Although a co-ownership is a *real* right, *personal* rights may be involved as when a house is occupied by different co-owners as a common dwelling. Here, for a co-owner to substitute another (without the others' consent), would be to deprive the others of their privacy. (Hence, the term "personal right" as used in Art. 493 is not the *technical* "personal right" as distinguished from "real right.").

(7) Some Decided Cases

Punzalan, et al. v. Boon Liat, et al.
44 Phil. 320

FACTS: 22 Moros caught a whale with ambergris (a valuable material) inside its abdomen and they agreed not to sell it without unanimous consent. But later, *one* of them sold all. May the buyer and the seller be sued by the 21 Moros?

HELD: Yes. There being a co-ownership, the lone seller could not be allowed to sell all, hence, the sale is valid only with respect to his (1/22) share. The lone seller can be sued, not because he is a co-owner, but because he had acted as if he were the exclusive owner.

Mainit v. Bandoy
14 Phil. 730

FACTS: Four brothers owned land, but one sold the whole land. The other three now demand an annulment of the entire sale. Will annulment prosper?

HELD: Yes, but only insofar as 3/4 of the land is concerned, the sale of the 1/4 being valid since a co-owner may dispose of his share even without the consent of the others.

Gov't. v. Abalosa
56 Phil. 504

FACTS: Three people owned land in common. It was agreed that one would act as trustee and register under the Torrens system the whole land under his name. Later, an innocent purchaser for value (without knowledge that a co-ownership existed) bought the whole land from the co-owner trustee. The other 2 co-owners sued for the annulment of the sale. Will the action prosper?

HELD: No, the action will not prosper because the purchaser was an innocent buyer for value, without knowledge of the existence of the co-ownership. He cannot be blamed for he had a right to rely on the registration records. The only remedy left would be for the 2 co-owners to demand indemnification from the Assurance Fund under the Land Registration Law or from the trustee.

Ramon Mercado, et al. v. Pio D. Liwanag
L-14429, June 30, 1962

FACTS: Ramon Mercado and Basilia Mercado were registered CO-OWNERS of a parcel of land covered by a Torrens Certificate of Title. Ramon, without Basilia's consent, sold his 1/2 share to Pio D. Liwanag whereupon a Transfer Certificate

of Title was issued, carrying the names of Pio Liwanag and Basilia Mercado as the “co-owner pro-indiviso.” Is this allowed?

HELD: Yes. After all, Ramon Mercado did NOT sell a definite part with boundaries; what he sold was only his undivided share of 1/2, and this indeed is what is reflected in the Transfer Certificate of Title. In no way therefore has Art. 493 been violated.

**Diversified Credit Corporation v.
Felipe Rosado and Luz Jayme Rosado
L-27933, Dec. 24, 1968**

FACTS: Luz Jayme Rosado, a wife and 12 other persons owned in common a parcel of land in a subdivision in the City of Bacolod. Luz’s husband, Felipe Rosado, and Luz herself, constructed, with the use of conjugal funds amounting to P8,000, a house on the common lot. Sometime later, Luz and the 12 other co-owners sold the entire lot to the Diversified Credit Corporation, but Luz did *not* get her husband’s consent. Moreover, the husband never participated in the sale. When the corporation sought delivery of the land, and asked the co-owners to vacate the same, Felipe and his wife refused to vacate on the ground that under Art. 158 of the Civil Code, the use of conjugal funds in the construction of the house had converted 1/13 part of the lot (corresponding to the paraphernal share of the wife) into conjugal land; that therefore, the sale of said share of the lot by his wife is void in view of his lack of consent to the transaction. *ISSUE:* Did the construction of the house with conjugal funds convert 1/13 of the common lot into conjugal property?

HELD: No, the construction did *not* convert 1/13 of the common lot into conjugal property. It is a basic principle in co-ownership that *no* individual co-owner can claim title to any *definite* portion of the land or thing owned in common until the partition thereof. Prior to that time, all that the co-owner has is an *ideal* or *abstract* proportionate share in the entire thing owned in common by all the co-owners.

This principle is emphasized by the rulings of the Court. In *Lopez v. Ilustre*, 5 *Phil.* 561, it was held that while a co-owner has the right to freely sell and dispose of his undivided

interest, he has *no right* to sell a divided part, by *metes and bounds*, of the real estate owned in common. The doctrine was reiterated in *Mercado v. Liwanag*, L-14429, June 20, 1962 holding that a co-owner may *not convey a physical* portion of the land owned in common. And in *Santos v. Buenconsejo*, L-20136, June 23, 1965, it was ruled that a co-owner may not even adjudicate to himself any *determinate* portion of the land owned in common. Since the share of the wife was at no time physically determined, it *cannot* be validly claimed that the house constructed by her husband was built on land belonging to her, and Art. 158 of the Civil Code cannot apply. Necessarily, the claim of conversion of the wife's share from paraphernal to conjugal character as a result of the construction must be rejected for lack of factual or legal basis. Moreover, there is *no proof* on record that the house occupied only 1/13 of the total area.

Paulmitan v. CA
215 SCRA 866
(1992)

Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void.

Even if a co-owner sells the whole property as his, the sale will affect only his share but not those of the other co-owners who did not consent to the sale.

Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.

A donor or testator may prohibit partition for a period which shall not exceed twenty years.

Neither shall there be any partition when it is prohibited by law.

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

COMMENT:

(1) Reason for Allowing Partition, as a Rule, at Any Time

To remain in a co-ownership would be to subject a person to the desires of the rest. Conflicts in management being bound to arise, the law as much as possible discourages co-ownership. Hence, no co-owner is, as a rule, obliged to remain in the co-ownership. (*Art. 494, first sentence*). Moreover, the right to demand partition never prescribes (as long, of course, as the co-ownership still remains). (*See De Castro v. Echarri, 20 Phil. 23*). Moreover, the law itself says: "Each co-owner (as a rule) may demand at any time the partition of the thing owned in common, insofar as his share is concerned." (*Art. 494, 2nd sentence, 1st paragraph*). Thus, it has been truly said that generally a co-owner may not acquire exclusive ownership of common property thru prescription, and that a co-owner is a trustee for the other co-owners. (*Castillo v. Court of Appeals, L-18046, Mar. 31, 1964*).

David v. Bandin
GR 48322, Apr. 8, 1987

Art. 494 of the Civil Code provides that prescription does not run against a co-owner "so long as he expressly or impliedly recognizes the co-ownership." By the same token, laches or estoppel cannot be invoked against a co-owner who has not been sleeping on his rights as long as the co-ownership continues to be recognized by the other co-owners.

(2) Object of a Partition

Both *real* and *personal* properties may be the object of partition. (*Del Val v. Del Val, 29 Phil. 534*). Partition has for its purpose the separation, division, or assignment of things held in common, among the people to whom they may belong. (*See Art. 1079*). Of course, the thing itself may be physically

divided, or if not, its value may be partitioned. (*See 7 Manresa 585; Art. 1079*).

(3) When a Co-owner May Not Successfully Demand a Partition (BAR)

- (a) If by agreement (for a period not exceeding 10 years), partition is prohibited.

[NOTE: The term may be extended by a new agreement, but only after the *expiration* of the original period, otherwise the intention of the law would be defeated.]

- (b) When partition is prohibited by a *donor* or *testator* (for a period not exceeding *twenty years*) — *from whom the property came*.
- (c) When partition is prohibited by law (as in the case of the conjugal partnership property, except in certain instances).
- (d) When a physical partition would render the property unserviceable, but in this case, the property may be *allotted* to one of the co-owners, who shall indemnify the others, or it will be sold, and the proceeds distributed. (*Art. 498*).
- (e) When the legal nature of the common property does not allow partition (like in the case of party walls).

(4) Prohibition to Partition Because of an Agreement

- (a) The period must not extend more than 10 years. (*Art. 494*).
- (b) If it exceeds 10 years, the stipulation is valid only insofar as the first 10 years are concerned.
- (c) There can be an *extension* but only *after* the original period has expired.
- (d) After the first extension, there can be another, and so on indefinitely, as long as for each extension, the period of 10 years is not exceeded. (*See 3 Manresa 511-513*).
- (e) *Query: A, B, and C* agreed that there should be no parti-

tion till *A* passes the bar. At the end of 10 years, *A* has not yet passed. Is the co-ownership already ended?

ANS.: It is submitted that it should be considered ended, otherwise the law would be indirectly violated.

- (f) In the same problem, suppose *A* passed at the end of *three* years, should the co-ownership already be considered ended?

ANS.: Yes, since the resolutive condition has arrived.

- (g) A perpetual prohibition should be considered void as against public policy, but in such a case, it is believed that it should be considered valid, for the first ten years.

Tuason v. Tuason
L-3404, Apr. 2, 1951

FACTS: *A*, *B*, and *C* were co-owners of a parcel of land. They agreed to subdivide it into small lots, and then divide the proceeds accordingly. Later, *A* questioned the validity of the stipulation on the ground that it virtually compelled them to *remain* in the co-ownership till after all the parcels had been sold.

HELD: The stipulation is valid, for the precise purpose of the agreement was to *eventually* put an end to the co-ownership, after the parcels had been sold. Their being forced to remain, till after the sale, should be considered only as a means to an end — a *partnership* so to speak, in order to dispose of the lots.

- (h) Notwithstanding any agreement to partition for ten years, the parties may mutually rescind the agreement, provided everybody consents.

(5) Rules in the Case of Succession or Inheritance

- (a) In the law of succession, a testator may provide in his will that the property he is disposing of will not be partitioned for 20 years. The *legitime* may even be subject to this condition.

- (b) In one case, testator prohibited his heirs from making the partition for a period of twenty years. Long before the expiration of the period, ALL the heirs mutually partitioned the property among themselves. Shortly thereafter one of them questioned the validity of the partition, claiming that it was contrary to the express desires of the deceased. The Supreme Court held that in view of his previous assent to the partition, he is now prevented by estoppel from alleging its illegality.
- (c) Although a testator may provide for an indivision of 20 years, the heirs may nevertheless partition the property should any of the grounds for the dissolution of a partnership exist.

Oliveras, et al. v. Lopez, et al.
L-29727, Dec. 14, 1988

This case exemplifies the Filipino custom of keeping inherited property in a prolonged judicial condition of co-ownership.

In a long line of decisions, however, this Court has held that before the partition of a land or thing held in common, no individual co-owner can claim title to any definite portion thereof. All that the co-owner has is an ideal or abstract quota or proportionate share in the entire land or thing. The duration of the juridical condition of co-ownership is not limitless. Under Arts. 494 and 1083 of the Civil Code, co-ownership of an estate should not exceed the period of 20 years. And, under the former article, any agreement to keep a thing or property undivided should be for a 10-year period only. Where the parties stipulate a definite period of indivision which exceeds the maximum allowed by law, said stipulation shall be void only as to the period beyond such maximum.

Although the Civil Code is silent as to the effect of the indivision of a property for more than 20 years, it would be contrary to public policy to sanction co-ownership beyond the period set up by the law. Otherwise, the 20-year limitation expressly mandated by the Civil Code would be rendered meaningless.

(6) Prescription in Favor of a Co-owner Against the Other Co-owners (BAR)

- (a) As a *general rule*, one co-owner cannot acquire the whole property as against the other co-owners. This is why the others can demand, as a rule, *partition* at any time. But this is only true, so long as the co-owner concerned *expressly* or *impliedly* recognizes the co-ownership. (*Coronel v. CA, 205 SCRA 393 [1992]*).
- (b) If, however, certain requirements are complied with, a co-owner can become the *exclusive owner* of the others' shares by prescription. (*Casañas v. Rosello, 50 Phil. 97; Abella v. Abella, 40 O.G. 4th Supp. No. 8, 222; Cordova, et al. v. Cordova, et al., L-9936, Jan. 14, 1958*).
- (c) These conditions are:
 - 1) He must make *known* to the other co-owners that he is definitely *repudiating* the co-ownership and that he is claiming complete ownership over the entire property.
 - 2) The evidence of *repudiation* and *knowledge* on the part of the others must be clear and convincing.
 - 3) The other requirements of prescription — continuous, open, peaceful, public, adverse possession for the period of time required under the law must be present. (*See Santos v. Heirs of Crisostomo, 41 Phil. 342; see also Bargayo v. Camunot, 40 Phil. 857*).
 - 4) The period of prescription (Statute of Limitations) shall start to run only from such repudiation of co-ownership. (*Castillo v. Court of Appeals, L-18046, Mar. 31, 1964*).

However, in *Cordova, et al. v. Cordova, et al., L-9936, Jan. 14, 1958*, the Court in an *obiter* made the statement that in a *constructive* trust (as in the case of co-heirship where one heir or co-owner fraudulently deprives the rest of their shares), prescription does not run. This doctrine of *imprescriptibility of a constructive trust* was reiterated in *Juan v. Zuñiga*,

L-17044, Apr. 28, 1962 and in *Jacinto v. Jacinto, L-17955, L-17957, May 31, 1962* but is directly AT VARIANCE with the rule stated in *J.M. Tuason and Co. v. Magdangal, L-15539, Jan. 30, 1962*, and in the case of *Cornelio Alzona, et al. v. Gregoria Capunitan, et al., L-10228, Feb. 28, 1962*. It would seem that the BETTER RULE is that a *constructive or implied trust* can PRESCRIBE, as distinguished from an *express trust* which *cannot prescribe* (as long as in this latter case, the relationship between trustor and trustee is *recognized*).

Valdez v. Ologa
L-22571, May 25, 1973

ISSUE: Generally, does prescription run against a co-heir or a co-owner?

HELD: No. Generally, prescription does not adversely affect a co-owner or a co-heir.

[NOTE: However, under certain conditions, the co-ownership or the co-heirship may be repudiated; from this moment of repudiation, prescription begins to run.]

BAR

A, co-owner of property with B, succeeds in acquiring a Torrens Title in his own name to the property. Five years after B learned of A's action, B filed an action for partition of the property. May A plead prescription of B's cause of action? Explain your answer.

ANS.: Generally, we may say that A cannot plead prescription. *Firstly*, this is an instance of co-ownership, and the rule is clear that here, the right to demand partition ordinarily does not prescribe; hence, Art. 494 of the Civil Code states that "each co-owner may *demand at any time the partition* of the thing owned in common, insofar as his share is concerned." *Secondly*, assuming that an *implied trust* has been created, still such a trust *cannot*

prescribe, if we follow the ruling in *Cordova, et al. v. Cordova, et al.*, L-9936, Jan. 14, 1958 and *Juan v. Zuniga*, L-17955, L-17957, May 31, 1962. Thirdly, assuming that an implied trust *can prescribe* (the better rule it seems) as ruled in *Cornelio Alzona, et al. v. Gregoria Capunitan, et al.*, L-10228, Feb. 28, 1962, L-17044, Apr. 28, 1962 and *Jacinto v. Jacinto*, and other cases, still the period in the instant problem is *only* five (5) years, hence *negating* prescription.

Mariano, et al. v. Judge de Vega
GR 59974, Mar. 9, 1987

No prescription runs in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership. A co-owner cannot acquire the rights of his co-owners by prescription if he does not clearly repudiate the co-ownership and duly communicate such repudiation to his co-owners. The record in the Office of the Assessor is not the sufficient repudiation and communication contemplated by law. Neither may a co-owner's possession of the premises militate against his co-owner's claim. After all, co-owners are entitled to be in possession of the premises.

[NOTE: Mere receiving of rents or profits, payment of land taxes, and the construction of fences and buildings will *not* be considered sufficient proof of *exclusive* or *adverse* possession because a co-owner *as such* usually does these. There must indeed be a definite repudiation. *Laguna v. Levantino*, 40 O.G. (14th S 136).]

Mariategui v. CA
205 SCRA 337
(1992)

Prescription of an action for partition does not lie except when the co-ownership is properly repudiated by the co-owner. Thus, petitioner's registration of the properties in their names in 1971 did not operate as a valid repudiation of the co-ownership.

Salvador v. CA
60 SCAD 303
(1995)

Each co-owner may demand at any time the partition of the common property implying that an action to demand partition is imprescriptible or cannot be barred by laches.

- (d) Acts which may be considered adverse insofar as strangers are concerned, may not be considered adverse insofar as co-owners are concerned. In other words, it is harder for a co-owner to acquire by prescription the share of the others than to acquire properties of strangers. (*See Mangyao v. Ilan, 38 O.G. 62*). Thus, mere actual possession by one will not give rise to the inference that the possession was adverse. This is because a co-owner is after all entitled to possession of the property. (*See Art. 486*).

Art. 495. Notwithstanding the provisions of the preceding article, the co-owners cannot demand a physical division of the thing owned in common, when to do so would render it unserviceable for the use for which it is intended. But the co-ownership may be terminated in accordance with Article 498.

COMMENT:

Partition of an Essentially Indivisible Object

- (a) A good example of this article would be the partition of an automobile owned in common.
- (b) If to physically partition is not practicable, the co-ownership may end under Art. 498.

Art. 496. Partition may be made by agreement between the parties or by judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code.

COMMENT:**(1) Classification of the Various Kinds of Partition**

- (a) From the viewpoint of *cause*:
 - 1) extrajudicial (or conventional)
 - 2) judicial (when court approval is sought or when partition is made by the court)
- (b) From the viewpoint of *permanence*:
 - 1) provisional or temporary
 - 2) permanent
- (c) From the viewpoint of *subject matter*:
 - 1) partition of *real* property
 - 2) partition of *personal* property
- (d) From the viewpoint of *forms and solemnities*:
 - 1) partition in a judicial decree
 - 2) partition duly registered in the Registry of Property
 - 3) partition in a *public* instrument
 - 4) partition in a *private* instrument
 - 5) oral partition

(2) The Law that Governs Partition

- (a) First, the Civil Code.
- (b) Then, suppletorily, the Rules of Court. (Rule 69 of the Rules of Court provides for the “Partition”).

Sanchez v. CA
87 SCAD 463
(1997)

For a partition to be valid, Rule 74, Sec. 1 of the Rules of Court requires the *concurrence* of the following conditions:

- 1. the decedent left no will;

2. the decedent left no debts, or if there were debts left — all had been paid;
3. the heirs and liquidators are all of age, or if they are minors, the latter are represented by their judicial guardian or legal representatives; and
4. the partition was made by means of a public instrument or affidavit duly filed with the Register of Deeds.

[NOTE: The co-owners have the right to voluntarily terminate their existing co-ownership over the property thru an agreement subdividing the land among themselves. This right exists, even if their subdivision does not conform to the rules of the National Planning Commission as to the area of each lot, frontage, and width of alleys.

Reasons:

- (a) Said Rules are intended to regulate the subdivision of land for sale and *for building development* (not for a voluntary partitioning, or introduction of improvements by co-owners).
- (b) Secondly, even if the Rules of the Commission would ordinarily be applicable, still said Rules were promulgated under Executive Order 98 in 1946 (under the emergency powers of the President), and should therefore *not* prevail over the Civil Code which took effect later, that is, Aug. 30, 1950. (*Francisco, et al. v. National Urban Planning Commission, L-8465, Feb. 28, 1957*).]

(3) What a Person Desiring Judicial Partition of Real Estate Must Do

A person having the right to compel the partition of real estate should set forth in his complaint the NATURE and EXTENT of his TITLE; and an adequate DESCRIPTION of the real estate. He must join as DEFENDANTS all the other persons interested in the property. (*Sec. 1, Rule 69, Rules of Court*).

- (a) Unless all other co-owners and interested persons are

made defendants, the action will not prosper. (*Reyes v. Cordero*, 46 *Phil.* 658).

- (b) If a co-owner is dead, his *administrator* or *his heirs* may bring the action.
- (c) Insufficiency of description in the complaint may be cured even during the trial, not afterwards. (*Del Val v. Del Val*, 29 *Phil.* 534).
- (d) *A* and *B* were co-owners of land. There was a partition but *A* happened to be given more than her share. Many years later, *B* asked to be given the extra part but *A* claimed prescription in her favor. Is *A* correct?

HELD: Yes. True, there can generally be no prescription among co-owners (while they remain co-owners), but here, there has already been a partition (and the co-ownership has therefore ceased). *B* should have claimed the extra part earlier. (*Valentin Ynot v. Matea Initan*, [CA] 34 *O.G.* 3360).

- (e) An action for partition *cannot* be considered as one for the partition of the property owned in common even though it is so entitled and the prayer of the complaint is to this effect, if any party to the suit denies the *pro-indiviso* (undivided) character of the estate whose partition is sought and claims exclusive title thereto or to any part thereof. In such case, the action becomes one for the recovery of property insofar as the property claimed exclusively by any of the parties is concerned. (*Africa v. Africa*, 42 *Phil.* 934; *Hilario v. Dilla, et al.*, CA-GR 5266, Feb. 28, 1951). Indeed, it is imperative for the court to determine ownership before a proper adjudication of the partitioned property can be made. (*Brownell v. Bautista*, 50 *O.G. No.* 10, p. 4772).

(4) What Court Must Do If It Finds that the Plaintiff Has the Right to Demand Partition

If after the trial the court finds that the plaintiff has the right thereto, it shall order the partition of the real estate among all the parties in interest. Thereupon, the parties *may*, if they are able to *agree*, make the *partition among* themselves

by proper instruments of conveyance, and the *court* shall *confirm* the partition so agreed upon by all the parties, and such *partition*, together with the order of the court confirming the same, shall be recorded in the registry of deeds of the place in which the property is situated. (*Sec. 2, Rule 69, Rules of Court*). A final order decreeing partition and accounting may be appealed by any party aggrieved thereby. (*Ibid.*).

- (a) While a partition effected thru a public instrument would be desirable, still the law does *not* require expressly the constitution of said public instrument. If there can be an alienation (or sale) of the real rights in real properties by virtue of a *private instrument* or even *orally* (provided there has been full or partial execution or there is no *objection*), it is evident that with *greater reason* should oral partition or partition by virtue of a *private instrument* (of real estate) be allowed, considering that here there is no *change* of ownership, but a mere *designation* and *segregation* of the part that rightfully belongs to each co-owner. (*See Hernandez v. Andal, et al., 44 O.G. 8, p. 2681; see also Art. 1079, Civil Code*).
- (b) Incidentally, it should be noted that while a private document of sale of land is valid and binding between the parties, it is not sufficient *by itself* to convey title or any real right to the land. This is because acts and contracts which have for their object the creation, transmission, modification, or extinguishment of real right over immovable property, must appear in a public instrument. (*See Pornellosa, et al. v. Land Tenure Administration, et al., L-14040, Jan. 31, 1961*).

[NOTE: What the buyer must do would be to compel the seller to execute the needed public instrument. This is because the sale is valid and enforceable. (*See Art. 357, Civil Code*).]

(5) What Court Must Do If the Parties Fail to Agree on the Partition

If the parties are unable to agree upon the partition, the court shall appoint not more than *three competent* and *disin-*

terested persons as commissioners to make the *partition*, commanding them to set off to the plaintiff and to each party in interest such *part* and *proportion* of the property as the court shall direct. (*Sec. 3, Rule 69, Rules of Court*).

- (a) A decision directing partition is *not* final but interlocutory because it leaves something more to be done in the trial court for the complete disposition of the case, namely, the appointment of commissioners, the proceedings to be had before them, the submission of their report which, according to law, must be set for hearing. (*Tan Vda. de Zalदारriaga v. Enriquez, et al., L-13252, Apr. 29, 1961*).
- (b) The selection of the commissioners depends upon the court's discretion, and will not be altered by the appellate court, unless abuse of discretion is proved. (*Tell v. Tell, 48 Phil. 70*).

(6) Factors to be Considered in Making the Partition

In making the partition, the commissioners shall view and examine the real estate, after due notice to the parties to attend at such view and examination, and shall hear the parties as to their preference in the portion of the property to be set apart to them and the comparative value thereof, and shall set apart the same to the parties in lots or parcels as will be most advantageous and equitable, having due regard to the improvements, situation, and quality of the different parts of the land. (*Sec. 4, Rule 69, Rules of Court*). Of course, lands occupied adversely by strangers cannot be examined by said commissioners. (*Araullo v. Araullo, 3 Phil. 567*).

(7) Rule if a Physical Partition is Prejudicial

If to make a physical partition is prejudicial, the land will be given to one co-owner who should reimburse the rest, unless one asks that a public sale be made. (*See Sec. 5, Rule 69, Rules of Court*). The request for a sale is allowed to forestall collusion between the *assignee* and the commissioners regarding the land's value.

(8) Effectivity of the Partition Made by the Commissioners

The partition made by the commissioners will not be effective until approved by the Court. (*See Sec. 6, Rule 69, Rules of Court*). The court is allowed, of course, to approve, amend, or disapprove the report. New commissioners may even be appointed. (*See Sec. 7, Rule 69, Rules of Court*).

(9) Rule as to Who Pays the Costs

The parties shall pay the costs, including the compensation of the commissioners. (*See Sec. 10, Rule 69, Rules of Court*).

(10) Statement of the Proper Boundaries

If actual partition is made, the judgment shall state the proper boundaries. (*See Sec. 11, Rule 69, Rules of Court*).

(11) Necessity of Delivery

Delivery is a necessary and indispensable incident to carry into effect the purpose of partition. Therefore, each co-owner may be placed in possession of the lot adjudicated to him even if the court's decision on the partition be silent in this respect. (*Confessor, et al. v. Pelayo, et al., L-14352, Mar. 27, 1961*).

(12) Conversion of Partition Proceeding to One for the Settlement of an Estate

An ordinary action for partition cannot be converted into a proceeding for the settlement of the estate of a deceased person, without compliance with the procedure outlined in the Rules of Court (*Rules 78-89*), especially the provisions on publication and notice to creditors. (*Guico, et al. v. Bautista, et al., L-14921, Dec. 31, 1960*).

(13) Rule in Partition Sales

In partition sales conducted by authority of the court, if the sale is made by the sheriff for *cash*, and the bidder to whom the property was adjudicated fails to make immediate

payment, the sheriff may sell the property anew on the same day without readvertising, even after the hours of sale have elapsed. Partition sales become valid and binding only upon confirmation by the court, so that before such confirmation, the bidder acquires no contractual right thereunder. Hence, if the property is resold before the confirmation of the first sale, and the resale is duly confirmed by the court, the original purchaser is released from further liability upon his purchase, and cannot be held for the deficiency upon the resale. (*Tayengco v. Sideco-Hautea*, L-17385, Nov. 29, 1965).

(14) Effect of an Extrajudicial Partition that is Later On Approved by a Court of Competent Jurisdiction

Here, the partition renders almost conclusive questions of possession and ownership over the property — such that future judicial determination will generally be precluded. (*See Borja Vda. de Torres v. Encarnacion*, L-4681, July 31, 1951).

(15) Novation of Partition

Lucero v. Banaga
L-34224, Oct. 15, 1974

A partition may be novated as long as all the interested parties consent thereto. This is particularly so if such novation is required in the interest of justice and equity, and in order to facilitate the settlement of the estate.

(16) Effect of Laches

Ramos v. Ramos
L-19872, Dec. 3, 1974

FACTS: Forty (40) years after a partition had been made, plaintiffs complain that the partition that had been effected was prejudicial to their rights. Ordinarily, can their complaint still be successfully heard?

HELD: Ordinarily, they should not complain, in view of their laches or unexplained delay. After 40 years, it would be

very difficult to harness judicial compassion in behalf of their claim.

Heirs of Joaquin Teves v. CA
114 SCAD 181, 316 SCRA 632
(1999)

An action questioning the extrajudicial settlement instituted after more than 25 years from the assailed conveyance constitutes laches, which is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

(17) May Validity of a Partition Be Adjudged in a Land Registration Case?

Demetrio Manalo v. Hon. Herminio C.
Mariano, et al.
L-33850, Jan. 22, 1976

FACTS: Demetrio Manalo and his nephew Severino Manalo executed in 1960 a “*Kasulatan ng Hatian Ng Lupa*” (“Partition of Land”) dividing their common land between the two of them. On Mar. 6, 1968, Demetrio filed in the CFI (now RTC) of Rizal an application for the registration of the lots assigned to him in the partition, but Severino filed an opposition alleging that his signature to the “*Kasulatan*” had been fraudulently obtained by Demetrio. Severino filed a counter-petition for the registration in his own name of the lots involved. After hearing, the CFI (now RTC) ruled that the partition agreement was valid, and ordered the registration in the name of the applicant, Demetrio. When the judgment became final, the Court in 1971, directed the issuance of the corresponding decree. Now then, in 1970 (or prior to the termination of the land registration case), the children of Severino (without joining Severino) sued in the CFI (now RTC) a “petition” for the annulment of the “*Kasulatan*.” This case was assigned to another CFI (now RTC) branch in Rizal. Demetrio filed a Motion to Dismiss, but the CFI (now RTC) branch denied in 1971 the Motion on the

ground that the land registration case did *not* constitute *res judicata* because the land registration court, with its limited jurisdiction, could not resolve said issue. Demetrio filed the instant petition in the Supreme Court for *certiorari* and prohibition. The issue is whether the annulment of the partition agreement is barred by *res judicata*; otherwise stated, is the decision of the land registration court upholding the effectiveness of the “*Kasulatan*” valid?

HELD: The decision of the land registration court upholding the effectiveness of the “*Kasulatan*” is VALID, and therefore the action for annulment of the partition agreement is barred by *res judicata*. The decision in the land registration case, which is a proceeding *in rem*, is conclusive upon the title to the land, and is binding on the entire world. In fact, said decision is even a judgment *in personam* as against Severino Manalo, the oppositor therein. The contention of Severino that the CFI (now RTC), as a land registration court had no jurisdiction to pass upon the partition, is not well taken. The CFI (now RTC) is a court of general original jurisdiction including land registration. (*De Paula v. Escay, 97 Phil. 617*). Whether a particular matter should be resolved by the CFI (now RTC) in the exercise of its *general* or *limited* jurisdiction is in reality, not a jurisdictional question. It is in essence a procedural question involving a mode of practice “which may be waived.” (*Cunanan v. Amparo, 80 Phil. 227*). Thus, although a probate court may not decide a question of title yet if the parties submit that question to the probate court, and the interests of third parties are not impaired, the probate court may have jurisdiction to decide that issue. (*Pascual v. Pascual, 73 Phil. 56*). Here, since the parties agreed to submit the question of validity of the “*Kasulatan*,” the land registration court had jurisdiction. (*Franco v. Monte de Piedad, L-17610, Apr. 22, 1963*).

(18) Prescriptive Period if Partition is Void

Landayan v. Bacani L-30455, Sep. 30, 1982

The action to declare the nullity of a VOID extrajudicial partition does not prescribe. (*See also Art. 1409, Civil Code*).

Art. 497. The creditors or assignees of the co-owners may take part in the division of the thing owned in common and object to its being effected without their concurrence. But they cannot impugn any partition already executed, unless there has been fraud, or in case it was made notwithstanding a formal opposition presented to prevent it, without prejudice to the right of the debtor or assignor to maintain its validity.

COMMENT:

(1) Rights of Creditors With Respect to the Partition

Example:

A, B, and C, are the co-owners of a lot. They are indebted to X for the construction of certain improvements thereon. In the partition proceeding, X is allowed to participate. If X did not participate, he is not allowed to impugn a partition already executed unless —

- (a) *X was defrauded;*
- (b) *or X has previously presented a formal opposition to prevent it.*

However, if the co-owners believe that the partition had been made validly (without the creditor being prejudiced), they have the right to prove their contention. (*Art. 497*).

(2) Scope of ‘Creditors’

All creditors whether preferred or ordinary are included within the scope of “creditors” as used in this article, but they must have become creditors during the existence of the co-ownership, and NOT before or after. (*3 Manresa 528-529*).

(3) Problem (as to Participation of Assignees)

A, B, and C are co-owners. A sold his share to X. Who is entitled to participate in the partition, A or X?

ANS.: It depends.

- (a) If A had *sold* his **WHOLE share**, and has *delivered* same (such as when X has been put in possession of the land in place of A, with the result that X now has a **REAL** right over the property), then it is **NOT A** who should participate but X. (But in this case, X is participating not as assignee but in his own right, as **CO-OWNER**, with B and C.)
- (b) If A had sold only part of his share, or even if he sold his *entire* share, he has *not yet delivered* same to X (such that X does not have yet a real right, but only a *personal right* against A), then both A and X are allowed to participate in the partition, together with B and C. A will participate as co-owner, and X as “*assignee*,” as the term is used in this article. (See *Lopez v. Martinez*, 5 Phil. 567).

(4) Notice to Creditors and Assignees

Since the law grants them the right to participate in the partition, it is understood that notice must be given them, although the law does not expressly so provide. Of course, it will be their fault if they do not appear after such notification and ordinarily, they will not be allowed to impugn the partition, unless of course **FRAUD** against them has been committed. (See *De Santos v. Bank of the Phil. Islands*, 58 Phil. 784).

De Santos v. Bank of the Phil. Islands 58 Phil. 784

FACTS: A and B partitioned their common property between themselves. This was approved by the cadastral court. C, a creditor of A, was able to prove that he (C) had *not* been notified of such proceedings, and is now therefore asking the Supreme Court for the proper remedy. What should be done?

HELD: The Supreme Court should remand (return) the case to the cadastral court in order to permit C to file the objections he may deem convenient.

Art. 498. Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.

COMMENT:**(1) Partition of an Essentially Indivisible Object**

- (a) Example of an object essentially indivisible: an automobile.
- (b) The termination of the co-ownership here is made not physically but by the law; hence, this article refers to what is called a “legal or juridical dissolution.”

(2) Procedure for the ‘Legal’ Partition

- (a) First, give the whole to one co-owner who will now be required to indemnify the rest.
- (b) If this is *not* agreed upon (as when nobody wants to get it, or more than one desire it), there must be a sale (*public* sale, such as an auction or a *private* sale). Of course, strangers are allowed to purchase. (*See 3 Manresa 514-515*).

[NOTE: The procedure applies whether the property is real or personal. (*See Garcia de Lara v. Gonzales de Lara, 2 Phil. 294*). There is no right of legal redemption here for the co-ownership has ceased.]

(3) Applicable Also to Objects Essentially Divisible

Although the article seemingly refers only to a case when the property is *essentially indivisible*, still there is nothing wrong with applying same to an object that is *essentially divisible* (like land). (*See Lara v. Lara, 2 Phil. 294*). Under Sec. 5, Rule 69, Rules of Court, regarding partition of real estate: “When it is made to appear to the commissioners that the real estate, or a portion thereof, *cannot* be divided *without* prejudice to the interests of the parties, the court may order it *assigned* to one of the parties *willing* to take the same, provided he pays to the other parties such amounts as the commissioners deem equitable, *unless one* of the interested parties asks that the property be sold instead of being so assigned, in which case the court shall order the commissioners to sell the real estate at public sale under such conditions and within such time as the court may determine.”

Ramirez v. Ramirez
L-22621, Sep. 29, 1967

FACTS: A lot, around 1,561 sq.m. in area, of Plaza Santa Cruz and Escolta in Manila was owned in common by 6 persons, one of whom desired a physical segregation of his 1/6 share. The rest objected, on the ground that the lot being commercial, its value would be greatly impaired should there be a physical partition.

HELD: The physical segregation of the 1/6 share should be allowed. It is doubtful if the proportionate value of the remaining 5/6 (around 1,300 sq. meters) would be decreased, considering its very favorable commercial position. Hence, the lot involved should not be considered indivisible.

Art. 499. The partition of a thing owned in common shall not prejudice third persons, who shall retain the rights of mortgage, servitude, or any other real rights belonging to them before the division was made. Personal rights pertaining to third persons against the co-ownership shall also remain in force, notwithstanding the partition.

COMMENT:

(1) Protection of Third Person's Rights

- (a) Note that both *real* and *personal* rights are protected.
- (b) *Example:*

A, B, and C were co-owners of a parcel of land mortgaged to *M*. If *A, B, and C* should physically partition the property, the mortgage in *M's* favor still covers all the three lots, which together, formerly constituted one single parcel. If *A* alone had contracted an unsecured obligation, he would of course be the only one responsible.

(2) Meaning of 'Third Persons' in this Article

All those who did not in any way participate or intervene in the partition are considered "third persons." (*3 Manresa 54; see also Gonzaga v. Martinez, 9 Phil. 489*). Thus, also a judg-

ment obtained by one co-owner against another co-owner will not adversely affect a purchaser of the latter's portion, if such purchase had been made PRIOR to the judgment and *without notice* of the controversy. (*See Vera v. Acoba, L-5973, Mar. 30, 1954*).

(3) Interests of All Persons Must Be Considered

When the court is asked to help in a partition, the interests of all must be considered so that reason and justice would prevail. (*Gov't. v. Abadilla, 53 Phil. 23*).

Art. 500. Upon partition, there shall be a mutual accounting for benefits received and reimbursements for expenses made. Likewise, each co-owner shall pay for damages caused by reason of his negligence or fraud.

COMMENT:

Effects of Partition

- (a) mutual *accounting* for benefits received. (*Art. 500*).
- (b) mutual *reimbursement* for expenses. (*Art. 500*).
- (c) indemnity for *damages* in case of *negligence or fraud*. (*Art. 500*).
- (d) reciprocal warranty for
 - 1) defects of title (or eviction);
 - 2) quality (or hidden defects). (*Art. 501*).

[NOTE: No warranty if there is a contrary stipulation or if the eviction is due to fault of co-owner evicted. (See Arts. 1092-1093).]

- (e) each former co-owner is deemed to have had *exclusive* possession of the part allotted to him for the entire period during which the co-possession lasted. (*Art. 543*).

[If he buys the shares of the others, this presumption of exclusive possession does not refer to said shares. (Ramos Silos v. Luisa Ramos, L-7546, June 30, 1955).]

- (f) partition confers upon each, the exclusive title over his respective share. (*See Art. 1091*).

Del Banco v. IAC
GR 72694, Dec. 1, 1987

Where the co-owners agreed not only in the sharing in proportion of the benefits derived from the property but also in the distribution of the property — each co-owner being allocated 1/4 portion of the property — each of the co-owners is a co-owner of the whole, and in this sense, over the whole, he exercises the right of dominion, but he is at the same time the sole owner of a portion (in this case, 1/4) of the property which is truly abstract, because until physical division is effected, such portion is merely an ideal share, not concretely determined.

A co-owner cannot, without the conformity of the other co-owners or a judicial decree of partition issued pursuant to the provision of Rule 69 of the Rules of Court, adjudicate to himself in fee simple, a determinate portion of the lot owned in common, as his share therein, to the exclusion of other co-owners. In the law of co-ownership, both under the present Civil Code, as in the Code of 1889, no individual co-owner can claim any definite portion thereof. It is therefore of no moment that some of the co-owners have succeeded in securing cadastral titles in their names to some portions of the property occupied by them.

It is not enough that the co-owners agree to subdivide the property. They must have a subdivision plan drawn in accordance with which they take actual and exclusive possession of their respective portions in the plan and titles issued to each of them accordingly. The mechanics of actual partition should follow the procedure laid down in Rule 69 of the Rules of Court.

Actual possession and enjoyment of some portions of the property by some of the co-owners cannot be considered repudiation of the co-ownership. Where the property was purchased by the original co-owners as a common

property and it has not been proven that the same had been partitioned among them or among their heirs, a co-owner's possession of his share is co-possession which is linked to the possession of the other co-owners.

Art. 501. Every co-owner shall, after partition, be liable for defects of title and quality of the portion assigned to each of the other co-owners.

COMMENT:

(1) Reciprocal Warranty

Example: *A* and *B*, co-owners, partitioned their land. Later, *C*, a stranger was able to prove that he really owned the lot belonging to *B*. Should *B* alone bear the loss?

ANS.: No. Both *A* and *B* must bear the loss in that *A* must give half of his portion to *B* because there is a reciprocal or mutual warranty against eviction.

(2) How Co-ownership Is Extinguished

- (a) judicial partition
- (b) extrajudicial partition
- (c) when by prescription, one co-owner has acquired the whole property by adverse possession as against all the others, and repudiating unequivocally the co-ownership of the other
- (d) when a stranger acquires by prescription the thing owned in common
- (e) merger in one co-owner
- (f) loss or destruction
- (g) expropriation (here the indemnity will be distributed accordingly).

Title IV. — SOME SPECIAL PROPERTIES

Chapter 1

WATERS

Section 1

OWNERSHIP OF WATERS

Art. 502. The following are of public dominion:

- (1) Rivers and their natural beds;**
- (2) Continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves;**
- (3) Waters rising continuously or intermittently on lands of public dominion;**
- (4) Lakes and lagoons formed by nature on public lands, and their beds;**
- (5) Rain waters running through ravines or sand beds, which are also of public dominion;**
- (6) Subterranean waters on public lands;**
- (7) Waters found within the zone of operation of public works, even if constructed by a contractor;**
- (8) Waters rising continuously or intermittently on lands belonging to private persons, to the State, to a province, or to a city or a municipality from the moment they leave such lands;**
- (9) The waste waters of fountains, sewers and public establishments.**

COMMENT:**(1) Nature of Public Waters**

Public waters are for the use of the general public (*Bautista v. Alarcon*, 3 *Phil.* 631), therefore, if a river runs thru two municipalities, neither may monopolize its use, or obstruct its use by another municipality by, for example, the construction of a dam. The dam can be ordered removed. (*Mangaldan v. Manaoag*, 38 *Phil.* 455).

(2) Rules as to Rivers

A river, whether navigable or not, is of public dominion, since the law makes no distinction, hence a non-navigable river cannot be acquired by prescription. (*See Com. v. Meneses*, 38 *O.G.* 2839).

(3) Some Doctrines

- (a) A creek is merely an arm of a river, and must, therefore, be classified as property of public dominion. (*See Mercado v. Mun. Pres. of Macabebe*, 59 *Phil.* 592).
- (b) Because rivers belong to the public, dams and other constructions thereon cannot be made without proper authorization. (*See Meneses v. Commonwealth*, 40 *O.G.* 7 *Supp.* 41).
- (c) A “spring” is a place thru which water comes up from the earth by the operation of natural resources, although originally artificially opened by man. (56 *Am. Jur.* 612).
- (d) *Esteros* are of public dominion, and are, therefore, non-registerable. (*Insular Gov’t. v. Naval*, [CA] 40 *O.G.* 11th *Supp.* 59). No exclusive right thereto may thus be obtained. (*Ortiz Luis v. Insular Gov’t.*, 19 *Phil.* 437).
- (e) A “stream” located within private land is still *property of public dominion* (hence, public water), even if the Torrens Title of the land does not show the existence of said “stream.” (*See Taleon v. Sec. of Public Works and Communications*, L-24281, May 16, 1967).

(4) Case**Republic v. Lat Vda. de Castillo
GR 69002, Jan. 30, 1988**

Lots which had always formed part of a lake, washed and inundated by the waters thereof are not subject to registration, being outside the commerce of men. Since the lots are of public domain (*Art. 502, par. 4, Civil Code*), the registration court does not have jurisdiction to adjudicate said lots as private property, hence *res judicata* does not apply.

Art. 503. The following are of private ownership:

(1) Continuous or intermittent waters rising on lands of private ownership, while running through the same;

(2) Lakes and lagoons, and their beds, formed by Nature on such lands;

(3) Subterranean waters found on the same;

(4) Rain waters falling on said lands, as long as they remain within the boundaries;

(5) The beds of flowing waters, continuous or intermittent, formed by rain water and those of brooks, crossing lands which are not of public dominion.

In every drain or aqueduct, the water, bed, banks and floodgates shall be considered as an integral part of the land or building for which the waters are intended. The owners of lands, through which or along the boundaries of which the aqueduct passes, cannot claim ownership over it, or any right to the use of its bed or banks, unless the claim is based on titles of ownership specifying the right or ownership claimed.

COMMENT:**(1) Are There Really Private Waters?**

It would seem under Art. 503 that there are *private waters*, and yet the Constitution provides that all "water ... belong to the State." (*Sec. 2, Art. XII, 1987 Constitution*). Of course, it

must be borne in mind that a law remains constitutional until declared otherwise by the competent court. It is believed that to be constitutional, this should apply only to existing water rights prior to the Constitution. (*See Sec. 2, Art. XII, 1987 Constitution; Memorandum of the Code Commission*).

Waters rising on private lands are private waters, until they go to lands of public dominion, in which case they become public waters. (*Art. 502, No. 8*).

Waste waters of private establishments are not public waters. (*Art. 502, No. 9*).

Under the new Water Code, there are no private waters.

(2) Creeks

A *creek* is really property of public dominion, being an arm or extension of a river. But *even granting* that it is private, still, if used by the general public for a long time (*1906-1928*), it has *ceased* to be private, and the alleged owner or claimant has no right to prevent the public from using the same. (*Mercado v. Mun. Pres. of Macabebe, 59 Phil. 592*).

(3) Foreshore Land

Republic v. Imperial, Jr.
103 SCAD 380, 303 SCRA 127
(1999)

Foreshore land is that part of the land which is between high and low water and left dry by the flux and reflux of the tides. It is a strip of land that lies between the high and low water marks and is alternatively wet and dry according to the flow of the tide.

Section 2

THE USE OF PUBLIC WATERS

Art. 504. The use of public waters is acquired:

- (1) By administrative concession;**
- (2) By prescription for ten years.**

The extent of the rights and obligations of the use shall be that established, in the first case, by the terms of the concession, and, in the second case, by the manner and form in which the waters have been used.

COMMENT:

(1) Rules that Govern the Use of Public Waters

- (a) If acquired by administrative concession — the *terms of the concession*.
- (b) If acquired by prescription for 10 years — the *manner and form* of using the waters (under the old Code, the period was 20 years). (See also periods under the Irrigation Law).

(2) Governing Law for an Administrative Concession

Secs. 14-17 of the Irrigation Law (*Act 2152 as amended by Act 3523*) govern the procedure for obtaining an administrative concession. An application therefore must be made to the Secretary of Public Works and Communications thru the Director of Public Works.

(3) Order of Preference in Obtaining a Concession

In obtaining a concession, the order of preference is as follows:

- (a) The first to appropriate is given a better right to ask for a concession.
- (b) When the claimants appropriated at the same time, preference is given in accordance with the *use* intended, in this order:
 - 1) domestic use (like drinking, cooking)
 - 2) agricultural use or power development for agricultural purposes
 - 3) industrial uses
 - 4) fishponds

- 5) mining uses or milling connected with mining purposes. (*See Sec. 3, Act 2152*).

[NOTE: As a rule, property of *public dominion* may not be acquired by prescription. This article on *public waters* gives an exception, insofar as their use is concerned.]

[NOTE: To obtain a concession for water, there must be a legislative franchise. (*See Act 4062*).]

(4) Fishery Privileges

The laws that govern the award of fishery privileges in municipal waters are the provisions of Secs. 67 and 69 of Act 4003, as amended by Commonwealth Acts 115 and 471. The pertinent provisions in the Revised Adm. Code of 1917 (*Secs. 2321, 2323, and 2319*) have been thereby modified by Act 4003, as amended. (*Vicente San Buenaventura v. Municipality of San Jose, et al., L-19309, Jan. 30, 1965*).

(5) Case

Honorio Bulao v. CA, et al. GR 101983, Feb. 1, 1993

FACTS: The case at bar involves water and water rights and is thus a water dispute. The proper authority to try and decide the case is the National Water Resources Council pursuant to Article 88 of Presidential Decree 1067 providing as follows: “The Council shall have original jurisdiction over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters within the meaning and context of the provision of this Code.”

The petitioner invokes in this connection the cases of *Abe-abe v. Manta* (90 SCRA 526) and *Tanjay Water District v. Gabaton* (172 SCRA 253). In the *first* case, the petitioners sought a judicial confirmation of their prior vested right under Article 504 of the Civil Code to use the water of Anibungan, Albay and Tajong Creeks to irrigate their ricelands upstream. They also wanted to enjoin the private respondent from using

the water of the creeks at night to irrigate his riceland located downstream. In the *second* case, the court was asked to prevent the Municipality of Pamplona from interfering with the management of the Tanjay Waterworks System. It was held in both cases that jurisdiction pertained to the National Water Resources Council as the issues involved were the appropriation, utilization and control of water.

HELD: These cases have no application to the instant controversy. It is clear from a reading of the private respondent's complaint in Civil Case 70 that it is an action for damages predicated on a *quasi-delict*. A *quasi-delict* has the following elements: a) the damage suffered by the plaintiff; b) the act or omission of the defendant supposedly constituting fault or negligence; and c) the causal connection between the act and the damage sustained by the plaintiff.

All these elements are set out in the private respondent's complaint, specifically in paragraphs 5, 7 and 8 thereof. The damage claimed to have been sustained by private respondent consists of his loss of harvest and consequent loss of income. The act constituting the fault is the alleged malicious construction of a dam and diversion of the flow of water by the petitioner. The said acts allegedly caused the interruption of water passing through petitioner's land towards respondent's lands, resulting in the destruction of the respondent's rice plants. The averments of the complaint plainly make out a case of quasi-delict that may be the basis of an action for damage. The Court also notes that the title of the complaint is "Civil Case 70 – Damages." Although not necessarily determinative of the nature of the action, it would nevertheless indicate that what the private respondent contemplated was an action for damages. It is pointed out, however, that paragraph (a) of the prayer for relief seems to convey the impression that the private respondent is asking for the right to use the irrigation water and for the recognition by the petitioner of an easement on his land. Would this change the character of Civil Case 70?

We have consistently held that the allegations of facts set forth in the complaint and not the prayer for relief will determine the nature of an action. In any case, the injury has been done and that is what the private respondent was suing

about in his action for damages. The relief he prayed for did not change Civil Case No. 70 into a water dispute coming under the jurisdiction of the National Water Research Council. It follows that since the court *a quo* had jurisdiction over the action instituted by the private respondent, its decision, which has already become final and executory, can no longer be disturbed.

Art. 505. Every concession for the use of waters is understood to be without prejudice to third persons.

COMMENT:

The Concession Should Not Prejudice Third Persons

- (a) The terms of the concession should not jeopardize vested rights. (*Sideco v. Sarena*, 41 Phil. 80; Art. 505).
- (b) *Example:*

A person given a concession should not build a dam that would divert the flow of the waters and cause damage to others. The injured party has the right to ask for the removal of the dam. This is true, even if the injury is only expected and not yet actual. (*Eusebio v. Aguas*, 47 Phil. 567).

Art. 506. The right to make use of public waters is extinguished by the lapse of the concession and by non-user for five years.

COMMENT:

(1) Extinguishment of the Right to Make Use of Public Waters

- (a) It would seem that even if there be a concession, non-user for five years would extinguish the right to make use of public waters. Of course, the lapse of the concession is also another way to end the use of the public waters involved.

- (b) Non-user applies also when the use was first acquired by prescription.

(2) Meaning of Non-User

Non-user is *total* or *partial* abandonment. Partial abandonment results in a lawful use only of that part not yet abandoned. (*See 56 Am. Jur. 761*). Fortuitous events excuse non-users. (*Op. Atty. Gen. Mar. 9, 1922*).

(3) Reversion of the Waters

Non-user reverts the waters to *publici juris*. (*See Sec. 36, Act 2152*).

Section 3

THE USE OF WATERS OF PRIVATE OWNERSHIP

Art. 507. The owner of a piece of land on which a spring or brook rises, be it continuous or intermittent, may use its waters while they run through the same, but after the waters leave the land they shall become public, and their use shall be governed by the Special Law of Waters of August 3, 1866, and by the Irrigation Law.

COMMENT:

(1) Conversion of Waters When They Leave Private Lands

Example:

On the land of *A*, waters rise. Said waters may be used by *A*, but after they leave the land, said waters belong to the public (*Art. 507*) unless they enter a private estate instead, in which case, said estate will have their use until they finally leave said private estate. (*Sansano v. Castro, 40 O.G. 15, p. 227*).

(2) Riparian Ownership

Riparian rights flow out of riparian ownership (*56 Am. Jur. 727*). To be riparian, land must have actual contact with the water, not be merely proximate to it. (*56 Am. Jur. 731*).

(3) Riparian Rights

- (a) right to the natural flow of the waters
- (b) right of access to and use of the waters
- (c) right of accretion. (*See 56 Am. Jur. 726*).

(4) Governing Laws

- (a) Spanish Law of Waters of Aug. 3, 1866
- (b) Irrigation Law (*Act 2152, as amended*)
- (c) Civil Code.

Art. 508. The private ownership of the beds of rain waters does not give a right to make works or constructions which may change their course to the damage of third persons, or whose destruction, by the force of floods, may cause such damage.

COMMENT:**Prohibition to Construct Injurious Works**

The Article explains itself. Note that damage to third persons is never allowed.

Art. 509. No one may enter private property to search waters or make use of them without permission from the owners, except as provided by the Mining Law.

COMMENT:**Private Property Cannot Generally Be Entered Without Permission**

The Article explains itself.

Art. 510. The ownership which the proprietor of a piece of land has over the waters rising thereon does not prejudice the rights which the owners of lower estates may have legally acquired to the use thereof.

COMMENT:**(1) Owners of Lower Estates Should Not Be Prejudiced***Example:*

There are neighbors: *A*, a new owner who occupies the higher estate; and *B*, who occupies the lower one. Waters rise on *A*'s estate. Now, although *A* is the owner of said waters, still he cannot divert the course of the waters in such a way as to prevent *B* from using said waters in case *B* had already previously acquired the right to use the same. Vested rights are protected by the law. (*See Sideco v. Sarenas, 41 Phil. 80.*)

(2) Pollution of Waters

Pollution of the waters is *actionable*, unless due to *force majeure*. (*56 Am. Jur. 826.*)

Art. 511. Every owner of a piece of land has the right to construct within his property, reservoirs for rain waters, provided he causes no damage to the public or to third persons.

COMMENT:**Right to Construct Reservoirs for Rain Waters**

The Article explains itself.

Section 4**SUBTERRANEAN WATERS**

Art. 512. Only the owner of a piece of land, or another person with his permission, may make explorations thereon for subterranean waters, except as provided by the Mining Law.

Explorations for subterranean waters on lands of public dominion may be made only with the permission of the administrative authorities.

COMMENT:**(1) Explorations for Subterranean Waters**

Example:

A wants to make explorations for subterranean waters beneath the lot of *B*, and beneath a lot of public dominion. Has *A* the right to do so?

ANS.: Regarding *B*'s lot, *A* should ask *B*'s permission except if he is already allowed to make explorations under the Mining Law. Regarding the *public* lot, *A* should request permission from the proper administrative authorities.

(2) Classes of Subterranean Waters

There are 2 classes of subterranean waters:

- (a) *flowing water* — more or less permanent; definite course.
- (b) *percolating water* — no definite course or channel, like rain water seeping thru the soil. (67 *C.J.* 833).

Art. 513. Waters artificially brought forth in accordance with the Special Law of Waters of August 3, 1866, belong to the person who brought them up.

COMMENT:**(1) Waters Artificially Brought Forth**

Example: (In accordance with the Special Law of Waters of Aug. 3, 1866). *A* artificially brought up certain waters. He owns said waters, so they are of private dominion. The bringing up is usually done thru wells. (56 *Am. Jur.* 616).

(2) Permitting Another to Construct a Well on Your Land

If you allow another to incur expenses by permitting him to bore a well on your own land, you cannot later on refuse permission for him to use the well without reimbursing him therefor, otherwise fraud will be encouraged. As a matter of fact, you can be considered in *estoppel*. (See *Mirasol v. Mun. of Tabaco*, 43 *Phil.* 610).

(3) Digging Up of Artesian Wells

Artesian wells may be dug provided that public waters are not diverted from their natural course, otherwise the Government can step in. (*See Art. 49, par. 2, Spanish Law of Waters*). No well may be dug within mining property unless indemnity is given. (*Art. 50, pars. 1 and 2, Spanish Law of Waters*).

Art. 514. When the owner of waters artificially brought to the surface abandons them to their natural course, they shall become of public dominion.

COMMENT:**Effect of Abandoning the Waters to their Natural Course**

The Article explains itself.

Section 5**GENERAL PROVISIONS**

Art. 515. The owner of a piece of land on which there are defensive works to check waters, or on which, due to a change of their course, it may be necessary to reconstruct such works, shall be obliged, at his election, either to make the necessary repairs or construction himself, or to permit them to be done, without damage to him, by the owners of the lands which suffer or are clearly exposed to suffer injury.

COMMENT:**(1) The Repair of Dangerous Defensive Works on Another's Land***Example:*

A, on his lot, constructed a dam to check certain waters. But the dam is now in great need of repair. May the adjoining owners demand the repair?

ANS.: Yes, because their properties may be damaged. A can be obliged to either:

- (a) repair the dam himself,
- (b) or let the others repair the dam.

Cost will be borne by those who would be benefited. (*Art. 515*). No damage must be caused on A's land.

(2) Alternatives are Exclusive

The alternatives given in Art. 515 are exclusive. So lower estates cannot invade upper estates and make diversions all by themselves. (*Osmeña v. Camara, 38 O.G. 2773*).

Art. 516. The provisions of the preceding article are applicable to the case in which it may be necessary to clear a piece of land of matter, whose accumulation or fall may obstruct the course of the waters, to the damage or peril of third persons.

COMMENT:

The Clearance of Dangerous Matter

On A's lot is a large deposit of matter. A's neighbors feel that the deposit might fall, and hence, might obstruct the course of the waters which they need. May the neighbors ask for the removal of said accumulated matter?

ANS.: Yes, A can be obliged to either:

- (a) clear the land himself,
- (b) or have the land cleared by others. (*Art. 516*). But the neighbors cannot take matters into their own hands and just construct a canal on A's estate, for their only recourse is to exercise the option. (*Osmeña v. Camara, 38 O.G. p. 2773*).

Art. 517. All the owners who participate in the benefits arising from the works referred to in the two preceding articles, shall be obliged to contribute to the expenses of

construction in proportion to their respective interests. Those who by their fault may have caused the damage shall be liable for the expenses.

COMMENT:

Proportional Contributions for the Needed Expenses

The Article explains itself. Note the proportionate contribution.

Art. 518. All matters not expressly determined by the provisions of this Chapter shall be governed by the special Law of Waters of August 3, 1866, and by the Irrigation Law.

COMMENT:

(1) Rule in Case of Conflict Between the Civil Code and the Special Laws Regarding Waters

Note that in case of conflict, the Civil Code prevails.

(2) Resume of Laws Governing Waters

- (a) Civil Code of the Philippines.
- (b) Spanish Law of Waters of Aug. 3, 1866. (*This was extended to the Philippines on Sep. 24, 1871*).

[NOTE: The Spanish Law of Waters of June 13, 1879 was never in force in the Philippines. (*See Montano v. Insular Gov't., 12 Phil. 572*).]

- (c) The Irrigation Act (*Act 2152*), as amended.
- (d) The Water Power Act. (*Act 4062*).
- (e) Sec. 2, Art. XII, 1987 Constitution.

(3) Presidential Decree 1067

A DECREE INSTITUTING A WATER CODE, THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIA-

**TION, UTILIZATION, EXPLOITATION, DEVELOPMENT,
CONSERVATION AND PROTECTION OF WATER RE-
SOURCES.**

WHEREAS, Article XIV, Section 8 of the New Constitution of the Philippines provides, *inter alia*, that all waters of the Philippines belong to the State;

WHEREAS, existing water legislations are piecemeal and inadequate to cope with increasing scarcity of water and changing patterns of water use;

WHEREAS, there is a need for a Water Code based on rational concepts of integrated and multi-purpose management of water resources and sufficiently flexible to adequately meet future developments;

WHEREAS, water is vital to national development and it has become increasingly necessary for government to intervene actively in improving the management of water resources;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree the enactment of the Water Code of the Philippines of 1976, as follows:

Chapter I

**DECLARATION OF OBJECTIVES
AND PRINCIPLES**

Article 1. This Code shall be known as "*The Water Code of the Philippines.*"

Art. 2. The objectives of this Code are:

a. To establish the basic principles and framework relating to the appropriation, control and conservation of water resources to achieve the optimum development and rational utilization of these resources;

b. To define the extent of the rights and obligations of water users and owners including the protection and regulation of such rights;

c. To adopt a basic law governing the ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources and rights to land related thereto; and

d. To identify the administrative agencies which will enforce this Code.

Art. 3. The underlying principles of this Code are:

a. All waters belong to the State.

b. All waters that belong to the State can not be the subject of acquisitive prescription.

c. The State may allow the use or development of waters by administrative concession.

d. The utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the National Water Resources Council, hereinafter referred to as the Council.

e. Preference in the use and development of waters shall consider current usages and be responsive to the changing needs of the country.

Art. 4. Waters, as used in this Code, refers to water under the ground, water above the ground, water in the atmosphere and the waters of the sea within the territorial jurisdiction of the Philippines.

Chapter II

OWNERSHIP OF WATERS

Art. 5. The following belong to the State:

a. Rivers and their natural beds;

b. Continuous or intermittent waters of springs and brooks running in their natural beds and the beds themselves;

c. Natural lakes and lagoons;

d. All other categories of surface waters such as water flowing over lands, water from rainfall whether natural

or artificial, and water from agricultural runoff, seepage and drainage;

- e. Atmospheric water;
- f. Subterranean or ground waters; and
- g. Seawater.

Art. 6. The following waters found on private lands also belong to the State:

- a. Continuous or intermittent waters rising on such lands;
- b. Lakes and lagoons naturally occurring on such lands;
- c. Rain water falling on such lands;
- d. Subterranean or ground waters; and
- e. Waters in swamps and marshes.

The owner of the land where the water is found may use the same for domestic purposes without securing a permit, provided that such use shall be registered, when required by the Council. The Council, however, may regulate such use when there is wastage, or in times of emergency.

Art. 7. Subject to the provisions of this Code, any person who captures or collects water by means of cisterns, tanks, or pools shall have exclusive control over such water and the right to dispose of the same.

Art. 8. Water legally appropriated shall be subject to the control of the appropriator from the moment it reaches the appropriator's canal or aqueduct leading to the place where the water will be used or stored and, thereafter, so long as it is being beneficially used for the purposes for which it was appropriated.

Chapter III

APPROPRIATION OF WATERS

Art. 9. Waters may be appropriated and used in accordance with the provisions of this Code.

Appropriation of waters, as used in this Code, is the acquisition of rights over the use of waters or the taking or diverting of waters from a natural source in the manner and for any purpose allowed by law.

Art. 10. Water may be appropriated for the following purposes:

- a. Domestic;
- b. Municipal;
- c. Irrigation;
- d. Power generation;
- e. Fisheries;
- f. Livestock raising;
- g. Industrial;
- h. Recreational; and
- i. Other purposes.

Use of water for domestic purposes is the utilization of water for drinking, washing, bathing, cooking or other household needs, home gardens, and watering of lawns or domestic animals.

Use of water for municipal purposes is the utilization of water for supplying the water requirements of the community.

Use of water for irrigation is the utilization of water for producing agricultural crops.

Use of water for power generation is the utilization of water for producing electrical or mechanical power.

Use of water for fisheries is the utilization of water for the propagation and culture of fish as a commercial enterprise.

Use of water for livestock raising is the utilization of water for large herds or flocks of animals raised as a commercial enterprise.

Use of water for industrial purposes is the utilization of water in factories, industrial plants and mines, including the use of water as an ingredient of a finished product.

Use of water for recreational purposes is the utilization of water for swimming pools, bath houses, boating, water skiing, golf courses and other similar facilities in resorts and other places of recreation.

Art. 11. The State, for reasons of public policy, may declare waters not previously appropriated, in whole or in part, exempt from appropriation for any or all purposes and, thereupon, such waters may not be appropriated for those purposes.

Art. 12. Waters appropriated for a particular purpose may be applied for another purpose only upon approval of the Council and on condition that the new use does not unduly prejudice the rights of other permittees, or require an increase in the volume of water.

Art. 13. Except as otherwise herein provided, no person, including government instrumentalities or government-owned or controlled corporations, shall appropriate water without a water right, which shall be evidenced by a document known as a water permit.

Water right is the privilege granted by the government to appropriate and use water.

Art. 14. Subject to the provisions of this Code concerning the control, protection, conservation, and regulation of the appropriation and use of waters, any person may appropriate or use natural bodies of water without securing a water permit for any of the following:

- a. Appropriation of water by means of handcarried receptacles; and
- b. Bathing or washing, watering or dipping of domestic or farm animals, and navigation of watercrafts or transportation of logs and other objects by flotation.

Art. 15. Only citizens of the Philippines, of legal age, as well as juridical persons, who are duly qualified by law to exploit and develop water resources, may apply for water permits.

Art. 16. Any person who desires to obtain a water permit shall file an application with the Council who shall make known said application to the public for any protests.

In determining whether to grant or deny an application, the Council shall consider the following: protests filed, if any; prior permits granted; the availability of water; the water supply needed for beneficial use; possible adverse effects; land-use economics; and other relevant factors.

Upon approval of an application, a water permit shall be issued and recorded.

Art. 17. The right to the use of water is deemed acquired as of the date of filing of the application for a water permit in case of approved permits, or as of the date of actual use in a case where no permit is required.

Art. 18. All water permits granted shall be subject to conditions of beneficial use, adequate standards of design and construction, and such other terms and conditions as may be imposed by the Council.

Such permits shall specify the maximum amount of water which may be diverted or withdrawn, the maximum rate of diversion or withdrawal, the time or times during the year when water may be diverted or withdrawn, the point or points of diversion or location of wells, the place of use, the purposes for which water may be used, and such other requirements the Council deems desirable.

Art. 19. Water rights may be leased or transferred in whole or in part to another person with prior approval of the Council, after due notice and hearing.

Art. 20. The measure and limit of appropriation of water shall be beneficial use.

Beneficial use of water is the utilization of water in the right amount during the period that the water is needed for producing the benefits for which the water is appropriated.

Art. 21. Standards of beneficial use shall be prescribed by the Council for the appropriator of water for different purposes and conditions, and the use of waters which are appropriated shall be measured and controlled in accordance therewith.

Excepting those for domestic use, every appropriator of water shall maintain water control and measuring devices,

and keep records of water withdrawal. When required by the Council, all appropriators of water shall furnish information on water use.

Art. 22. Between two or more appropriators of water from the same sources of supply, priority in time of appropriation shall be given the better right, except that in times of emergency the use of water for domestic and municipal purposes shall have a better right over all other uses; *Provided*, That where water shortage is recurrent and the appropriator for municipal use has a lower priority in time of appropriation, then it shall be his duty to find an alternative source of supply in accordance with conditions prescribed by the Council.

Art. 23. Priorities may be altered on grounds of greater beneficial use, multi-purpose use, and other similar grounds after due notice and hearing, subject to payment of compensation in proper cases.

Art. 24. A water right shall be exercised in such a manner that the rights of third persons or of other appropriators are not prejudiced thereby.

Art. 25. A holder of a water permit may demand the establishment of easements necessary for the construction and maintenance of the works and facilities needed for the beneficial use of the waters to be appropriated, subject to the requirements of just compensation and to the following conditions:

- a. That he is the owner, lessee, mortgagee or one having real right over the land upon which he proposes to use water; and
- b. That the proposed easement is the most convenient and the least onerous to the servient estate.

Easements relating to the appropriation and use of waters may be modified by agreement of the contracting parties provided the same is not contrary to law or prejudicial to third persons.

Art. 26. Where water shortage is recurrent, the use of the water pursuant to a permit may, in the interest of equitable

distribution of benefits among legal appropriators, be reduced after due notice and hearing.

Art. 27. Water users shall bear the diminution of any water supply due to natural causes or *force majeure*.

Art. 28. Water permits shall continue to be valid as long as water is beneficially used; however, it may be suspended on the grounds of non-compliance with approved plans and specifications or schedules of water distribution; use of water for a purpose other than that for which it was granted; non-payment of water charges; wastage; failure to keep records of water diversion, when required; and violation of any term or condition of any permit or of rules and regulations promulgated by the Council.

Temporary permits may be issued for the appropriation and use of water for short periods under special circumstances.

Art. 29. Water permits may be revoked after due notice and hearing on grounds of non-use; gross violation of the conditions imposed in the permit; unauthorized sale of water; willful failure or refusal to comply with rules and regulations or any lawful order; pollution, public nuisance or acts detrimental to public health and safety; when the appropriator is found to be disqualified under the law to exploit and develop natural resources of the Philippines; when, in the case of irrigation, the land is converted to non-agricultural purposes; and other similar grounds.

Art. 30. All water permits are subject to modification or cancellation by the Council, after due notice and hearing, in favor of a project of greater beneficial use or for multi-purpose development, and a water permittee who suffers thereby shall be duly compensated by the entity or person in whose favor the cancellation was made.

Chapter IV

UTILIZATION OF WATERS

Art. 31. Preference in the development of water resources shall consider security of the State, multiple use, beneficial effects, adverse effects and costs of development.

Art. 32. The utilization of subterranean or ground water shall be coordinated with that of surface waters such as rivers, streams, springs and lakes, so that a superior right in one is not adversely affected by an inferior right in the other.

For this purpose, the Council shall promulgate rules and regulations and declare the existence of control areas for the coordinated development, protection, and utilization of subterranean or ground water and surface waters.

Control area is an area of land where subterranean or ground water and surface water are so interrelated that withdrawal and use in one similarly affects the other. The boundary of a control area may be altered from time to time, as circumstances warrant.

Art. 33. Water contained in open canals, aqueducts or reservoirs of private persons may be used by any person for domestic purpose or for watering plants as long as the water is withdrawn by manual methods without checking the stream or damaging the canal, aqueduct or reservoir; *Provided*, That this right may be restricted by the owner should it result in loss or injury to him.

Art. 34. A water permittee or appropriator may use any watercourse to convey water to another point in the watercourse for the purpose stated in a permit and such water may be diverted or recaptured at that point by said permittee in the same amount less allowance for normal losses in transit.

Art. 35. Works for the storage, diversion, distribution and utilization of water resources shall contain adequate provision for the prevention and control of diseases that may be induced or spread by such works when required by the Council.

Art. 36. When the reuse of waste water is feasible, it shall be limited as much as possible, to such uses other than direct human consumption. No person or agency shall distribute such water for public consumption until it is demonstrated that such consumption will not adversely affect the health and safety of the public.

Art. 37. In the construction and operation of hydraulic works, due consideration shall be given to the preservation of

scenic places and historical relics and, in addition to the provisions of existing laws, no works that would require the destruction or removal of such places or relics shall be undertaken without showing that the destruction or removal is necessary and unavoidable.

Art. 38. Authority for the construction of dams, bridges and other structures across of which may interfere with the flow of navigable or flutable waterways shall first be secured from the Department of Public Works, Transportation and Communications.

Art. 39. Except in cases of emergency to save life or property, the construction or repair of the following works shall be undertaken only after the plans and specifications therefor, as may be required by the Council, are approved by the proper government agency; dams for the diversion or storage of water; structures for the use of water power; installation for the utilization of subterranean or ground water and other structures for utilization of water resources.

Art. 40. No excavation for the purpose of emission of a hot spring or for the enlargement of the existing opening thereof shall be made without prior permit.

Any person or agency who intends to develop a hot spring for human consumption must first obtain a permit from the Department of Health.

Art. 41. No person shall develop a stream, lake, or spring for recreational purposes without first securing a permit from the Council.

Art. 42. Unless otherwise ordered by the President of the Philippines and only in times of national calamity or emergency, no person shall induce or restrain rainfall by any method such as cloud seeding without a permit from the proper government agency.

Art. 43. No person shall raise or lower the water level of a river, stream, lake, lagoon or marsh nor drain the same without a permit.

Art. 44. Drainage systems shall be so constructed that their outlets are rivers, lakes, the sea, natural bodies of water,

or such other water course as may be approved by the proper government agency.

Art. 45. When a drainage channel is constructed by a number of persons for their common benefit, the cost of construction and maintenance of the channel shall be borne by each in proportion to the benefits derived.

Art. 46. When artificial means are employed to drain water from higher to lower land, the owner of the higher land shall select the routes and methods of drainage that will cause the minimum damage to the lower lands, subject to the requirements of just compensation.

Art. 47. When the use, conveyance or storage of waters results in damage to another, the person responsible for the damage shall pay compensation.

Art. 48. When a water resources project interferes with the access of a landowner to a portion of his property or with the conveyance of irrigation or drainage water, the person or agency constructing the project shall bear the cost of construction and maintenance of the bridges, flumes and other structures necessary for maintaining access, irrigation, or drainage, in addition to paying compensation for land and incidental damages.

Art. 49. Any person having an easement for an aqueduct may enter upon the servient land for the purpose of cleaning, repairing or replacing the aqueduct or the removal of obstructions therefrom.

Art. 50. Lower estates are obliged to receive the waters which naturally and without the intervention of man flow from the higher estates, as well as the stone or earth which they carry with them.

The owner of the lower estate can not construct works which will impede this natural flow, unless he provides an alternative method of drainage; neither can the owner of the higher estate make works which will increase this natural flow.

Art. 51. The banks of rivers and streams and the shores of the seas and lakes throughout their entire length and within a

zone of three (3) meters in urban areas, twenty (20) meters in agricultural areas and forty (40) meters in forest areas, along their margins, are subject to the easement of public use in the interest of recreation, navigation, flotage, fishing and salvage. No person shall be allowed to stay in this zone longer than what is necessary for recreation, navigation, flotage, fishing or salvage or to build structures of any kind.

Art. 52. The establishment, extent, form, and conditions of easements of water not expressly determined by the provisions of this Code shall be governed by the provisions of the Civil Code.

Chapter V

CONTROL OF WATERS

Art. 53. To promote the best interest and the coordinated protection of flood plain lands, the Secretary of Public Works, Transportation and Communications may declare flood control areas and promulgate guidelines for governing flood plain management plans in these areas.

Art. 54. In declared flood control areas, rules and regulations may be promulgated to prohibit or control activities that may damage or cause deterioration of lakes and dikes, obstruct the flow of water, change the natural flow of the river, increase flood losses or aggravate flood problems.

Art. 55. The government may construct necessary flood control structures in declared flood control areas, and for this purpose it shall have a legal easement as wide as may be needed along and adjacent to the river bank and outside the bed or channel of the river.

Art. 56. River beds, sand bars and tidal flats may not be cultivated except upon prior permission from the Secretary of the Department of Public Works, Transportation and Communication and such permission shall not be granted where such cultivation obstructs the flow of water or increases flood levels so as to cause damage to other areas.

Art. 57. Any person may erect levees or revetments to protect his property from flood, encroachment by the river or

change in the course of the river, provided that such construction does not cause damage to the property of another.

Art. 58. When a river or stream suddenly changes its course to traverse private lands, the owners of the affected lands may not compel the government to restore the river to its former bed; nor can they restrain the government from taking steps to revert the river or stream to its former course. The owners of the lands thus affected are not entitled to compensation for any damage sustained thereby. However, the former owners of the new bed shall be the owners of the abandoned bed in proportion to the area lost by each.

The owners of the affected lands may undertake to return the river or stream to its old bed at their own expense; *Provided*, That a permit therefor is secured from the Secretary of Public Works, Transportation and Communications and works pertaining thereto are commenced within two years from the change in the course of the river or stream.

Art. 59. Rivers, lakes and lagoons may, upon the recommendation of the Philippine Coast Guard, be declared navigable either in whole or in part.

Art. 60. The rafting of logs and other objects on rivers and lakes which are flutable may be controlled or prohibited during designated seasons of the year with due regard to the needs of irrigation and domestic water supply and other uses of water.

Art. 61. The impounding of water in ponds or reservoirs may be prohibited by the Council upon consultation with the Department of Health if it is dangerous to public health, or it may order that such pond or reservoir be drained if such is necessary for the protection of public health.

Art. 62. Waters of a stream may be stored in reservoir by a permittee in such amount as will not prejudice the right of any permittee downstream. Whoever operates the reservoir shall, when required, release water for minimum stream flow.

All reservoir operations shall be subject to rules and regulations issued by the Council or any proper government agency.

Art. 63. The operator of a dam for the storage of water may be required to employ an engineer possessing qualifications prescribed for the proper operation, maintenance and administration of the dam.

Art. 64. The Council shall approve the manner, location, depth, and spacing in which borings for subterranean or ground water may be made, determine the requirements for the registration of every boring or alteration to existing borings as well as other control measures for the exploitation of subterranean or ground water resources, and in coordination with the Professional Regulation Commission, prescribe the qualifications of those who would drill such borings.

No person shall drill a well without prior permission from the Council.

Art. 65. Water from one river basin may be transferred to another river basin only with approval of the Council. In considering any request for such transfer, the Council shall take into account the full costs of the transfer, the benefits that would accrue to the basin of origin without the transfer, the benefits that would accrue the receiving basin on account of the transfer, alternative schemes for supplying water to the receiving basin, and other relevant factors.

Chapter VI

CONSERVATION AND PROTECTION OF WATERS AND WATERSHEDS AND RELATED LAND RESOURCES

Art. 66. After due notice and hearing when warranted by circumstances, minimum stream flows for rivers and streams and minimum water levels for lakes may be established by the Council under such conditions as may be necessary for the protection of the environment, control of pollution, navigation, prevention of salt damage, and general public use.

Art. 67. Any watershed or any area of land adjacent to any surface water or overlying any ground water may be declared by the Department of Natural Resources as protected area. Rules and regulations may be promulgated by such Department

to prohibit or control such activities by the owners or occupants thereof within the protected area which may damage or cause the deterioration of the surface or ground water or interfere with the investigation, use, control, protection, management or administration of such waters.

Art. 68. It shall be the duty of any person in control of a well to prevent the water from flowing on the surface of the land, or into any surface water, or any porous stratum underneath the surface without being beneficially used.

Art. 69. It shall be the duty of any person in control of a well containing water with minerals or other substances injurious to man, animals, agriculture, and vegetation to prevent such waters from flowing on the surface of the land or into any surface water or into any other aquifer or porous stratum.

Art. 70. No person shall utilize an existing well or pond or spread waters for recharging subterranean or ground water supplied without prior permission of the Council.

Art. 71. To promote better water conservation and usage for irrigation purposes, the merger of irrigation associations and the appropriation of waters by associations instead of by individuals shall be encouraged.

No water permit shall be granted to an individual when his water requirement can be supplied through an irrigation association.

Art. 72. In the consideration of a proposed water resource project, due regard shall be given to ecological changes resulting from the construction of the project in order to balance the needs of development and the protection of the environment.

Art. 73. The conservation of fish and wildlife shall receive proper consideration and shall be coordinated with other features of water resources development programs to insure that fish and wildlife values receive equal attention with other project purposes.

Art. 74. Swamps and marshes which are owned by the State and which have primary value for waterfowl propagation or other wildlife purposes may be reserved and protected from drainage operation and development.

Art. 75. No person shall, without prior permission from the National Pollution Control Commission, build any works that may produce dangerous or noxious substances or perform any act which may result in the introduction of sewage, industrial waste, or any pollutant into any source of water supply.

Water pollution is the impairment of the quality of water beyond a certain standard. This standard may vary according to the use of the water and shall be set by the National Pollution and Control Commission.

Art. 76. The establishment of cemeteries and waste disposal areas that may affect the source of a water supply or a reservoir for domestic or municipal use shall be subject to the rules and regulations promulgated by the Department of Health.

Art. 77. Tailings from mining operations and sediments from placer mining shall not be dumped into rivers and waterways without prior permission from the Council upon recommendation by the National Pollution Control Commission.

Art. 78. The application of agricultural fertilizers and pesticides may be prohibited or regulated by the National Pollution Control Commission in areas where such application may cause pollution of a source of water supply.

Chapter VII

ADMINISTRATION OF WATERS AND ENFORCEMENT OF THE PROVISIONS OF THIS CODE

Art. 79. The administration and enforcement of the provisions of this Code, including the granting of permits and the imposition of penalties for administrative violations hereof, are hereby vested in the Council, and except in regard to those functions which under this Code are specifically conferred upon other agencies of the government, the Council is hereby empowered to make all decisions and determinations provided for in this Code.

Art. 80. The Council may deputize any official or agency of the government to perform any of its specific functions or activities.

Art. 81. The Council shall provide a continuing program for data collection, research and manpower development needed for the appropriation, utilization, exploitation, conservation, and protection of the water resources of the country.

Art. 82. In the implementation of the provisions of this Code, the Council shall promulgate the necessary rules and regulations which may provide for penalties consisting of a fine not exceeding One Thousand Pesos (P1,000.00) and/or suspension or revocation of the water permit or other right to the use of water. Violations of such rules and regulations may be administratively dealt with by the Council.

Such rules and regulations shall take effect fifteen (15) days after publication in newspapers of general circulation.

Rules and regulations prescribed by any government agency that pertain to the utilization, exploitation, development, control, conservation, or protection of water resources shall, if the Council so requires, be subject to its approval.

Art. 83. The Council is hereby authorized to impose and collect reasonable fees or charges for water resources development from water appropriators, except when it is for purely domestic purpose.

Art. 84. The Council and other agencies authorized to enforce this Code are empowered to enter upon private lands, with previous notice to the owner, for the purpose of conducting surveys and hydrologic investigations, and to perform such other acts as are necessary in carrying out their functions including the power to exercise the right of eminent domain.

Art. 85. No program or project involving the appropriation, utilization, exploitation, development, control, conservation, or protection of water resources may be undertaken without prior approval of the Council, except those which the Council may, in its discretion, exempt.

The Council may require consultation with the public prior to the implementation of certain water resources development projects.

Art. 86. When plans and specifications of a hydraulic structure are submitted for approval, the government agency

whose functions embrace the type of project for which the structure is intended, shall review the plans and specifications and recommend to the Council proper action thereon and the latter shall approve the same only when they are in conformity with the requirements of this Code and the rules and regulations promulgated by the Council. Notwithstanding such approval, neither the engineer who drew up the plans and specifications of the hydraulic structure, nor the constructor who built it, shall be relieved of his liability for damages in case of failure thereof by reason of defect in plans and specifications, or failure due to defect in construction, within ten (10) years from the completion of the structure.

Any action to recover such damages must be brought within five (5) years following such failure.

Art. 87. The Council or its duly authorized representative, in the exercise of its power to investigate and decide cases brought to its cognizance, shall have the power to administer oaths, compel the attendance of witnesses by subpoena and the production of relevant documents by subpoena *duces tecum*.

Non-compliance or violation of such orders or subpoena and subpoena *duces tecum* shall be punished in the same manner as indirect contempt of an inferior court upon application by the aggrieved party with the proper Court of First Instance in accordance with the provisions of Rule 71 of the Rules of Court.

Art. 88. The Council shall have original jurisdiction over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of waters within the meaning and context of the provisions of this Code.

The decisions of the Council on water rights controversies shall be immediately executory and the enforcement thereof may be suspended only when a bond, in an amount fixed by the Council to answer for damages occasioned by the suspension or stay of execution, shall have been filed by the appealing party, unless the suspension is by virtue of an order of a competent court.

All disputes shall be decided within sixty (60) days after the parties submit the same for decision or resolution.

The Council shall have the power to issue writs of execution and enforce its decisions with the assistance of local or national police agencies.

Art. 89. The decisions of the Council on water rights controversies may be appealed to the Court of First Instance of the province where the subject matter of the controversy is situated within fifteen (15) days from the date the party appealing receives a copy of the decision, on any of the following grounds: (1) grave abuse of discretion; (2) question of law; and (3) questions of fact and law.

Chapter VIII

PENAL PROVISIONS

Art. 90. The following acts shall be penalized by suspension or revocation of the violator's water permit or other right to the use of water and/or a fine of not exceeding One Thousand Pesos (P1,000.00), in the discretion of the Council:

- a. Appropriation of subterranean or ground water for domestic use by an overlying landowner without registration required by the Council.
- b. Non-observance of any standard of beneficial use of water.
- c. Failure of the appropriator to keep a record of water withdrawal, when required.
- d. Failure to comply with any of the terms or conditions in a water permit or a water rights grant.
- e. Unauthorized use of water for a purpose other than that for which a right or permit was granted.
- f. Construction or repair of any hydraulic work or structure without duly approved plans and specifications, when required.
- g. Failure to install a regulating and measuring device for the control of the volume for water appropriated, when required.

h. Unauthorized sale, lease, or transfer of water and/or water rights.

i. Failure to provide adequate facilities to prevent or control diseases when required by the Council in the construction of any work for the storage, diversion, distribution and utilization of water.

j. Drilling of a well without permission of the Council.

k. Utilization of an existing well or ponding or spreading of water for recharging subterranean or ground water supplies without permission of the Council.

l. Violation of or non-compliance with any order, rules, or regulation of the Council.

m. Illegal taking or diversion of water in an open canal, aqueduct or reservoir.

n. Malicious destruction of hydraulic works or structures valued at not exceeding P5,000.00.

Art. 91. A fine of not exceeding Three Thousand Pesos (P3,000.00) or imprisonment for not more than three (3) years, or both such fine and imprisonment, in the discretion of the Court, shall be imposed upon any person who commits any of the following acts:

1. Appropriation of water without a water permit, unless such person is expressly exempted from securing a permit by the provisions of this Code.

2. Unauthorized obstruction of an irrigation canal.

3. Cultivation of a river bed, sand bar or tidal flat without permission.

4. Malicious destruction of hydraulic works or structure valued at not exceeding Twenty-Five Thousand Pesos (P25,000.00).

B. A fine exceeding Three Thousand Pesos (P3,000.00) but not more than Six Thousand Pesos (P6,000.00) or imprisonment exceeding three (3) years but not more than six (6)

years, or both such fine and imprisonment in the discretion of the Court, shall be imposed on any person who commits any of the following acts:

1. Distribution for public consumption of water which adversely affects the health and safety of the public.

2. Excavation or enlargement of the opening of a hot spring without permission.

3. Unauthorized obstruction of a river or waterway, or occupancy of a river bank or seashore without permission.

4. Establishment of a cemetery or a waste disposal area near a source of water supply or reservoir for domestic or municipal use without permission.

5. Constructing without prior permission of the government agency concerned, works that produce dangerous or noxious substances, or performing acts that result in the introduction of sewage, industrial waste, or any substance that pollutes a source of water supply.

6. Dumping mine tailings and sediments into rivers or waterways without permission.

7. Malicious destruction of hydraulic works or structure valued more than Twenty-Five Thousand Pesos (P25,000.00) but not exceeding One Hundred Thousand Pesos (P100,000.00).

C. A fine exceeding Six Thousand Pesos (P6,000.00) but not more than Ten Thousand Pesos (P10,000.00) or imprisonment exceeding six (6) years but not more than twelve (12) years, or both such fine and imprisonment, in the discretion of the Court, shall be imposed upon any person who commits any of the following acts:

1. Misrepresentation of citizenship in order to qualify for water permit.

2. Malicious destruction of a hydraulic works or structure, valued at more than One Hundred Thousand Pesos (P100,000.00).

Art. 92. If the offense is committed by a corporation, trust, firm, partnership, association or any other juridical person, the penalty shall be imposed upon the President, General Manager, and other guilty officer or officers of such corporation, trust, firm, partnership, association or entity, without prejudice to the filing of a civil action against said juridical person. If the offender is an alien, he shall be deported after serving his sentence, without further proceedings.

After final judgment of conviction, the Court upon petition of the prosecuting attorney in the same proceedings, and after due hearing, may, when the public interest so requires, order the suspension of or dissolution of such corporation, trust, firm, partnership, association or juridical person.

Art. 93. All actions for offenses punishable under Article 91 of this Code shall be brought before the proper court.

Art. 94. Actions for offenses punishable under this Code by a fine of not more than Three Thousand Pesos (P3,000.00) or by an imprisonment of not more than three (3) years, or both such fine and imprisonment, shall prescribe in five (5) years; those punishable by a fine exceeding Three Thousand Pesos (P3,000.00) but not more than Six Thousand Pesos (P6,000.00) or an imprisonment exceeding three (3) years but not more than six (6) years, or both such fine and imprisonment, shall prescribe in seven (7) years; and those punishable by a fine exceeding Six Thousand Pesos (P6,000.00) but not more than Ten Thousand Pesos (P10,000.00) or an imprisonment exceeding six (6) years but not more than twelve (12) years, or both such fine and imprisonment, shall prescribe in ten (10) years.

Chapter IX

TRANSITORY AND FINAL PROVISIONS

Art. 95. Within two (2) years from the promulgation of this Code, all claims for a right to use water existing on or before December 31, 1974 shall be registered with the Council which shall confirm said rights in accordance with the provisions of this Code, and shall set their respective priorities.

When priority in time of appropriation from a certain source of supply cannot be determined, the order of preference in the use of the waters shall be as follows:

- a. Domestic
- b. Municipal
- c. Irrigation
- d. Power generation
- e. Fisheries
- f. Livestock raising
- g. Industrial
- h. Recreational and
- g. Other purposes.

Any claim not registered within said period shall be considered waived and the use of the water deemed abandoned, and the water shall thereupon be available for disposition as unappropriated waters in accordance with the provisions of this Code.

Art. 96. No vested or acquired right to the use of water can arise from acts or omissions which are against the law or which infringe upon the rights of others.

Art. 97. Acts and contracts under the regime of old laws, if they are valid in accordance therewith, shall be respected, subject to the limitations established in this Code. Any modification or extension of these acts and contracts after the promulgation of this Code, shall be subject to the provisions hereof.

Art. 98. Interim rules and regulations promulgated by the Council shall continue to have binding force and effect, when not in conflict with the provisions of this Code.

Art. 99. If any provision or part of this Code, or the application thereof to any person or circumstance, is declared unconstitutional or invalid for any reason, the other provisions or parts therein shall not be affected.

Art. 100. The following laws, parts and/or provisions of laws are hereby repealed:

- a. The provisions of the Spanish Law on Waters of August 3, 1866, the Civil Code of Spain of 1889 and the Civil Code of the Philippines (RA 386) on ownership of waters, easements relating to waters, use of public waters and acquisitive

prescription on the use of waters, which are inconsistent with the provisions of this Code;

b. The provisions of RA 6395, otherwise known as the Revised Charter of the National Power Corporation, particularly Section 3, paragraph (f), and Section 12, insofar as they relate to the appropriation of waters and the grant thereof;

c. The provisions of Act 2152, as amended, otherwise known as the Irrigation Act, Section 3, paragraphs (k) and (m) of PD 813, RA 2056; Section 90, CA 137; and,

d. All Decrees, Laws, Acts, parts of Acts, Rules of Court, executive orders, and administrative regulations which are contrary to or inconsistent with the provisions of this Code.

Art. 101. This Code shall take effect upon its promulgation.

Done in the City of Manila, this 31st of December, nineteen hundred and seventy-six.

(4) Case

Libertad Santos, et al. v. CA, et al. GR 61218, Sep. 23, 1992

Article 88 of Presidential Decree 1067 (Water Code) speaks of limited jurisdiction conferred upon the National Water Resources Council over all disputes relating to appropriation, utilization, exploitation, development, control, conservation and protection of *waters* and said jurisdiction of the council does not extend to, much less cover, conflicting rights over real properties, jurisdiction over which is vested by law with the regular courts.

Where the issue involved is not on a settlement of water rights dispute, but the enjoyment of a right to water use for which a permit was already granted, the regular court has jurisdiction over the dispute, not the National Water Resources Council. (*Amistoso v. Ong*, 130 SCRA 228, 237 [1984]).

Chapter 2

MINERALS

Art. 519. Mining claims and rights and other matters concerning minerals and mineral lands are governed by special laws.

COMMENT:

(1) Definition of 'Minerals'

Inorganic elements or substances found in nature whether in a gaseous, liquid, or solidified stage. Excluded are the soil, ordinary earth, sand, stone and gravel. (*See Sec. 7, Com. Act No. 137*).

(2) Definition of 'Mineral Lands'

Those where there are minerals sufficient in quality and quantity to justify expenses for their extraction. (*See Sec. 8, Com. Act No. 137*).

(3) Laws Governing Minerals

- (a) *Before July 1, 1902*: The Spanish Mining Law, entitled *Royal Decree Sobre Minería* (concerning mining) of May 14, 1867. (*See Lawrence v. Garduno, GR 1092*).
- (b) *Between July 1, 1902 – 1935 (Commonwealth)*:
 - 1) The Philippine Bill of 1902. (This contained a mining code, some parts of which were amended by Act of Congress of Feb. 6, 1905.)

- 2) Act 624 of the Phil. Commission (which prescribed the location and manner of recording mining claims).
- (c) *After the Constitution Became Effective*
- 1) The Phil. Constitution Art. XIII, Sec. 1 of the 1935 Constitution (now Art. XII, Sec. 2, 1987 Constitution), which provides that the mineral resources of the country shall not be alienated; that all minerals belong to the state, whether they are contained in *public or private land*; and that no license, concession or lease for the exploitation, and development shall be granted for a period exceeding 25 years, renewable for another 25 years.
 - 2) Commonwealth Act 137. (The Mining Law — *enacted Nov. 7, 1936*).
 - 3) Act 2719. (The Coal Act).
 - 4) Republic Act 387. (The Petroleum Act of 1949).
 - 5) Act 2932. (Oil and Gas).
 - 6) The Mining Act of 1995 or RA 7942.

(4) Ownership of Mineral Lands and Minerals Under the Constitution

Article XII, Sec. 2 of the 1987 Philippine Constitution reads:

All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be

for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development, and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty (30) days from its execution.

Cadwallader v. Abeleda
L-31927, June 25, 1980

If a person is involved in a mining dispute, he must first go to the administrative authorities before seeking a judicial remedy of any kind.

Mapulo Mining Association v. Lopez
206 SCRA 9
(1992)

Any person who fails to file an adverse claim against the applicant during the period of publication is forever barred.

**Atok Big-Wedge Mining Co. v. IAC and
Tuktukan Saingan
74 SCAD 184, GR 63528, Sep. 9, 1996**

The process of recording mining claims could not have been intended to be the operative act of classifying lands into mineral lands. The recording of a mining claim only operates to reserve to the registrant, exclusive rights to undertake mining activities upon the land subject of the claim.

(5) Suppose There Are Minerals on Private Lands?

These minerals are still owned by the State. (*See Sections 2 and 4, RA 7942*). This is true even if the land has the Torrens Title. This is because the ownership of mines, from their very nature, should not depend upon the ownership of the soil.

(6) Salient Features of the Mining Act

In line with Art. XII, Sec. 2 of the 1987 Philippine Constitution, the Philippine Mining Act of 1995 (*RA 7942*) has been enacted.

According to its declared policy, it shall be the responsibility of the State to promote and enhance national growth.

Comprising 30 chapters, RA 7942 contains provisions for government management, mineral agreements, financial or technical assistance agreement, small scale mining, safety and environmental protection, settlement of conflicts, organizational and institutional arrangements, and penal provisions.

Chapter 3

TRADEMARKS AND TRADE NAMES

Art. 520. A trademark or trade name duly registered in the proper government bureau or office is owned by and pertains to the person, corporation, or firm registering the same, subject to the provisions of special laws.

COMMENT:

(1) Distinctions Re Trademark, Trade Name and Service Mark

- (a) *Trademark* — name or symbol of goods made or manufactured. (*Example: McGregor.*) (*Canon Kabushiki Kaisha v. CA, GR 120900, July 20, 2000.*)
- (b) *Trade name* — name or symbol of store, business, or occupation. (*Example: Heacock's.*) It means the name or designation identifying or distinguishing an enterprise. (*Sec. 121.3, RA 8293.*) (*Canon Kabushiki Kaisha v. CA, GR 120900, supra.*)
- (c) *Service mark* — name or symbol of service rendered. (*Example: Metropolitan Express Company, Inc. [See Sec. 38, Republic Act 1466].*)

[NOTE: Under RA 8293, otherwise known as *The Intellectual Property Code, effective Jan. 1, 1998, Part III Re: The Law on Trademarks, Service Marks, and Trade Names* provides the following definitions: “Mark” means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. (*Sec.*

121.1, RA 8293). “*Collective mark*” means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark. (Sec. 121.2, *id.*).].

**Converse Rubber Corp. v.
Universal Rubber Products, Inc.
GR 27906, Jan. 8, 1987**

A trade name is any individual name or surname, firm name, device or word used by manufacturers, industrialists, merchants and others to identify their businesses, vocations or occupations. As the trade name refers to the business and its goodwill, the trademark refers to the goods. The ownership of a trademark or trade name is a property right which the owner is entitled to protect since there is damage to him from confusion of reputation or goodwill in the mind of the public as well as from confusion of goods. The modern trend is to give emphasis to the unfairness of the acts and to classify and treat the issue as fraud. Article 8 of the Convention of the Union of Paris for the Protection of Industrial Property to which the Philippines became a party on Sep. 27, 1965, provides that “a trade name [corporate name] shall be protected in all countries and the Union without the obligation of filing or registration, whether or not it forms part of the trademark.” The object of the Paris Convention is to accord a national of a member nation extensive protection “against infringement and other types of unfair competition.”

The mandate of the Paris Convention is implemented in Section 37, Republic Act 166, otherwise known as the Trademark Law, as follows: “Persons who are nationals of, domiciled in, or have a *bona fide* or effective business or commercial establishment in any foreign country, which is a party to an international convention of treaty relating to marks or trade names on the repression of unfair competition to which the Philippines may be a

party, shall be entitled to the provisions of this Act. x x x Trade names of persons described in the first paragraph of this section shall be protected without the obligation of filing or registration whether or not they form parts of the marks.”

A corporation is entitled to the cancellation of a mark that is confusingly similar to a corporate name. Appropriation by another of the dominant part of a corporate name is an infringement.

**Puma Sports Chuh Fabriken Rudolf
Dassler, K.G. v. IAC
GR 75067, Feb. 26, 1988**

A treaty or convention is not a mere moral obligation to be enforced or not at the whims of the incumbent head of a Ministry. It creates a legally binding obligation on the parties founded on the generally accepted principle of international law of *pacta sunt servanda* which has been adopted as part of the law of our land.

Article 8 of the Convention of the Union of Property to which the Philippines became a party on Sep. 27, 1965, provides that “a trade name [corporation name] shall be protected in all the countries of the union without the obligation of filing or registration, whether or not it forms part of the trademark.” The object of the convention is to accord a national of a member nation extensive protection “against infringement and other types of unfair competition.”

The mandate of the Paris Convention is implemented in Section 37 of RA 166, otherwise known as the Trade-mark Law which provides that “persons who are nationals of, domiciled in, or have a *bona fide* or effective business or commercial establishment in any foreign country, which is a party to an international convention or treaty relating to marks or tradenames on the repression of unfair competition to which the Philippines may be a party, shall be entitled to the benefits and subject to the provisions” of RA 166. Trade names of persons described in the first paragraph of Section 35 shall be protected without the

obligation of filing or registration whether or not they form part of marks.

A foreign corporation which has never done any business in the Philippines and which is unlicensed and unregistered to do business here, but is widely and favorably known in the Philippines through the use therein of its products bearing its corporate and trade name, has a legal right to maintain an action in the Philippines to restrain the residents and inhabitants thereof from organizing a corporation therein bearing the same name as the foreign corporation, when it appears that they have personal knowledge of the existence of such a foreign corporation, and it is apparent that the purpose of the proposed domestic corporation is to deal and trade in the same goods as those of the foreign corporation.

Philips Export B.V. v. CA
206 SCRA 457
(1992)

The general rule as to a corporation is that each corporation must have a name by which it is to sue and be sued and do all legal acts. A corporation can no longer use a corporate name in violation of the rights of others than an individual can use his name legally acquired so as to mislead the public and injure another.

In determining the existence of confusing similarity in corporate name, the TEST is whether the similarity is such as to mislead a person using ordinary care and discrimination. It is settled that proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur.

A corporation's right to use its corporate and trade name is a property right, a right *in rem* which it may assert and protect against the world in the same manner as it may protect its tangible property, real or personal against trespass or conversion. A corporation has an exclusive right to the use of its name which may be protected by injunction upon a principle similar to that upon which persons are protected in the use of trademarks and tradenames.

**Amigo Manufacturing, Inc. v.
Cluett Peabody Co., Inc.
GR 139300, Mar. 14, 2001**

Findings of the Bureau of Patents that two trademarks are confusingly and deceptively similar to each other are binding upon the courts, absent any sufficient evidence to the contrary.

In the present case, the Bureau considered the totality of the similarities between the two sets of marks and found that they were of such degree, number, and quality as to give the overall impression that the two products are confusingly if not deceptively the same.

(2) Necessity of Registration at the Patent Office

- (a) A certificate of registration of a trademark is *prima facie* evidence of the validity of such registration, but the same may be rebutted. (*People v. Lim Hoa, L-10612, May 30, 1958*).
- (b) Incidentally, the contention that once the publication of the application is approved by the Director of Patents, it becomes the latter's ministerial duty to issue the corresponding certificate of registration is **UNTENABLE**. It is the decision of the Director given after the public is given the opportunity to contest the application that finally terminates the proceedings, and in which the registration is finally approved or disapproved. (*East Pacific Merchandising Corp. v. Director of Patents, et al., L-14377, Dec. 29, 1960*). A trademark that is already registered in the name of a person is entitled to be protected even if the registrant has not yet used said trademark. (*Chua Che v. Phil. Patent Office, L-18337, Jan. 30, 1965*).

**James Boothe v. Director of Patents
L-24919, Jan. 28, 1980**

The Director of Patents:

- 1) can review the decisions of the Patent Examiner.

- 2) can consider grounds of which he has knowledge — grounds other than those raised specifically in an appeal to him.
- 3) can require a full, definite and accurate description of a process (the patent for which is applied for) so that the public may be properly informed (if incomplete, the patent application can be considered substantially defective).

Lorenzana v. Macagba
GR 33773, Oct. 22, 1987

FACTS: GLL filed an application with the Philippine Patent Office for registration of a trademark in the Supplemental Register. GLL's brother SLL, asked for the cancellation of Certificates of Registration. After protracted hearings, the Director of Patents held GLL as entitled to registration of the questioned trademark in the Supplemental Register. Later, GLL again filed with the Patent Office for the registration of the same trademark, this time in the Principal Register. This was opposed by SLL and 6 of his 11 brothers and sisters. GLL moved to dismiss the opposition on the ground of *res judicata*. The Director dismissed the opposition on the ground of *res judicata*.

HELD: There is no *res judicata*. There is no identity of parties, subject matter and causes of action between the registration in the supplemental register and registration in the principal register. For *res judicata* to apply, the following requisites must concur: (1) there must be a prior final judgment or order; (2) the court rendering the judgment or order must have jurisdiction over the subject matter and over the parties; (3) the judgment or order must be on the merits; and (4) there must be between the two cases, the earlier and the instant, identity of parties, identity of subject matter and identity of causes of action. Substantial distinctions exist between registration in the Principal Register and registration in the Supplemental Register. These distinctions are: (1) Registration in the Principal Register gives rise to

a presumption of the validity of the registration, the registrant's ownership of the mark, and his right to the exclusive use thereof. There is no such presumption in registration in the Supplemental Register. (2) Registration in the Principal Register is limited to the actual owner of the trademark and proceedings therein on the issue of ownership which may be contested through opposition or interference proceedings or, after registration, in a petition for cancellation. Registration in the Principal Register is constructive notice of the registrant's claim of ownership, while registration in the Supplemental Register is merely proof of actual use of the trademark and notice that the registrant has used or appropriated it. It is not subject to opposition although it may be cancelled after the issuance. Corollarily, registration in the Principal Register is a basis for an action for infringement, while registration in the Supplemental Register is not. (3) In applications for registration in the Principal Register, publication of the application is necessary. This is not so in applications for registration in the Supplemental Register. Certificates of registration under both Registers are also different from each other. (4) Proof of registration in the Principal Register may be filed with the Bureau of Customs to exclude foreign goods bearing infringing marks while this does not hold true for registrations in the Supplemental Register.

(3) Duration of the Marks

A certificate of registration shall remain in force for ten (10) years: *Provided*, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Intellectual Property Office. (*Sec. 145, RA 8293*).

(4) Marks or Names That Cannot Be Registered

- (a) Immoral, deceptive, scandalous, or disparaging matter. (*Sec. 123[a], RA 8293*).

- (b) Those which falsely suggest a connection with persons (living or dead), institutions, beliefs, or national symbols. (*Ibid.*).
- (c) The national flag, coat of arms, or insignia of the *Philippines*, its political subdivisions or any *foreign nation* (or *simulation thereof*). (*Sec. 123[b], id.*).
- (d) The name, portrait, or signature of a living individual (unless he consents in writing); or of a deceased Philippine President (while the widow is alive, unless she gives her written consent). (*Sec. 123[c], id.*).
- (e) That which resembles a trademark or trade name as would cause deceptive confusion. Indeed, registration must be refused in cases where there is a likelihood of confusion, mistake, or deception, even though the goods should fall into different categories. (*Chua Che v. Phil. Patent Office, L-18337, Jan. 30, 1965*). (*See Sec. 123[d], RA 8293*).

**Converse Rubber Corp. v.
Universal Rubber Products, Inc.
GR 27906, Jan. 8, 1987**

FACTS: Universal Rubber Products, Inc. applied for registration of the trademark “UNIVERSAL CONVERSE AND DEVICE” used on rubber shoes and slippers. Converse Rubber Corporation opposed the application because the trademark sought to be registered is confusingly similar to the word “CONVERSE” which is part of its corporate name. Also, it manufactures rubber shoes described as All Star Converse Chuck Taylor. Applicant’s witness had no idea why it chose “Universal Converse” as trademark. Applicant itself gave no reasonable explanation for using “CONVERSE,” in its trademark.

HELD: The word “converse” is the dominant word that identifies oppositor from other corporations engaged in similar business. Applicant admittedly was aware of oppositor’s reputation and business even before the former applied for the registration of the trademark in question.

Knowing that the word “converse” belongs to and is being used by oppositor and is in fact the dominant word in the latter’s corporate name, the former has no right to appropriate the same for use on its products which are similar to those being produced by the latter. Applicant’s unexplained use of the dominant word of oppositor’s corporate name gives rise to the inference that it was chosen deliberately to deceive.

An application for registration of trademark or trade name will be denied if confusing similarity exists between the mark or name applied and that of a prior user of the said mark or name, which would confuse the purchasing public to the prejudice of the prior user. For purposes of the law, it would suffice if similarities between two labels is such that there is a possibility or likelihood of the purchaser of the older brand mistaking the new brand for it. The details between the two labels need not all be identical, as long as the general appearance of the two products could deceive an ordinary or a not too perceptive and discriminating customer. The determinative factor in ascertaining whether or not marks are confusingly similar to each other “is not whether the challenged mark would actually cause confusion or deception of the purchasers, but whether the use of such mark would likely cause confusion or mistake on the part of the buying public.” A boundless choice of words, phrases and symbols is available to one who wishes a trademark sufficient unto itself to distinguish his product from those of others. When, however, there is a reasonable explanation for the defendant’s choice of such a mark though the field for his selection was so broad, the inference is inevitable that it was chosen deliberately to deceive. The unexplained use by a shoe manufacturer of the dominant word of another shoe manufacturer’s corporate name lends itself open to the suspicion of fraudulent motive to trade upon the latter’s reputation.

Sales invoices provide the best proof that there are actual sales of a foreign registrant’s products in the country and that there was actual use for a protracted period of its trademark or part of it through these sales. The most

convincing proof of use of a trademark in commerce is testimony of the customers or the orders of buyers during a certain period. A customer who has no business connection with the manufacturer and testified as such customer strongly supports the move for trademark pre-emption. Sales of 12 to 20 pairs a month of the oppositor's (a foreign registrant) rubber shoes cannot be deemed insignificant, considering that the shoes are of high expensive quality, which not too many basketball players can afford to buy. Any sale made by a legitimate trader from his store is a commercial act establishing trademark rights since such sales are made in due course of business to the general public, not only to limited individuals. Actual sale of goods in the local market establishes trademark use which serves as the basis for an action aimed at trademark pre-emption. The fact that a foreign corporation is not licensed to do business in the country and is not actually doing business here, does not mean that its goods are not being sold here or that it has not earned a reputation or goodwill as regards its products. The Director of Patents was remiss in ruling that proofs of sales presented "was made by a single witness who had never dealt with nor had never known the oppositor x x x without oppositor having a direct or indirect hand in the transaction to be the basis of trademark pre-emption.

- (f) That which is merely *descriptive* or deceptively *descriptive* or is primarily a *surname* (unless for the past 5 years, it has become *distinctive*. (See *Arce Sons and Company v. Selecta Biscuit Co., et al.*, L-14761, L-17981, Jan. 28, 1961). Thus, although the word "Selecta" may be an ordinary or common word in the sense that it may be used or employed by anyone in promoting his business or enterprise, still, once adopted or coined in connection with one's business as an emblem, sign, or device to characterize its products, or as a badge of authenticity, it may acquire a secondary meaning as to be exclusively associated with its products and business. (*Ibid.*; see *Ang Tibay v. Teodoro*, 74 *Phil.* 50).

[NOTE: The denial of the registration of trademarks does not violate the rule against *ex post facto* laws, be-

cause trademark registerability is without any PENAL aspect. (*The East Pacific Merchandising Corporation v. Dir. of Patents, et al.*, L-14377, Dec. 29, 1960).]

- (g) That which is contrary to public order or morality. (*Sec. 123[m], RA 8293*).

(5) Unfair Competition

There is unfair competition when there is *infringement* by passing off one's goods as those made by another contrary to good faith. (*See Amigo Manufacturing, Inc. v. Cluett Peabody Co., Inc.*, GR 139300, Mar. 14, 2001). Imitation or *similarity* such that average customers may be deceived, should be considered the test of infringement. (*See Sec. 155.2, RA 8293; Forbes v. Ang San To*, 40 Phil. 272). Indeed, the similarity in the appearance of the goods may justify the inference that the defendant actually intended to deceive the public and to defraud the plaintiff. Such a defendant may be declared an unfair competitor even if his competing trademark is registered. (*People v. Lim Hoa*, L-10612, May 30, 1958; *see also Recaro v. Embisan*, L-17049, May 3, 1961).

Pro Line Sports Center, Inc. v. CA 88 SCAD 524 (1997)

That a corporation other than the certified owner of the trademark is engaged in the unauthorized manufacture of products bearing the same trademark engenders a reasonable belief that a criminal offense for unfair competition is being committed.

The test of unfair competition is whether certain goods have been intentionally clothed with an appearance which is likely to deceive the ordinary purchasers exercising ordinary case.

Tatad v. Sec. of Energy 89 SCAD 335 (1997)

The provision on *predatory pricing* is constitutionally infirmed for it can be wielded more successfully by the oil

oligopolists. Its cumulative effect is to add to the arsenal of power of the dominant oil companies.

For as structured, it has no more than the strength of a spider web — it can catch the weak but cannot catch the strong, it can stop the small oil players but cannot stop the big oil players from engaging in predatory pricing.

When one applies for registration of a trademark which is almost the same or very closely resembles one already used and registered by another, the application should be dismissed outright, *even without any opposition* on the part of the owner and user of a previously registered trademark. The Director of Patents should as much as possible discourage all attempts at imitation of trademarks already used and registered to avoid confusion and to protect an already established goodwill. (*Chuanchow Soy and Canning Co. v. Director of Patents and Rosario Villapania, L-13947, June 30, 1960*). Even if an offending trademark has already been changed, a suit for infringement may still continue and the court may still issue a *permanent injunction* against the infringer, for without such injunction, the infringer might resume the use of the former trademark. (*Recaro v. Embisan, L-17049, May 31, 1961*).

However, the registration of a *patent* for a device, which is of “practical utility” to something already invented (hence a “side-tilting dumping wheel-barrow” which is of “practical utility,” may be patented even if previously a patent had already been issued to another for a “dumping and detachable wheel-barrow”). (*Samson v. Tarroza, et al., L-20354, July 28, 1969*).

Manzano v. CA
86 SCAD 723
(1997)

Since the Patent Office is an expert body pre-eminently qualified to determine questions of patentability, its findings must be accepted if they are consistent with the evidence, with doubts as to patentability resolved in favor of the Patent Office.

[NOTE: Said law on unfair competition is not only broader but also more inclusive as compared to the law on trademark

infringement. This is because such “conduct constitutes unfair competition if the effect is to pass off on the public the goods of one man as the goods of another.” (*Mighty Corp. v. E. & V. Gallo Winery*, 434 SCRA 473 {2003}).]

Samson v. Judge Daway
434 SCRA 612
(2003)

Issue: Which court exercises jurisdiction over cases for infringement of registered marks, unfair competition, false designation of origin, and false description or representation?

Held: It is lodged with the regional trial court (RTC).

[NOTE: Sec. 239 of RA 8293 did expressly repeal RA 166 in its entirety, otherwise, it would not have used the phrases “parts of Acts” and “inconsistent herewith.” The use of said phrases only means that the repeal pertains only to provisions which are repugnant or not susceptible of harmonization with RA 8293. (*Samson v. Dawag, supra*).]

[NOTE: RA 8293 and RA 166 are special laws conferring jurisdiction over violations of intellectual property rights (IPR) to the RTCs which should, therefore, prevail over RA 7691, which is a general law. (*Samson v. Dawag, supra*).]

[NOTE: The passing remark in *Mirpuri v. CA* (316 SCRA 516 [1999]), on the repeal of RA 166 by RA 8293 was merely a backgrounder to the enactment of the present Intellectual Property Code (IPC) and cannot, thus, be construed as a jurisdictional pronouncement in cases for violation of intellectual property rights. (*Samson v. Dawag, supra*).]

Doctrine of ‘Equivalents’

It provides that an infringement also takes place when a device appropriates a prior invention by incorporating its innovative concept and, although with some modification and change, performs substantially the same function in substantially the same way to achieve substantially the same result. (*Smith Kline Beckman Corp. v. CA*, 409 SCRA 33 [2003]).

Case**Ganuelas v. Cawed**
401 SCRA 447
(2003)

To classify the donation as *inter vivos* simply because it is founded on considerations of love and affection is erroneous — love and affection may also underline transfers *mortis causa*.

William Sevilla v. Sevilla
402 SCRA 501
(2003)

A donation *inter vivos* is immediately operative and final.

Where the Attendance of a Wise Consent Renders the Donation Voidable

Being an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another who accepts it, donation is like any other contract, wherein the agreement of the parties is essential and the attendance of a wise consent renders the donation voidable. In contrast, there is said to be no consent and consequently no contract when the agreement is entered into by one in behalf of another who has never given him authorization therefor unless he has by law a right to represent the latter. Thus, fraud and undue influence that vitiated a party's consent must be established by full, clear, and convincing evidence — otherwise, the latter's presumed consent to the contract prevails. (*Heirss of William Sevilla v. Sevilla*, 402 SCRA 501 [2003]).

(6) Remedies in Case of Infringement

- (a) Injunction. (*Sec. 23, RA 8293*).
- (b) Seizure and destruction of all necessary paraphernalia. (*Sec. 157, RA 8293*).
- (c) Damages, which consist of:

- 1) reasonable profit the complainant would have made (had there been no infringement); or
- 2) actual profit which infringer made (or if this cannot be easily determined, a reasonable percentage of *gross sales* of infringer).

Almoradie v. CA
47 SCAD 12
(1994)

The Trademark Law provides that any person whose trademark or tradename is infringed may recover damages in a civil action, and upon proper showing, may also be granted injunction.

[NOTE: In case there was actual and intentional fraud, double damages may be given. (Sec. 23, RA 166).J.

[NOTE: Only the owner of a registered trademark or tradename may sue for infringement thereof. (See Heng and Dee v. Wellington Dept. Store, et al., L-4531, Jan. 10, 1953).J.

(7) Grounds for the Cancellation of the Registration

Registration may be cancelled when:

- (a) there has been abandonment;
- (b) or the registration had been made *fraudulently* or *illegally*;
- (c) when the registered name is used to *misrepresent* the source of the goods;
- (d) when the name has become a *generic* or common descriptive name. (*Sec. 151, RA 8293*).

[NOTE: In cancellation proceedings, the Director of Patents is NOT bound by the findings of facts by the court in a criminal case for unfair competition for the issues are different. (Go San v. Director of Patents, et al., L-10563, Feb. 23, 1961).J.

Almoradie v. CA
47 SCAD 12
(1994)

The only effect of cancellation is that it would deprive the registrant protection from infringement. Thus, petitioner's continued use of respondent's trademark on her product, instead of the assigned mark "WONDER GH" is a clean act of abandonment due to non-use, which is, in fact, a ground for the cancellation of registration. The matter restricting the exclusive use of a trademark is only true over unrelated goods.

As a condition precedent to registration, the trademark, trade name or service mark should have been in actual use in commerce in the Philippines before the time of the filing of the application. (*See Sec. 124.2, RA 8293*).

Conrad & Co., Inc. v. CA
63 SCAD 232
(1995)

While an application for the administrative cancellation of a registered trademark on any of the grounds enumerated in Sec. 17 of RA 166 falls under the exclusive cognizance of the Bureau of Patents, Trademarks and Technology Transfer (BPTTT), an action for infringement or unfair competition, as well as the remedy of injunction and relief for damages, is explicitly and unquestionably within the competence and jurisdiction of ordinary courts.

An application with BPTTT for an administrative cancellation of a registered trademark cannot *per se* have the effect of restraining or preventing the courts from the exercise of their lawfully conferred jurisdiction.

Emerald Garment Manufacturing v. CA
66 SCAD 865
(1995)

The reckoning point for the filing of a petition for cancellation of a certificate of registration of a trademark is not from the alleged date of use but from the date the certificate

of registration was published in the *Official Gazette* and issued to the registrant.

To be barred from bringing suit on grounds of estoppel and laches, the delay must be lengthy.

(8) Protection of Foreign Trademarks and Names

In *Asari Yoko Co. v. Kee Boc, et al.*, L-14086, Jan. 20, 1961, the Supreme Court had occasion to rule that even if a foreign trademark has *not* been registered in the Philippines, and even if there is *no* formal commercial agreement between the Philippines and the foreign country involved, still if goods bearing the foreign trademark have *lawfully entered* the Philippines, the owner of said trademark must be protected, and other people may properly be excluded from the use of said trademark. Modern trade and commerce demand that depredations on trademarks on non-nationals should NOT be countenanced.

However, in the legitimate case of *Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft, et al.*, L-19906, Apr. 30, 1969, it was ruled that registration of the trademark "Bayer" in the *United States* does NOT of itself afford protection to its owner, because registration in the United States is *not* registration in the Philippines.

(9) Some Decided Cases

Heng and Dee v. Wellington Department Store, Inc., et al. L-4531, Jan. 10, 1953

The name "Wellington," being either geographical or a surname, cannot be registered, and hence one *cannot prevent another from using the same*.

The East Pacific Merchandising Corp. v. Director of Patents, et al. L-14377, Dec. 29, 1960

The term "*Verbena*" being descriptive of a whole *genus* of garden plants with fragrant flowers, the use of the term can-

not be denied to other traders using verbena extract or oils in their own products.

Ang Tibay v. Teodoro
74 Phil. 50

A trademark will be refused registration if there will be “confusion of origin.” This is the “confusion of origin” rule.

Sterling Products International, Inc. v.
Farbenfabriken Bayer Aktiengesellschaft, et al.
L-19906, Apr. 30, 1969

(1) The *adoption* alone of a trademark will *NOT* give exclusive right thereto; it is its ACTUAL USE in commerce that is the pre-requisite to the acquisition of ownership over such trademark, for a trademark is a “creation of use.”

(2) The “confusion of origin” rule will not be used if the alleged origin is *not really* the origin.

Asia Brewery, Inc. v. CA
GR 103543, July 5, 1993
43 SCAD 258

Infringement of trademark is a form of unfair competition. Infringement, thus, is determined by the “test of dominancy” rather than by differences or variations in the details of one trademark and of another.

“*Pilsen*” is a primarily geographically descriptive word, hence, non-registrable and not approvable by any beer manufacturer. The use of someone else’s registered trademark, tradename or service mark is unauthorized, hence, actionable, if it is done without the consent of the registrant.

A merchant cannot be enjoined from using a type or color of bottle where the same has the useful purpose of protecting the contents from the deleterious effects of light rays. What is all important is the name of the product written on the label of the bottle for that is how one beer may be distinguished from the others. Mere similarity in the shape and size of the container and label, does not constitute unfair competition.

Mirpuri v. CA
115 SCAD 648, 318 SCRA 516
(1999)

The Convention of Paris for the Protection of Industrial Property, otherwise known as “*The Paris Convention*,” is a multilateral treaty that seeks to protect industrial property consisting of patents, utility models, industrial designs, trademarks, service marks, trade names and indications of source or appellations of origin, and at the same time aims to REPRESS unfair competition.

Art. 6bis of the Paris Convention governs protection of well-known trademarks. This is a self-executing provision and does not require legislative enactment to give it effect in the member-country. For the power to determine whether a trademark is well-known lies in the “competent authority of the country of registration or use.”

Canon Kabushiki Kaisha v. CA
GR 120900, July 20, 2000

When a trademark is used by a party for a product in which the other party does not deal, the use of the same trademark on the latter’s product cannot be validly objected to.

Amigo Manufacturing, Inc.
v. Cluett Peabody, Co., Inc.
GR 139300, Mar. 14, 2001

FACTS: Respondent is domiciled in the United States and is the registered owner of the “Gold Toe” trademark. *ISSUE:* Is it entitled to the protection of the Union Convention for the Protection of Industrial Property adopted in Paris on Mar. 20, 1883, otherwise known as the Paris Convention, of which the Philippines and the United States are members.

HELD: A foreign-based trademark owner, whose country of domicile is a party to an international convention relating to protection of trademarks, is accorded protection against infringement or any unfair competition as provided in Sec. 37 of RA 166, the Trademark Law which was the law in force at the time this case was instituted.

Moreover, Sec. 20 of RA 166 provides as follows: “A certificate of registration of a mark or trade name shall be *prima facie* evidence of the validity of the registration, the registrant’s ownership of the mark or trade name, and of the registrant’s exclusive right to use the same in connection with the goods, business, or services specified in the certificate, subject to any conditions and limitations stated therein.”

Let it be remembered that the duly registered trademarks are protected by law as intellectual properties and cannot be appropriated by others without violating the due process clause. An infringement of intellectual rights is no less vicious and condemnable as theft of material property, whether personal or not.

Thus, applicable is the Paris Convention whereupon respondent is entitled to its protection. By virtue of the Philippines’ membership to said Convention, trademark rights in favor of respondent have been created. The object of the Convention is to accord a national of a member-nation extensive protection against infringement and other types of unfair competition. (*Puma Sports Schuh Fabriken Rudolf Dassler K.G. v. Intermediate Appellate Court*, 158 SCRA 233; *La Chemise Lacoste, S.A. v. Fernandez*, 129 SCRA 373).

**Philip Morris, Inc. v. Fortune
Tobacco Corp.
493 SCRA 333
(2006)**

ISSUE: Does membership in the Paris Union automatically entitle petitioners to the protection of their trademarks in the Philippines?

HELD: No, absent actual use of the marks in local commerce and trade.

Art. 521. The goodwill of a business is property, and may be transferred together with the right to use the name under which the business is conducted.

COMMENT:**(1) 'Goodwill' Defined**

It is the advantage acquired by any product or firm because of general encouragement and patronage of the public. Its elements are: place, name, and reputation. (*See 24 Am. Jur. 803, 807*).

(2) Goodwill as Property

While goodwill is considered property (*Art. 521*); it is not an independent property which is separable from the firm or business which owns it.

(3) Case

Cosmos Bottling Corp. v. NLRC
88 SCAD 511
(1997)

Private respondent made a mockery of the petitioner's promotional campaign, and exposed the company to complainants by those victimized by private respondent. At the very least, the company's *goodwill* and business reputation were ruined.

Art. 522. Trademarks and trade names are governed by special laws.

COMMENT:**Applicability of Special Laws**

Refer to RA 8293, otherwise known as the Intellectual Property Code of the Philippines, approved June 6, 1997, and effective Jan. 1, 1998. (*See Amigo Manufacturing, Inc. v. Cluett Peabody Co., Inc., GR 139300, Mar. 14, 2001*).

Title V. — POSSESSION

Chapter I

POSSESSION AND THE KINDS THEREOF

Art. 523. Possession is the holding of a thing or the enjoyment of a right.

COMMENT:

(1) Definition of 'Possession'

- (a) *Etymological* — derived from “*pos sedere*” (“to be settled”) — or “*posse*.”
- (b) *Legal* — the holding or control of a thing (this is possession proper); or the exercise of a right. (This is only quasi-possession since a right is incorporeal.)

(2) Is Possession a Fact or a Right?

It is really a *fact* (since it exists); but from the moment it exists, certain consequences follow, thus making possession also a *right*.

(3) Viewpoints of Possession

- (a) *Right TO possession (jus possidendi)* — This is a *right* or *incident* of ownership. (*Example: I own a house; therefore I am entitled to possess it.*)
- (b) *Right OF possession (jus possessionis)* — This is an independent right of itself, *independent* of ownership.

(*Example: I am renting a house from X. Although I am not the owner, still by virtue of the lease agreement, I am entitled to possess the house for the period of the lease.*)

(4) Degrees of Possession

- (a) Mere holding or having, without any right whatsoever. (This is the *grammatical* degree). (*Example: possession by a thief.*)
- (b) Possession with a *juridical title*, but not that of an owner. (*Example: that of a lessee, pledgee, depositary.*) (This is called *juridical* possession.)
- (c) Possession with a *just title*, but not from the true owner (This is called *real possessory right.*) (*Example: A in good faith buys an automobile from B who delivers same to A, and who merely pretended to be the owner.*)

[NOTE: Under Art. 430 of the old Civil Code, there was a distinction between natural and civil possession. The first was a physical holding (detention); the other was natural possession, coupled with the *intention of making the thing or right* as one's own. This distinction has been abolished, because at all events, all kinds of *rightful possession* are entitled to protection. Besides, the alleged distinction was *confusing*, since the possession of a thief under said old rule was one of *civil possession*, with the thief intending to make as his own, the thing stolen.]

- (d) Possession with a title of *dominium*, that is, with a just title from the owner. (This is really ownership or possession that springs from ownership.) (*3 Sanchez Roman 405.*)

(5) Requisites or Elements of Possession

- (a) There must be a *holding* or *control* (occupancy, or taking or apprehension) of a thing or a right. (This holding may be actual or constructive.)
- (b) There must be a deliberate intention to possess (*animus possidendi*). This is a state of the mind.
- (c) The possession must be by virtue of one's own right. (This may be because he is an owner or because of a right derived from the owner such as that of a *tenant*.)

HENCE, an agent who holds is not truly in possession; it is the principal who possesses *thru* the agent.

(6) Holding or Detention

Holding or detention may be either actual or constructive occupation. Hence, if a person assumes control over a big tract of land although he actually possesses only *one-fourth* of it, he is said to be in *constructive possession* of the rest. Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of ground before it can be said that he is in possession. (*Ramos v. Director of Lands*, 39 Phil. 175). It is, however, essential in constructive possession that the property be not in the adverse possession of another. (*See Sarmiento v. Lesaca*, L-15383, June 30, 1960).

(7) Classes of Possession

- (a) In *one's own name* or in that of another. (*Art. 524*).
- (b) In the concept of owner (*en concepto de dueno*) and in the concept of holder. (*Art. 525*).
- (c) In good faith (*bona fide*) or in bad faith. (*mala fide*).

(8) Ownership is Different from Possession

Ownership is different from possession. A person may be declared the owner, but he may not be entitled to possession. The possession (in the concept of holder) may be in the hands of another, such as a lessee or a tenant. A person may have introduced improvements thereon of which he may not be deprived without due hearing. He may have other valid defenses to resist surrender of possession. Hence, a judgment for ownership does NOT necessarily include possession as a necessary incident. (*Jabon v. Alo*, L-5094, Aug. 7, 1952). This is moreover true only if there is the possibility that the actual possessor has some rights which must be respected and defined. Where the actual possessor has no valid right over the property enforceable even against the owner thereof, the surrender of the possession to the adjudged owner should be considered included in the judgment. (*Perez, et al. v. Evite, et al.*, L-16003, Mar. 29, 1961).

(9) Cases

**Spouses Medina and Bernal v.
Hon. Nelly Romero Valdellon
L-38510, Mar. 25, 1975**

FACTS: A married couple sued for recovery of possession of a parcel of land. The defendants presented a motion to dismiss on the ground that a land registration case was pending between the parties in another CFI branch of the same court. *ISSUE:* should the recovery of possession case be dismissed?

HELD: No, because the issues in the two cases are different. The first deals with possession, the second, with ownership. Thus, the eventual decision in one will not constitute *res judicata* for the other.

**Heirs of Bofill v. CA
56 SCAD 73
(1994)**

Possession is not a definite proof of ownership, nor is non-possession inconsistent therewith.

**Somodio v. CA
54 SCAD 374
(1994)**

Possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before it can be said that he is in possession. (*Ramos v. Director of Lands, 39 Phil. 175 [1918]*). It is sufficient that petitioner was able to subject the property to the action of his will.

**Garcia v. CA
110 SCAD 571, 312 SCRA 180
(1999)**

Possession is defined as the holding of a thing or the enjoyment of a right while ownership exists when a thing pertaining to one person is completely subjected to his will in a manner

not prohibited by law and inconsistent with the rights of others.

(10) Physical Possession

When the primary issue to be resolved is physical possession, the issue should be threshed out in the ejectment suit, and not in any other case such as an action for declaratory relief to avoid multiplicity of suits. (*Panganiban v. Pilipinas Shell Petroleum Corp.*, 395 SCRA 624 [2003]).

[NOTE: The law does not require one in possession of a house to reside in the house to maintain his possession. For possession in the eyes of the law does not mean that a man has to have his feet on every square meter of the ground before he is deemed in possession. (*Dela Rosa v. Carlos*, 414 SCRA 226 [2003]).

Art. 524. Possession may be exercised in one's own name or in that of another.

COMMENT:

(1) Names Under Which Possession May Be Exercised

- (a) one's own name
- (b) name of another

(2) Example

I may possess a piece of land myself or thru my agent. Here if I possess the land myself, this is possession in one's own name; on the other hand, the agent possesses not in his own name but in that of another. (*See Alo v. Rocamora*, 6 Phil. 197).

(3) Query – Who is in Actual Possession of a Rented Parcel of Land?

The lessor, thru the tenant, is in actual possession of the land (in the concept of owner, that is, if the lessor is NOT the owner; if he is the owner, he is called the *possessor-owner*).

The tenant, by himself, is in actual possession *in the concept of holder*.

(4) Possession in Another's Name

- (a) *Voluntary* — as when an agent possesses for the principal (by virtue of agreement).
- (b) *Necessary* — as when a mother possesses for a child still in the maternal womb.

[NOTE: Here the mother does not possess the child; she possesses FOR him.].

- (c) *Unauthorized* — (This will become the principal's possession only after there has been a ratification without prejudice to the effects of *negotiorum gestio*.)

[NOTE: Even a servant, guard, or laborer may possess in another's name — see *Alguer and Castan*. (See 4 *Manresa* 87-88).].

(5) Right of the Landlord Himself to Bring Suit Against an Intruder

QUESTION: If a tenant is ousted by an intruder, the tenant is undoubtedly given the right to bring an action of forcible entry. Now then, suppose it is the *landlord himself* who institutes the suit against the intruder, would the action prosper?

ANS.: Yes, for after all, the landowner was really in actual possession, thru the tenant. Moreover, unless he would be allowed this right, there is a danger he may eventually lose his possession over the same, and suffer serious inconvenience. It should be noted also that under Art. 1673 (of the Civil Code) the tenant is required to give notice to the owner of any usurpation which a stranger may do. It can be inferred from this that the owner can maintain his possession, by suit, if this is essential. (See *Simpao v. Dizon*, 1 *Phil.* 261).

(6) Query Re Cursory Visits to Object

Suppose I visit a certain piece of land once in a while and I declare for taxation purposes the fact that the land belongs

to me, does this necessarily mean that I am in possession of the lands?

HELD: Not necessarily, for these facts, by themselves (*See Ramirez v. Dir. of Lands, 60 Phil. 114*) do not show possession. [*NOTE:* The holding however of an *informacion posesoria* or possessory information is considered evidence of possession under Art. 394 of the Spanish Mortgage Law. (*See Bishop of Nueva Segovia v. Municipality of Bantay, 24 Phil. 347*).].

(7) **Case**

Jose De Luna v. CA, et al.
GR 94490, Aug. 6, 1992

Well-established is the rule in ejectment cases that the only issue to be resolved therein is who is entitled to the physical or material possession of the premises, or possession *de facto*, independent of any claim of ownership that either party may set forth in their pleadings. If petitioner can prove prior possession in himself, he may recover such possession even from the owner himself. Whatever may be the character of his prior possession, if he has in his favor priority of time, he has the security that entitles him to stay on the property until he is lawfully ejected by a person having a better right by either *accion publiciana* or *accion reivindicatoria*. However, where the question of possession can not be resolved without deciding the question of ownership, an inferior court has the power to resolve the question of ownership but only insofar as to determine the issue of possession.

In the case at bar, the inferior court acted correctly in receiving evidence regarding the ownership of the disputed property, inasmuch as respondent Dimaano, Jr. claimed to possess the property by virtue of a lease agreement with the alleged owner thereof, Agustin Dequiña, Jr.

Be that as it may, the respondent Court erred in upholding the Regional Trial Court regarding the conclusion that the subject property is owned by Agustin Dequiña, Jr. and therefore respondent Dimaano, Jr. is entitled to possess the same. First of all, petitioner has shown that he had prior possession of the

property. The prior possession of petitioner was established by the testimony of his witnesses, notably that of his tenant Epigenio Dilag and Victor dela Cruz. While petitioner admitted that he declared the property for taxation purposes only in 1957, he had possessed the property beginning 1953 at the very latest, when he leased the same to Epigenio Dilag, who in turn possessed the same until respondent Dimaano, Jr. entered upon the property in 1972. The possession of the property by Dilag since 1953 redounds to the benefit of petitioner, since possession may be exercised in one's own name or in that of another. (*Art. 524, Civil Code*). Moreover, there is evidence to the effect that petitioner possessed the property even earlier than 1953. Petitioner's witness, Victor dela Cruz, who lived about 400 meters from the land in controversy, testified that he had witnessed the delivery of the property to the petitioner and his mother Apolonia Dequiña by Agustin Dequiña, Sr. in 1938, when they and their brothers and sisters partitioned among themselves the properties of their deceased parents. He further testified that he saw petitioner and his mother cultivate the land from 1938 to 1941, and that he leased the land from them from 1944 to 1952.

Upon the other hand, respondent Dimaano, Jr. had failed to prove that Agustin Dequiña, Jr. possessed the property prior to his possession, much less the ownership of the latter over said property. While Agustin Dequiña, Jr. testified that he is a co-owner of the disputed property, there is nothing to support this self-serving claim; neither does his testimony support the defense's theory that he had prior possession of the property. The mere fact that Agustin Dequiña, Sr. had declared the subject property for taxation purposes from 1908 up to 1945 did not constitute possession thereof, nor is it proof of ownership in the absence of Dequiña, Jr.'s actual possession of said property. Therefore, the Court of Appeals erred in ruling that Agustin Dequiña, Jr. was the owner of the disputed property since there is no evidence whatsoever to support such a conclusion. However, it goes without saying that this case does not bar petitioner and Agustin Dequiña, Jr. from resolving the issue of ownership over the disputed property in an appropriate proceeding.

Art. 525. The possession of things or rights may be had in one of two concepts: either in the concept of owner, or in that of the holder of the thing or right to keep or enjoy it, the ownership pertaining to another person.

COMMENT:

(1) Concept of Owner or Holder

- (a) In the *concept of owner*, other people believe thru my actions, that I am the owner of the property, hence considered in the opinion of others as owner. This is regardless of my good faith or bad faith. Otherwise stated, a possessor in the concept of an owner is one who, whether in good or in bad faith, CLAIMS to be, and ACTS as if he is, the owner. He thus recognizes no title of ownership in another, with respect to the property involved. Whether he is in good faith or bad faith is *immaterial*.

[NOTE: This is the possession that may ripen into ownership. (See 4 Manresa 81-82). This is also referred to as *adverse* possession.]

**Cruz v. Court of Appeals
L-40880, Oct. 13, 1979**

Adverse possession or acts of dominion in derogation of owner's interest may include the construction of permanent buildings and the collection of rentals, harvesting of the fruits of fruit-bearing trees, the giving of advice as to the boundaries of adjoining properties, the payment religiously of the taxes on the property.

- (b) In the *concept of holder*, here I recognize another to be the owner.

(2) Examples in General

I purchased land from X knowing him not to be the owner. But I exercise acts of ownership over it and my friend believe I am the owner. In time, thru prescription, I may become the owner because my possession is in *concepto de dueno*. If a

tenant leases the land from me, he possesses the land in the concept of holder (although it may be said that he possesses the “lease right” — the right to the lease — in the concept of owner). (*4 Manresa, pp. 87-88*).

(3) Specific Examples of Possession in the Concept of Holder

- (a) that of the tenant;
- (b) that of the usufructuary;
- (c) that of the depositary;
- (d) that of the bailee in *commodatum*.

[NOTE: The possession is of the property concerned. Regarding their respective rights (the lease right, the usufruct, the right to safeguard the thing, the right to use the thing), all are possessed by them, respectively, in the concept of owner.

HENCE, we distinguish between:

- 1) possession of the THING itself.
- 2) possession of the RIGHT TO ENJOY the thing (or benefit from it).]

Art. 526. He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.

Mistake upon a doubtful or difficult question of law may be the basis of good faith.

COMMENT:

(1) Possession in Good Faith or Bad Faith

It is useless to speak of an owner as a possessor in good faith or bad faith (except insofar as to point out whether or

not in the meantime he is entitled to possess). This is because when the law in Art. 526 distinguishes good and bad faith, *there must* be a flaw. If aware of it, the possessor is in BAD faith; if not aware, he is in GOOD faith. If there is *no flaw at all*, the article should not apply.

(2) 'Possessor in Good Faith' Defined

One who is not aware that there exists in his TITLE or MODE of acquisition any flaw which invalidates it. (*DBP v. CA, 316 SCRA 650 [1999]*).

(*Example: I bought a bullet proof Mercedes Benz car from another and paid him very good money for it, but it turns out that he is not the owner and that he had merely deceived me.*)

[NOTE: Good faith or lack of it is in the last analysis a question of intention. It is a *fact* which is intangible, and is evidenced by external signs. (*See Leung Lee v. Strong, 37 Phil. 644*).].

[NOTE: The belief must be a reasonable, not capricious, one. Hence, if I do not know why a certain *Mont Blanc* fountain pen ever came into my possession, I will not be justified in thinking that it is my own. (*See 4 Manresa 98*).].

[NOTE: While the possessor in good faith is one who BELIEVES he is the owner, the possessor in the concept of owner is one who ACTS as if he is the owner.].

Pura Carreon, et al. v. Rufo Agcaoili, et al. L-11156, Feb. 23, 1961

FACTS: Rufo Agcaoili purchased a parcel of land from Celerina Dawag Carreon, under whose name the land was registered. In truth, however, the land was owned *by the seller in common with her children*. Rufo did not know that Celerina had children, although they were townmates. There was no encumbrance or burden annotated on the Torrens Certificate of Title except the law lien stated in Sec. 4, Rule 74 of the Rules of Court (which section grants to an heir or other person unduly deprived of his lawful participation in an estate, the right to

compel a judicial settlement of the estate for the purpose of satisfying such lawful participation). This lien however (which is effective only for two years) had already *expired* (and had become a *functus officio*). *ISSUE*: Was Rufo a purchaser in good faith?

HELD: Yes, on the basis of the facts hereinabove stated. Fraud cannot be presumed. It must be established by clear and convincing evidence. Rufo had a right to rely on the certificate of title. And the only lien it contained was no longer effective.

[*NOTE*: If I enter upon an inheritance thinking I am the only heir, I should be considered in good faith, unless facts exist which show that I should have known of the existence of other heirs.]

[*NOTE*: If the wife and children are in possession of a parcel of land and have made improvements thereon, unaware that the husband had previously donated said land to somebody else, the wife and the children are considered in good faith, and the improvements should be governed by the rules of accession and possession in good faith. (*Liguez v. Court of Appeals*, L-11240, Dec. 18, 1957).]

Benin, et al. v. Tuason, et al.

L-26127, June 28, 1974

Juan Alcantara, et al. v.

Mariano Severo Tuason, et al.

L-26128, June 28, 1974

ISSUE: If a buyer knows at the time of purchase that the lot he is acquiring, is in the possession of a *person other than the seller*, is he necessarily a buyer in bad faith?

HELD: He is not necessarily a buyer in bad faith. After all, a possessor is not necessarily the owner of the property possessed. Besides, he may be possessing only a portion of the land involved, or his possession may be with the knowledge and tolerance of the owner. Finally, the rights of a mere possessor are unavailing as against a seller who is armed with a Torrens Title over the property involved.

**Republic of the Phils. Bureau of Forest Development
v. IAC and Hilario R. Rama
GR 69138, May 19, 1992**

Good faith which entitles the possessors to necessary expenses with right of retention until reimbursement is explained in the case: “On the matter of possession of plaintiffs-appellants, the ruling of the Court of Appeals must be upheld. *There is no showing that plaintiffs are not purchasers in good faith and for value. As such title-holders, they have reason to rely on the indefeasible character of their certificates.*” On the issue of good faith of the plaintiffs, the Court of Appeals reasoned out: “The concept of possessors in good faith given in Art. 526 of the Civil Code and when said possession loses this character under Art. 528, needs to be reconciled with the doctrine of indefeasibility of a Torrens Title. Such reconciliation can only be achieved by holding that the possessor with a Torrens Title is not aware of any flaw in his Title which invalidates it until his Torrens Title is declared null and void by final judgment of the courts.

“Even if the doctrine of indefeasibility of a Torrens Title were not thus reconciled, the result would be the same, considering the third paragraph of Art. 526 which provides that: ‘Mistake upon a doubtful or difficult question of law may be the basis of good faith. The legal question whether plaintiff-appellants’ possession in good faith, under their Torrens Titles acquired in good faith, does not lose this character except in the case and from the moment their Titles are declared null and void by the Courts, is a difficult one. Even the members of this Court were for a long time divided, two to one, on the answer. It was only after several sessions, where the results of exhaustive researches on both sides were thoroughly discussed, that an undivided Court finally found the answer given in the preceding paragraph. Hence, even if it is assumed for the sake of argument that the Supreme Court would find that the law is not as we have stated it in the next preceding paragraph and that the plaintiffs-appellants made a mistake in relying thereon, such mistake on a difficult question of law may be the basis of good faith does not lose this character except in the case and from

the moment their Torrens Titles are declared null and void by the Courts.’ ”

Under the circumstances of the case, especially where the subdivision plan was originally approved by the Director of Lands, we are not ready to conclude that the above reasoning of the Court of Appeals on this point is a reversible error. Needless to state, as such occupants in good faith, plaintiffs have the right to the retention of the property until they are reimbursed the necessary expenses made on the lands.

With respect to the contention of the Republic of the Philippines that the order for the reimbursement by it of such necessary expenses constitutes a judgment against the government in a suit not consented to by it, suffice it to say that the Republic, on its own initiative, asked and was permitted to intervene in the case and thereby submitted itself voluntarily to the jurisdiction of the court.

Reyes v. CA
GR 110207, July 11, 1996
72 SCAD 126

Regarding the requirement of good faith, the first paragraph of Article 526 states, thus: “He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.”

From the abovesited provision, petitioners could not have been possessors in good faith of the subject parcel of land considering the finding that at the very inception, they forged the Deed of Extrajudicial Partition and Settlement which they claim to be the basis for their just title. Having forged the Deed and simulated the signatures of private respondents, petitioners, in fact, are in bad faith. The forged Deed containing private respondents’ simulated signatures is a nullity and cannot serve as a just title.

(3) ‘Possessor in Bad Faith’ (*mala fide*) Defined

One who is not in good faith. (Hence, if circumstances exist that require a *prudent man* to investigate, he will be in bad faith if he does not investigate.)

Examples:

- (a) If I buy properties from X, after having been warned by a friend that X's title was defective, and I made no investigation, I would be a *vendee* and *possessor* in bad faith. "A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor." (*Leung Lee v. Strong*, 37 Phil. 644). In the *Leung Lee* case, the Supreme Court held that "a party's mere refusal to believe that a defect exists or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title will *not* make him an innocent purchaser for value if it afterwards develop that the title was in fact defective." Thus, a buyer of registered land who fails to act with the diligence of a *prudent* man *cannot* be a purchaser in good faith. (*RFC v. Javillonar*, L-14224, Apr. 25, 1960).

[NOTE: In the case of *Carlos Manacop, Jr. v. Faustino Cansino*, L-13971, Feb. 27, 1961, the Supreme Court held that if a purchaser of land had visited the land about 9 months before the purchase and had learned of another person's open, public, peaceful, and adverse possession of the same, he is aware of sufficient fact to warrant an inquiry into the status of the title to the land. If he does not so investigate, he cannot legally claim the rights of a purchaser in good faith. It was also therein held that if the trial court finds a purchaser to be in bad faith, and said purchaser appeals *directly* to the Supreme Court (which ordinarily has no jurisdiction to entertain questions of facts, he has, by said act, waived the right to question such finding by the trial court.]

Republic v. Court of Appeals
102 SCRA 331

Before one purchases real property, he must make inquiries regarding the rights if any of those in possession thereof.

J.M. Tuason and Co., Inc. v. Atanacio Munar
L-21544, Sep. 30, 1968

FACTS: A transferee of a certain Munar constructed a building on land owned by J.M. Tuason and Co., as evidenced by the latter's Torrens Title thereto. The transferee however alleges that the Title (issued more than 20 years ago) was void and fraudulent; moreover, he claims rights of a possessor in good faith.

HELD: The transferee of Munar is a possessor in bad faith. *Firstly*, he is barred from assailing a decree of registration in favor of Tuason and Co., twenty years after its issuance. *Secondly*, in view of the *presumptive knowledge* of the Torrens Title (in favor of Tuason and Company), the transferee *cannot* in good conscience say now that he believed that his vendor, Munar, had rights of ownership over the lot purchased. He chose to ignore Tuason's Torrens Title, and relied instead on Munar's claim of ownership, perhaps because said course appeared to him as more advantageous; hence, he has only himself to blame for the consequences that followed. Good faith *cannot* now be alleged.

Republic v. Diaz
L-36486, Aug. 6, 1979

A lessee who continues to stay on the premises after the expiration of the lease contract is a usurper having no more right to the use and enjoyment of the premises. He has become a possessor in bad faith.

- (b) Purchaser from a suspected thief.
- (c) Purchaser at a public auction sale of property subject to litigation or to third-party claim. (*Too Lan Co. v. Laureana*, L-46173; *Director of Lands v. Martin*, 47 O.G. 120).
- (d) Purchaser from a person with a forged title. (*Valdez v. Pine*, (CA) L-9848, Mar. 18, 1946). In *Rivera v. Tirona, et al.*, L-12328, Sep. 30, 1960, it was held that one who buys land from a person who is NOT the registered owner is *not* considered a subsequent purchaser who takes the certificate of title for value and in good faith and who is

protected against any encumbrance except those noted on said certificate. In order to enjoy the full protection of the registration system, the purchaser must be a holder in good faith of such certificate.

- (e) Squatters on church land who know it to be temporarily abandoned because of war. (*See Roman Catholic Church v. Municipalities, 10 Phil. 1*).
- (f) A tenant who continues to occupy the property leased after the period of lease has expired, and has already been asked to leave (*Jison v. Hernaez, 74 Phil. 66*), or the wife of a tenant who (referring to the wife) claims ownership over the property despite the fact that she knows of the lease contract entered into by her husband. (*See Lerma v. de la Cruz, 7 Phil. 581*).
- (g) A purchaser from a tenant of the property, the purchaser knowing that the property belonged to another. (*Paula Guzman v. Fidel Rivera, 4 Phil. 621*).
- (h) Persons who take possession of hereditary estate of a relative and deliberately excluded from the estate the child of the deceased. (*Bagoba, et al. v. Hon. Fernandez, et al., L-11539, May 19, 1958*).
- (i) While one who buys from the registered owner does NOT need to look behind the certificate of title, one who buys from one who is NOT the registered owner (such as impostor-forgery) is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land. The failure of the purchaser to make the necessary investigation constitutes lack of good faith. Not being a purchaser in good faith, he is NOT entitled to the rights of a registered owner. (*Revilla v. Galindez, L-9940, Mar. 30, 1960*).
- (j) An attorney at law who purchased land in Quezon City from a seller who informed him that although the land had *no* Torrens Title, he (the seller) nonetheless was willing to bind himself to issue a clear title to the land. (*Republic v. Aricheta, L-15589, May 31, 1961* — where the court discovered that the land had already a Torrens

Title issued in favor of a person NOT the seller. In this case, the Court also stated that as an attorney-at-law, the buyer ought to have known that *no* property around Manila or in Quezon City is as yet NOT covered by a Torrens Title. Moreover, the statement in the deed of sale that the seller was guaranteeing title shows that the buyer must have doubted the validity of his vendor's title to the property).

- (k) A buyer of land already in the peaceable possession of a person other than the seller, who does not inquire into the status of the land or the title of the seller of the property should be considered one in bad faith and must suffer the consequences of the risk taken. (*Salvoro v. Tañega, et al.*, L-32988, Dec. 29, 1978, 87 SCRA 349).

(4) Query

If a person is aware of the defects of his predecessor's title, should he be considered in good faith or in bad faith?

ANS.: Although Manresa says he should be considered in good faith because after all, the law speaks of his title, not that of the predecessor, still the fact remains that he is not allowed to get from a person who is not the owner. Therefore, we should consider him in bad faith unless of course he has valid reasons to believe that his own title is good.

Roque v. Lapuz **L-32811, Mar. 31, 1980**

A person in bad faith is not entitled to the privilege of having a court give him a longer term for the fulfillment of his obligation.

NOTA BENE: Bad faith or malice, the lesser evil of the two, the Court has once said, implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Bad faith is different from the negative idea of negligence in that malice or bad faith contemplates a state of mind affirmatively operating with futive design or ill-will. (*Equitable Banking Corp. v. NLRC*, 83 SCAD 303 [1997]). It means breach of a known duty thru some motive. (*Equatorial Realty Development, Inc. v. Anunciacion, Jr.*, 88 SCAD 87

[1997]). Bad faith partakes of the nature of fraud. (See *Philippine Stock Exchange, Inc. v. CA*, 88 SCAD 589 [1997]).

(5) Effect of Erroneous Final Judgment

Llanos v. Simborio **L-9704, Jan. 18, 1957**

FACTS: A war evacuee entered a parcel of land belonging to another, and when asked to vacate by the owner, refused to do so on the ground that he was merely a war evacuee. The landowner then permitted him to stay, for then he had no other place to go. Subsequently, he introduced some improvements on the land. The Court of Appeals declared both of them in *bad faith* and said that their rights must be determined as if both has acted in good faith. So the landowner was required to refund the value of the improvement. The landowner did not appeal, and the judgment became final. Later, a case was brought, concerning the necessity of the refund.

ISSUES:

- (a) Was the decision of the Court of Appeals correct?
- (b) Can the evacuee be ousted even without reimbursement?

HELD:

- (a) The decision of the Court of Appeals was *wrong* because the landowner, under the premises did *not* act in bad faith.
- (b) Nevertheless, since the wrong decision was *not* appealed, and had therefore become final, the decision remains and the landowner must reimburse if he wants the ouster.

(6) Mistake on a Doubtful or Difficult Question of Law

Mistake upon a doubtful or difficult question of law (provided that such ignorance is not gross and therefore inexcusable) may be the basis of good faith. (*Art. 526; see also Kasilag v. Rodriguez*, 69 *Phil.* 217). It is true that “ignorance

of the law excuses no one” but error in the *application* of the law, in the legal solutions arising from such application, and the interpretation of doubtful doctrine can still make a person a transgressor, violator, or possessor in good faith. For indeed, ignorance of the law may be based on an error of fact. (*See 4 Manresa 100-102*).

Kasilag v. Rodriguez
40 O.G. 17, 3rd Supp., p. 247

FACTS: Emiliana Ambrosio was the owner of a parcel of land obtained thru a homestead patent. Under Sec. 116 of the Public Land Act, such *land* could *not* be mortgaged or encumbered within a period of 5 years from the time the patent was issued. Emiliana nevertheless turned over the land’s *possession* to *X* by virtue of the contract of antichresis to secure a debt. Should *X* be considered a possessor in good faith or bad faith?

HELD: *X* should be considered a possessor in good faith, even if the contract in his favor is prohibited by the law. For while gross and inexcusable ignorance of the law may not be the basis of good faith, slight ignorance may be excusable in his case, considering that he is not a lawyer or a jurist who is supposed to know the various intricacies of a contract of antichresis. He should therefore be considered a possessor in good faith.

[NOTE: It would be seen that according to the Code Commission, mistake or ignorance of a law by itself cannot be the basis of good faith — the law must be one that is “doubtful” or “difficult.” Query — is there really any law or legal provision that is NOT “doubtful” or “difficult” to understand?]

(7) Bad Faith Is Personal

Just because a person is in bad faith (knows of the defect or flaw in his title) does *not* necessarily mean that his successors-in-interest are also in bad faith. As a matter of fact, a child or heir may even be presumed in good faith, notwithstanding the father’s bad faith. (*See Art. 534; see also Sotto v. Enage, [CA] 43 O.G. 5057*).

Art. 527. Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

COMMENT:

(1) Presumption of Good Faith

Reason: The presumption of innocence is given because every person should be presumed honest till the contrary is proved. (*See U.S. v. Rapinan, 1 Phil. 294*).

Ballatan v. CA
104 SCAD 30, 304 SCRA 34
(1999)

Good faith is always presumed, and upon him who alleges bad faith on the part of a possessor rests the burden of proof.

Thus, where a person had no knowledge that he encroached on his neighbor's lot, he is deemed a builder in good faith until the time the latter informed him of his encroachment on the latter's property.

(2) When No Evidence is Presented Showing Bad Faith

If no evidence is presented proving bad faith, the presumption of good faith remains. (*Sideco v. Pascua, 13 Phil. 342*). This is so even if the possessor has profited, as when he had rented the land to others. (*Labajo v. Enriquez, L-11093, Jan. 27, 1958*).

Technogas Phils. Mfg. Corp.
v. Court of Appeals
79 SCAD 290
(1997)

Art. 527 of the Civil Code presumes good faith, and since no proof exists to show that the encroachment over a narrow, needle-shaped portion of private respondent's land was done in bad faith by the builder of the encroaching structures, the latter should be presumed to have built them in good faith.

(3) One Effect of Possession in Good Faith

If at a mortgage sale (which later turns out to be void), the mortgagee-buyer takes possession of a house on the lot, he should be considered a possessor in good faith and would not be responsible for the subsequent loss of the house thru a fortuitous event. (*Cea v. Villanueva, 18 Phil. 538*).

Art. 528. Possession acquired in good faith does not lose this character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully.

COMMENT:

(1) When Possession in Good Faith is Converted to Possession in Bad Faith

- (a) From the moment facts exist showing the possessor's knowledge of the flaw, from that time should he be considered a possessor in bad faith. (*Art. 528*).
- (b) It does not matter whether the "facts" were caused by him or by some other person. (*4 Manresa 117*).

[NOTE: Under the old law, the word "acts" was used instead of "facts." The Code Commission used "facts" because this term is BROADER, and necessarily includes "acts."].

(2) When Bad Faith Begins

Existence of bad faith may begin either from the receipt of judicial summons (*See Tacas v. Tobon, 53 Phil. 356*), or even before such time as when a letter is received from the true owner asking the possessor to stop planting on the land because somebody else owns it. (*See Ortiz v. Fuentebella, 27 Phil. 537*). What the possessor should do upon receipt of the letter would be to investigate; and if he does not, but is later on defeated, bad faith should be counted not from the time of summons, but from the time he first received the letter. Although receipt of summons will *ordinarily* produce a conversion from good faith to bad faith, it may be possible that a possessor will still be convinced of the

righteousness of his cause, thus *preserving* his original good faith. This is why if he originally was in good faith, he would not be responsible in case of loss thru fortuitous event, even if the loss should occur *during* the trial. Upon the other hand, had he been really in bad faith all the time, the loss by fortuitous event would not excuse him. (*See Art. 552*).

(3) Cases

Felices v. Iriola L-11269, Feb. 28, 1958

FACTS: A homestead was sold within five years from the issuance of the patent, and therefore, under Sec. 118, Com. Act No. 141 as well as Art. 1409 of the Civil Code, the sale was null and void. *After* the seller offered to “redeem” or get back the land, the buyer refused and instead made improvements on the land. Said construction of improvements continued even after the judicial action to recover the land had been filed.

ISSUE: Is the buyer a possessor and builder in bad faith despite the knowledge of both parties that the sale was illegal?

HELD: *Yes. It is true that the contract was illegal and void, and that both knew of the illegality of the sale, and are therefore in a sense in pari delicto.* But it cannot be said that the rights of both are as though they both had acted in good faith — because after the buyer had refused to restore the land to the seller, the latter could no longer be regarded as having impliedly assented or conformed to the improvements thereafter made by the buyer. Moreover, the buyer continued to act in bad faith when he made such improvements. He should consequently lose whatever he had built, planted, or sowed in bad faith, without right to indemnity.

The Heirs of Proceso Bautista, represented by Pedro Bautista v. Spouses Severo Barza and Ester P. Barza, and CA GR 79167, May 7, 1992

Petitioner’s contention that the action for recovery of possession had prescribed when the Barzas filed it on Dec. 12,

1968 is erroneous for it was filed within the ten-year period for enforcing a judgment, which in this case is the May 5, 1959 decision of the Secretary of Agriculture and Natural Resources as provided for in Art. 1144 of the Civil Code. Hence, the ultimate issue in this case is whether or not the Barzas may rightfully seek enforcement of the decision of the Director of Fisheries and that of the Secretary of Agriculture and Natural Resources, notwithstanding their refusal to reimburse the Bautistas for the improvements in the area. We find that the peculiar circumstances of this case compel as to rule in the affirmative.

Although Bautista was in possession of the area for quite a number of years, he ceased to become a *bona fide* possessor upon receipt of the decision of the Director of Fisheries granting due course to Barza's fishpond application. Under Art. 528 of the Civil Code, "(p)ossession acquired in good faith does not lose its character except in the case and from the moment facts exist which show that the possessor is not unaware that he possesses the thing improperly or wrongfully." Thus, Bautista should have desisted from introducing improvements on the property when he learned that Barza's application had been approved. However, Bautista may not be solely faulted for holding on the area notwithstanding that he had no right over it. The Barzas, after receiving the administrative decision in their favor, should have complied with its directive to reimburse the Bautistas for the improvements introduced thereon. This is not to say, however, that such failure to abide by the decision of the Director of Fisheries rendered "stale" the said decision. There is also the established fact that Bautista refused the payments tendered by the Barzas. However, the Barzas' failure to question the last reappraisal of the improvements constituted inaction on their part, for which they should bear its consequences.

**Development Bank of the Phils. v.
Court of Appeals
114 SCAD 197, 316 SCRA 650
(1999)**

When a contract of sale is void, the possessor is entitled to keep the fruits during the period for which it held the property

in good faith, which good faith of the possessor ceases when an action to recover possession of the property is filed against him and he is served summons therefor.

David v. Malay
115 SCAD 820, 318 SCRA 711
(1999)

A person in actual possession of a piece of land under claim of ownership may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right and that his undisturbed possession gives him the continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim.

Art. 529. It is presumed that possession continues to be enjoyed in the same character in which it was acquired, until the contrary is proved.

COMMENT:

(1) Continuity of the Character of the Possession

This Article is another presumption regarding possession.

(2) Some Presumptions Regarding Possession

- (a) *GOOD FAITH* — “Good faith is always presumed.” (*Art. 527*).
- (b) *CONTINUITY OF CHARACTER OF POSSESSION* (whether in *good faith* or *bad faith* — “It is presumed that possession continues to be enjoyed in the same character in which it was acquired, until the contrary is proved.” (*Art. 529*).
- (c) *NON-INTERRUPTION OF POSSESSION* — “The possession of hereditary property is deemed transmitted to the heir *without* interruption, and from the moment of the death of the decedent, in case the inheritance is accepted. One who validly *renounces* an inheritance is deemed *never* to have possessed the same.” (*Art. 533*).

- (d) *PRESUMPTION OF JUST TITLE* – “A possessor in the concept of owner has in his favor the legal presumption that he possesses with *just title*, and he *cannot be obliged* to show or prove it.” (Art. 541).
- (e) *NON-INTERRUPTION OF POSSESSION OF PROPERTY UNJUSTLY LOST BUT LEGALLY RECOVERED* – “One who recovers, *according to law*, possession unjustly lost, shall be *deemed* for all purposes which may *redound to his benefit*, to have enjoyed it *without interruption*.” (Art. 561).
- (f) *POSSESSION DURING INTERVENING PERIOD* – “It is presumed, that the present possessor who was also the possessor at *previous time*, has continued to be in possession during the intervening time, unless there is proof to the contrary.” (Art. 1138[2]).
- (g) *POSSESSION OF MOVABLES WITH REAL PROPERTY* – “The possession of real property presumes that of the *movables therein*, so long as it is not shown or proved that they should be excluded.” (Art. 542).
- (h) *EXCLUSIVE POSSESSION OF COMMON PROPERTY* – “Each one of the participants of a thing possessed in common shall be deemed to have *exclusively possessed* the *part* which may be *allotted* to him upon the division thereof, for the *entire period* during which the co-possession lasted.” (Art. 543).

Art. 530. Only things and rights which are susceptible of being appropriated may be the object of possession.

COMMENT:

(1) What May or May Not Be Possessed?

Only those things and rights which are susceptible of being *appropriated* (hence, only PROPERTY may be the object of possession).

The following cannot be appropriated and hence cannot be possessed: property of public dominion, *res communes*, easements (if discontinuous or non-apparent), things specifically prohibited by law.

(2) 'Res Nullius'

Res nullius (abandoned or ownerless property) may be possessed, but cannot be acquired by *prescription*. *Reason*: prescription presupposes prior ownership in *another*. However, said "*res nullius*" may be acquired by *occupation*.

Chapter 2

ACQUISITION OF POSSESSION

Art. 531. Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right.

COMMENT:

(1) How Is Possession Acquired? (BAR)

- (a) By *material occupation* (detention) of a thing or the *exercise of a right* (quasi-possession). (This also includes *constitutum possessorium* or *traditio brevi manu*.)
- (b) By subjection to our will (this includes *traditio longa manu* – by mere agreement; or by the delivery of keys – *traditio simbolica*) (clearly, this *does not* require actual physical detention or seizure).
- (c) By *constructive possession* or proper acts and legal formalities (such as succession, donation, execution of public instruments; or thru the possession by a sheriff by virtue of a court order.) (*See Muyo v. Montilla, 7 Phil. 498*).

[NOTE: (1) *Constitutum possessorium* exists when a person who possessed property as an owner, now possesses it in some other capacity, as that of lessee or depositary.

- (2) *Traditio brevi manu* – (the opposite of *constitutum possessorium*) – this exists when a person who possessed property *not as an owner* (like a lessee), now possesses it as owner.

- (3) *Traditio longa manu* (delivery by the long hand) — delivery by consent or mere pointing. (See 4 *Manresa 148-149*).J.

[NOTE: In the absence of stipulation of the parties that the ownership of a thing sold shall *not* pass to the purchaser until he has fully paid the stipulated price, the execution of the sale thru a *public instrument* shall be *equivalent* to the *delivery* of the thing. The fact that the parties have agreed that the balance shall be paid upon approval of a particular loan does not evidence a contrary intention. (*Tan Boon Diok v. Aparri Farmer's Cooperative Association, Inc., L-14154, June 30, 1960*). If, however, notwithstanding the execution of the instrument, the purchaser CANNOT have the enjoyment and material tenancy of the thing and make use of it himself, because such tenancy and enjoyment are opposed by another, then delivery has NOT been effected. Symbolic delivery holds true when there is no impediment that may prevent the passing of the property from the hands of the vendor into those of the vendee. (*Sarmiento v. Lesaca, L-15385, June 30, 1960*).J.

Roque v. Lapuz
L-32811, Mar. 31, 1980

If a lot buyer cannot show a deed of conveyance, the probability is that there was no immediate transfer of ownership intended.

Pio Barretto Sons, Inc. v.
Compania Maritima
L-22358, Jan. 29, 1975

FACTS: Pio Barretto Sons, Inc. sued Compania Maritima for payment of P6,054.36 with 12% interest, as the price of lumber allegedly delivered by the former to the latter. To prove delivery, plaintiff presented counter-receipts issued by the defendant certifying to the fact that certain *statements* had been received from the plaintiff “for the latter’s revision.” Is this sufficient proof of delivery of the lumber?

HELD: No, said counter receipts can not mean an admission of having *received the lumber*, but only an admission of *having received certain statements on claims* for lumber allegedly delivered. To rule otherwise would be to say that the *sending of a statement* of account would be evidence of the admission of said statement. Because the plaintiff has failed to prove delivery, defendant has no duty to pay.

Pamplona v. Moreto
L-33187, Mar. 31, 1980

Property sold by a husband and wife should after their death be delivered by the children to the buyer — that is, in case no delivery has yet been made.

(2) Essential Requirements for Possession

- (a) the *corpus* (or the thing physically detained).
- (b) the *animus* or intent to possess (whether evidenced expressly or impliedly).

(3) Constructive Possession of Land

If an entire parcel is possessed under claim of ownership, there is constructive possession of the entire parcel, UNLESS a portion thereof is adversely possessed by another. (*See Ramos v. Director of Lands, 39 Phil. 175*). The area must however be within reasonable limits — it is not enough to merely plant a sign. (*Lasam v. Director of Lands, 65 Phil. 367*).

Asuncion, et al. v. Hon. Plan
GR 52359, Feb. 24, 1981

In an action for partition, defendants agreed to deliver to plaintiff, 24 hectares of land. Plaintiff's heirs then executed lease contracts involving said 24 hectares with certain persons, *not* parties in the partition case. When the lessees failed to pay the rent, the plaintiff's heirs moved for the issuance of an *alias* writ of execution in the *partition* case, asking in effect for the delivery to them of the 24 hectares. The motion *cannot* be granted, for by the execution of the lease contracts, the

judgment in the partition case had already been executed. A new action is needed to oust the lessees, since they were not parties in the partition case.

Art. 532. Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever; but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice to the juridical consequences of *negotiorum gestio* in a proper case.

COMMENT:

(1) Acquisition of Possession from the Viewpoint of Who Possesses

- (a) personal
- (b) thru authorized person (agent or legal representative)
- (c) thru UNAUTHORIZED person (but only if subsequently RATIFIED).

(2) Essential Requisites

- (a) *for personal acquisition*
 - 1) *intent* to possess
 - 2) *capacity* to possess
 - 3) *object* must be *capable of being possessed*
- (b) *thru an authorized person*
 - 1) *intent* to possess for principal (not for agent)
 - 2) *authority* or *capacity* to possess (for another)
 - 3) principal has *intent* and *capacity* to possess
- (c) *thru an unauthorized person* (as in *negotiorum gestio*)
 - 1) *intent* to possess for another (the “principal”)
 - 2) *capacity* of “principal” to possess

- 3) *ratification* by “principal” (The possession although cured only by the express or implied ratification should be regarded as having a *RETROACTIVE effect.*) (See by analogy Art. 1396).

[NOTE: If the stranger (*gestor*) had possessed it in *his own name*, it is he who had possession, and not the so-called “principal.”].

(3) **Negotiorum Gestio**

Negotiorum gestio is referred to in Art. 2144, *et seq.* of the Civil Code.

Art. 2144. Whoever voluntarily takes charge of the agency or management of the business or property of another *without* any power from the latter, is obliged to continue the same until the termination of the affair and its incidents, or to require the person concerned to substitute him, if the owner is in a position to do so. This juridical relation does not arise in either of these instances:

- (a) When the property or business is not neglected or abandoned;
- (b) If in fact the manager has been tacitly authorized by the owner.

In the first case, the provisions of Articles 1317, 1403, No. 1, and 1404 regarding unauthorized contracts shall govern.

In the second case, the rules on agency in Title X of this Book shall be applicable.

Art. 533. The possession of hereditary property is deemed transmitted to the heir without interruption and from the moment of the death of the decedent, in case the inheritance is accepted. One who validly renounces an inheritance is deemed never to have possessed the same.

COMMENT:

- (1) **Acquisition of Possession thru Succession Mortis Causa**

Art. 533 speaks of acquisition of possession thru SUCCESSION MORTIS CAUSA.

(2) Time of Acquisition of Possession

- (a) If heir *accepts* — from the moment of death since there is *no interruption*. (Moreover, the possession of the deceased should be *added* to the possession of the heir). (*Art. 1138, No. 1*).

[It should be understood however that the estate of the deceased has more assets than liabilities (the inheritance thus consisting of the *remaining estate*), otherwise there will be no property to be *possessed*. (*See Centenera v. Sotto, 44 O.G. 3782*).].

- (b) If heir *refuses* (or is incapacitated to inherit) — he is deemed NEVER to have possessed the same.

(3) If Heir Accepts

- (a) *Example*: Father died on June 1, 2003. Son accepted the inheritance on June 25, 2003. Possession is deemed *transmitted* not on June 25 but on June 1, 2003.
- (b) *Example*: Father before his death possessed in good faith *X's* land for 3 years. Son accepted inheritance, and believed also in good faith that the father was the owner of the land. Nine (9) years after the father's death, the owner *X* wants to recover the property from the son. Will *X's* action prosper?

ANS.: *No*, *X's* action will not prosper, because to the possession of the child (9 years) must be added the possession of the predecessor, the father (3 years), giving the son a total of 12 years of uninterrupted possession — there being a *just title* (succession) and *good faith* — 10 years would be enough to give ownership to the son (*not by succession but by prescription*).

[*NOTE*: Art. 1138(1) says “In the computation of time necessary for prescription, the *present* possessor *may complete* the period necessary for prescription by *tacking*

his possession to that of his *grantor* or *predecessor-in-interest*.”].

[NOTE: The example given is good only if the father and the son are both in *GOOD FAITH*, or if both are in *BAD FAITH* (but in the latter case, the total period must be 30 years of *extra-ordinary prescription*). If father was in *bad faith*, and son is in *good faith*, see Art. 534. (*infra*).].

(c) *Problem:*

Father died on June 1, 2003. Son accepted on June 25, 2003. Who was possessor of the property on June 8, 2003?

ANS.: Son, because of the retroactive effect of the acceptance.

(d) *Problem:*

Father died on June 1, 2003. Son accepted on June 25, 2003. For 25 days an administrator had been taking care of the land and was actually on it. For the period of 25 days, who was the actual possessor, the administrator or the son?

ANS.: The son was in actual possession (in the concept of *owner*) thru the administrator. The administrator was in actual possession (in the concept of *holder*); and therefore he was really in actual possession in behalf of the son.

Consequences:

- 1) If an intruder should force entry into the premises, either the administrator or the son may institute the action of forcible entry.
- 2) For purposes of prescription, the son’s possession is considered uninterrupted.
- 3) But if, during the period of 25 days, the son had forced himself into the premises, the administrator would have had the right to sue him for forcible entry. (*See Padlin v. Humphreys*,

19 *Phil. 254*, which held that the owner of the property himself may be the defendant in a forcible entry case.)

(e) *Some Decided Cases*

- 1) If an heir succeeds the deceased by operation of law in all his rights and obligations by the mere fact of his death, it is unquestionable that the plaintiff in fact and in law, succeeded her parents and acquired the ownership of the land referred to in the said title by the mere fact of their death. (*Lubrico v. Arbedo*, 12 *Phil. 391*).
- 2) A died. B immediately occupied and possessed the property left by A. C now alleges that he is the heir of A, and that he (C) therefore, is entitled to get possession of the property. What should C do?

HELD: C must prove the ownership over the property by A, his alleged predecessor-in-interest; otherwise B, the present possessor, has in his favor the legal presumption that he (B) holds possession by reason of a sufficient title, and he cannot be forced to show it. If C can prove A's right, he will be considered owner and possessor from the time of A's death. (See *Bondad v. Bondad*, 34 *Phil. 232*; *Cruz v. Cruz*, 37 *O.G. 209*).

- 3) A bought certain property from B. Does A automatically acquire possession over the property bought? Now suppose A inherited the property from B, would your answer be the same?

ANS.: In the case of the sale, possession is not immediately acquired by A, whether or not A pays the price right away. To acquire possession (and ownership), A must have been the recipient of a delivery of the thing from B. In the case of the inheritance, however, the answer is different, for here, even if there is no delivery right away, still if the inheritance is accepted, the possession of the heir will be counted from the death of the decedent, by express provision of the law. Indeed the only direct trans-

mission of possession is that which is brought about by operation of law upon the death of the deceased. (*Repide v. Astuar*, 2 *Phil.* 757).

(4) If Heir Renounces

(a) One who *validly* renounces inheritance is deemed never to have possessed the same.

(b) *Example:*

Father died on Jan. 3, 2004. Son repudiated inheritance on Jan. 18, 2004. Who was the owner on Jan. 15, 2004?

ANS.: If the father left no other heirs, the State is supposed to have succeeded him, and therefore the State was the owner and possessor of the property on Jan. 15, 2004. The property here, after its escheat to the government is an example of PATRIMONIAL PROPERTY of the State.

(c) *A, B, and C* inherited in equal parts a piece of land from their father. Before partition *A* sold *his* share to *X*. The next day, *B* *repudiated* the inheritance. Upon partition, what share of the land is *X* entitled to, 1/3 or 1/2?

ANS.: Note that *A* has sold HIS share to *X*. Now then, at the time of sale, *A*'s share was apparently 1/3 only, but because *B* had repudiated, it is as if *B* never inherited, hence there were really only two heirs (*A and C*). Therefore, *A*'s share was really one half (1/2) since the repudiation by *B* has a retroactive effect. Therefore *X* is entitled to 1/2 (which was REALLY *A*'s share), at the moment of the father's death.

(5) Case

**Herodotus P. Acebedo v. Hon. Bernardo P.
Abesamis, et al.
GR 102380, Jan. 18, 1993**

The right of an heir to dispose of the decedent's property, even if the same is under administration, is based on Art. 533

of the Civil Code stating that the possession of hereditary property is deemed transmitted to the heir without interruption and from the moment of the death of the decedent, in case the inheritance is accepted. Where there are however, two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs.

The Civil Code (Art. 493) under the provision on co-ownership, further qualifies this right. Although it is mandated that each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and thus may alienate, assign or mortgage it, and even substitute another person in its enjoyment, the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership. In other words, the law does not prohibit a co-owner from selling, alienating or mortgaging his ideal share in the property held in common.

As early as 1942, this Court has recognized said right of an heir to dispose of property under administration. In the case of *Teves de Jakosalem vs. Rafols, et al.* (73 Phil. 628), it was said that the sale made by an heir of his share in an inheritance, subject to the result of the pending administration, in no wise, stands in the way of such administration. The Court then relied on the provision of the Old Civil Code, Article 440 and Article 399 which are still in force as Article 533 and Article 493, respectively, in the new Civil Code. The Court also cited the words of a noted civilist, Manresa: "Upon the death of a person, each of his heirs becomes the undivided owner of the whole estate left with respect to the part or portion which might be adjudicated to him, a community of ownership being thus formed among the co-owners of the estate which remains undivided."

Art. 534. One who succeeds by hereditary title shall not suffer the consequences of the wrongful possession of the decedent, if it is not shown that he was aware of the flaws affecting it; but the effects of possession in good faith shall not benefit him except from the date of death of the decedent.

COMMENT:**(1) Some Effects of Acquisition of Possession, thru Succession**

If the father or decedent was in bad faith, it does not necessarily mean that the son was also in bad faith. The son is *presumed* to be in GOOD FAITH. (*Arriola v. De la Serna, 14 Phil. 627*). However, since the father was in BAD FAITH, the consequences of the GOOD FAITH of the son should be counted only from the date of the decedent's death.

[NOTE: The use of the words "suffer" and "wrongful possession." Note also that if the father had been in GOOD FAITH, the article is *not applicable*, for the son would not "suffer." In such a case, the possession of the father in GOOD FAITH is added to the possession of the son in GOOD FAITH, and we cannot say that the effects of possession in good faith shall commence only from the decedent's death. (*See also discussion under the preceding article – Art. 533*).]

(2) Example

Father possessed in bad faith, X's land for 3 years, after which the property was presumably inherited by M, the father's son. M was in *good faith*. For how many years more, from the father's death, should M possess the land in order to become its owner?

ANS.: For 9 years, since the effects of his possession in good faith should begin only from the decedent's death. [NOTE: Because extraordinary prescription requires 30 years, and ordinary prescription requires 10 years, it follows that 3 years possession in BAD FAITH should be equivalent to 1 year possession in GOOD FAITH. Hence, applying Art. 1138(1), 1 year plus 9 years equals 10 years.].

(3) Query

In the example given above, if X within 4 years brings an action to recover the *property* and *its fruits*, should X's action prosper?

ANS.: Regarding the land — yes, because *M* has not yet become the owner. Regarding the fruits —

- (a) *M* does not have to reimburse the value of the fruits for the 4-year period he was in possession, since he is a possessor in *good faith*.
- (b) But, if *M* obtained any cash or benefit from the fruits *harvested by his father*, said value must be returned (*minus* necessary expenses for cultivation, gathering, and harvesting) because the father was in *bad faith*, and the effects of *M's* good faith, it must be remembered, should only commence from the father's death.

Art. 535. Minors and incapacitated persons may acquire the possession of things; but they need the assistance of their legal representatives in order to exercise the rights which from the possession arise in their favor.

COMMENT:

(1) Acquisition of Possession by Minors and Incapacitated Persons

Example:

A minor may *acquire* the possession of a fountain pen donated to him, but in case of a court action regarding ownership over the pen, his parents or legal representatives must intervene.

(2) Persons Referred to in the Article

- (a) unemancipated minors
- (b) minors emancipated by parental concession or by marriage (in certain cases, like possession of *real property*)
- (c) other incapacitated persons like
 - 1) the insane
 - 2) the prodigal or spendthrift
 - 3) those under civil interdiction

- 4) deaf-mutes (in certain cases) — (in general, those laboring under restrictions on capacity to act). (*See Arts. 38 and 39; 4 Manresa, pp. 190-191*).

(3) Nature of their Possession

Regarding “*acquisition of possession*,” it is clear that possession by them is allowed only in those matters where they have capacity to act (as in the case of physical seizure of *res nullius* or donation of personal property simultaneously delivered to them) and NOT possession where juridical acts are imperative like the possession of land the ownership of which he desires to test in court (*See 2 Castan 45-46 citing Morrell; see also 4 Manresa 189*), for in such a case, and in similar ones, the intervention of the legal representatives or guardians is needed. (*See 3 Sanchez Roman 451*).

(4) Acquisition by Prescription

Minors and other incapacitated persons may acquire property or rights by *prescription*, either personally or thru their parents, guardians, or legal representatives. (*Art. 1107*).

Art. 536. In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a thing, must invoke the aid of the competent court, if the holder should refuse to deliver the thing.

COMMENT:

(1) Modes Thru Which Possession Cannot Be Acquired (Force, Tolerance, Secrecy)

Possession *cannot* be acquired:

- (a) thru FORCE or INTIMIDATION (as long as there is a possessor who *objects thereto*). (*Impliedly*, if at first there was objection but later on such objection *ceases*, the possession begun by force or intimidation may be *acquired*).

Objection may be made by suit of forcible entry *within* a year from the dispossession, otherwise, the possession *de facto* is lost.)

- (b) thru mere TOLERANCE (permission). (*Example: If I willingly permit X to occupy my land, that is not really his possession, for the possession continues to be mine.*) Mere inaction or mere failure to bring an action is NOT the tolerance referred to in the law.) (*See Art. 537; see also Manresa.*)
- (c) thru *clandestine, secret possession* (or possession without knowledge — for this would be possession by stealth, and not open or public. (*See Art. 537*). *Clandestine possession* by itself is *hidden* or *disguised* possession and may be *with* or *without* the owner's knowledge.

(2) How to Recover Possession

If a person has been deprived of possession, he cannot take the law into his own hands. First, he should request the usurper to give up the thing and if the latter refuses, the former should invoke the aid of the proper and competent court (that which has jurisdiction over the subject matter and the parties). (*Repide v. Astuar, 2 Phil. 757; 4 Manresa 167; Bishop of Cebu v. Mangaron, 6 Phil. 286*). Otherwise, the *owner* can be made the defendant in a *forcible entry case* with all its repercussions. (*See Santiago v. Cruz, 54 Phil. 640*).

[NOTE: An action of forcible entry or unlawful detainer may be brought even against the owner. (*See also Mañalac v. Olegario, {CA} 43 O.G. 2166*).].

Art. 537. Acts merely tolerated, and those executed clandestinely and without the knowledge of the possessor of a thing, or by violence, do not affect possession.

COMMENT:

(1) Acts of Tolerance or Secrecy

- (a) See also the discussion under the preceding article.

- (b) As has already been said, “tolerance” is permission, as distinguished from *abandonment*. If an owner abandons, as when within the proper period for prescription, he brings no action, the possession of another will ripen into ownership. As a matter of fact, silence or inaction is NEGLIGENCE, not tolerance. But where a person occupies another’s land with the latter’s permission (or tolerance), the occupier, no matter how long he may remain, can never acquire ownership, because he never had possession. Whether there was permission, or there has been an abandonment, is a question of fact. (*See 4 Manresa 196-197*). Of course, it is possible that although there was *permission* at first, the permission was subsequently *withdrawn*, and *abandonment* has resulted. But this must be proved by clear and convincing evidence.

(2) Cases and Doctrines on Tolerance

Vda. de Catchuela v. Francisco **L-31985, June 25, 1980**

If a person squats on another’s property because of “tolerance,” the latter may sue for ejectment.

Ayala de Roxas v. Maglonso **8 Phil. 745**

FACTS: A owned a parcel of land, which was occupied by B and C. A tolerated their presence, and did not compel them to pay rentals. In 1901, a land tax was imposed, and A asked them to pay rentals. They promised to do so, and recognized A’s ownership over the land, but did not really pay said rentals. After a period of years, B and C now claim that they have acquired said land by prescription. Are they right?

HELD: No, since their stay was merely by tolerance, and having recognized ownership in another, they cannot now claim that their possession was adverse.

Cuaycong v. Benedicto
37 Phil. 781

FACTS: A land owner for sometime permitted his neighbors and the general public to cross his property. This went on for a long time. *ISSUE:* Has the easement of right of way been acquired in this case?

HELD: No, in view of the fact that possession by mere tolerance, no matter how long continued, does not start the running of the period of prescription. (Incidentally, even if there had been no tolerance, the easement of right of way can never be acquired by prescription, for said easement is *discontinuous*. (See *Ronquillo, et al. v. Roco, et al.*, L-10619, Feb. 28, 1958; see also Art. 620).

Director of Lands v. Roman Catholic Bishop
61 Phil. 644

Land belonging to the Roman Catholic Church was occupied by a municipality, which erected thereon a Rizal monument, but which could present no other proof of ownership. That there was mere tolerance and permission on the part of the church was the conclusion the Court reached, resulting in the decision denying title to the municipality. (See also *Bishop of Lipa v. Mun. of San Jose*, 27 Phil. 271).

(3) Possession by a Squatter

A squatter's possession, when there is no violence, is by mere tolerance. The one-year period for filing an unlawful detainer case against him should be counted not from the beginning of the possession, but from the time the latest *demand* to *vacate* is made, unless in the meantime an *accion publiciana* is instituted. (*Calubayan v. Pascual*, L-22645, Sep. 18, 1967).

People v. City Court,
Br. III, Gen. Santos City
208 SCRA 8
(1992)

Squatting is a continuing offense.

NOTA BENE: Squatting has been decriminalized.

Galang v. CA
245 SCRA 629
(1995)

The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best, it may mitigate the penalty but it certainly will not condone the offense. For social justice cannot condone the violation of the law nor does it consider that very wrong to be a justification for priority in the enjoyment of a right.

(4) Clandestine Possession

Clandestine possession is *secret* possession, or possession by stealth. For clandestine possession to affect the owner's possession, the possession must also be *unknown* to the owner. If it is secret to many, but known to the owner, his possession is affected. (*4 Manresa 199*). There is a presumption however that when possession is *clandestine*, it is *also unknown* to the owner.

(5) Possession by Force or Violence

- (a) Force may be proved *expressly* or by *implication*. "The act of entering into the premises and excluding the lawful possessor therefrom necessarily implies the exertion of force over the property." (*Mañalac v. Olegario, et al., [CA] 43 O.G. 2169*).
- (b) *The force may be:*
- 1) actual or merely threatened;
 - 2) done by possessor himself or by his agent;
 - 3) done against the owner or against any other possessor (*See 4 Manresa 200-201*) or against the owner's representative, such as a *capataz* (*Mediran v. Villanueva, 37 Phil. 752*);
 - 4) done to *oust* possessor; or if occupied during the latter's absence, done to prevent his getting back the premises. (*See Bishop of Lipa v. Municipality of San Jose, 27 Phil. 571*).

(6) Meaning of “Acts ... do not affect possession” (Art. 537)

- (a) The intruder does not acquire any right to possession (NO LEGAL POSSESSION).
- (b) The legal possessor, even if physically ousted, is *still the possessor* and therefore —
 - 1) still entitled to the benefits of prescription;
 - 2) still entitled to the fruits;
 - 3) still entitled as possessor for all purposes favorable to his possession. (*See Ayala de Roxas v. Maglonso, 8 Phil. 745; 4 Manresa 201-202.*)
- (c) The intruder cannot acquire the property by prescription. (*See Ayala de Roxas v. Maglonso, supra; Cuaycong v. Benedicto, 37 Phil. 781.*)

(7) Old and New Laws Compared

- (a) Under the old law, the Code of Civil Procedure, prescription was possible even if entry into the premises was effected thru *violence*, for the law said “in whatever way such occupancy may have *commenced or continued.*” (*Sec. 41, Act 190, Civil Code*).
- (b) Under the new Civil Code, “possession (for prescription) has to be in the concept of an *owner, public, PEACEFUL and uninterrupted.*” (*Art. 1118*). The reason for “peaceful” is that “violence or downright usurpation must be condemned.” (*Report of the Code Commission, p. 129*).

Art. 538. Possession as a fact cannot be recognized at the same time in two different personalities except in the case of co-possession. Should a question arise regarding the fact of possession, the present possessor shall be preferred; if there are two possessors, the one longer in possession; if the dates of the possession are the same, the one who presents a title; and if all these conditions are equal, the thing shall be placed in judicial deposit pending determination of its possession or ownership through proper proceedings.

COMMENT:**(1) General Rule Regarding Possession as a Fact**

Possession as *a fact* cannot be recognized at the *same time* in *two different personalities*.

Exceptions to General Rule:

- (a) *co-possessors* (since here, there is no conflict of interest, both of them acting as *co-owners*, as in the case of property owned or possessed in common)
- (b) possession in *different concepts or different degrees*

(Example: Both owner and tenant are possessors as a fact at the same time; the first, in the concept of owner; the second, in the concept of holder; other examples: principal and agent; depositor and depositary; owner and administrator.)

(2) Rules or Criteria to be Used in Case of Conflict or Dispute Regarding Possession (BAR)

- (a) *present* possessor shall be preferred
- (b) if both are present, the one *longer in possession*
- (c) if both began to possess at the same time, the one who *present* (or has) a title
- (d) if both present a title, the Court will determine. (Meantime, the thing shall be judicially deposited.)

(3) Example

- (a) While I was vacationing in Europe, someone occupied my city lot, and when I returned, he repelled me by force. Who is the possessor as a fact of my property?

ANS.: Although apparently the intruder is the present possessor, he actually cannot be said to be in possession since he is possessing it by force. (*Arts. 536, 537; See Bishop of Lipa v. Municipality of San Jose, 27 Phil. 571*). Therefore, since I am the *present* possessor, and the intruder is NOT in possession, I will be considered

the actual possessor and my right is preferred. (*See also Veloso v. Naguit, 3 Phil. 604.*)

- (b) A began to possess a parcel of land in 2003; B began to do the same in 2007 and both are actually there. Whose possession will be recognized?

ANS.: A's possession as a fact will be recognized since his possession is longer. (Art. 538; 4 Manresa 205).

[NOTE: The law does not say there cannot be two or more possessors as a matter of fact (actual possessors). There can indeed be, as in the example above given. BUT the law does not recognize that there should be, from the legal viewpoint, two actual possessors (save in the case of the exception already discussed). Only one of two actual possessors will be recognized in law, as the actual possessor. (See 4 Manresa 204-205).]

- (c) On March 15, 2007, both A and B, at exactly the same hour, began to possess my land, A without any right whatsoever, B as my tenant or because he purchased the land from me. Who should be preferred?

ANS.: B, because he has a title (either the lease right or the purchase from me).

[NOTE: What does the word "title" in the article mean, a right as by purchase, or the document evidencing the right? Manresa is of the opinion that it means the "document, for it must be presented"; and that the document may be either a private or a public one. (See 4 Manresa 206). It is submitted, however, that the word "presents" can also mean "has" and therefore title means EITHER a right, or the document evidencing the right. Thus, in the problem presented, B should be preferred even if the lease contract or the deed of sale had been lost or destroyed. Note also the use of the word "presents" in Art. 1544.]

- (d) Suppose both possessors who began possessing at the same time could present a title, who should be preferred?

ANS.: Manresa says that the person with the older title must be preferred and therefore, there need not be

any judicial deposit. (*See 4 Manresa 206-207*). But the law says that if both can present a title, the court should make the determination thru the proper proceedings, and in the meantime, the object *shall be placed in judicial deposit*. (*Art. 538*).

[NOTE: A judicial deposit or sequestration takes place when an attachment or seizure of property in litigation is ordered. (*Art. 2005*). Movable as well as immovable property may be the object of sequestration. (*Art. 2006*). The depositary of property or objects sequestered cannot be relieved of his responsibility until the controversy which gave rise thereto has come to an end, unless the court so orders. (*Art. 2007*). The depositary of property sequestered is bound to comply with respect to the same, with all the obligations of a good father of a family. (*Art. 2008*). As to matters not provided for in this Code, judicial sequestration shall be governed by the Rules of Court. (*Art. 2009*).].

(4) When the Article Applies

Art. 538 applies to preference of POSSESSION (whether *real* or *personal* property is involved). It also applies whether the possession was *longer* or *shorter than one year*. (*See 4 Manresa 207-208*).

(5) Preference of Ownership (not Possession)

Art. 1544 applies to preference of OWNERSHIP in case of DOUBLE SALE (*Art. 1544*) or a DOUBLE DONATION. (*Art. 744*).

(a) MOVABLE property —

Preference in ownership is given to the person who *first possessed it in good faith*. (*Art. 1544, par. 1*).

(b) IMMOVABLE property —

Preference in ownership is given

- 1) to the first who *registered* his right in *good faith* in the Registry of Property.

- 2) if there was no registration, to the person who first *possessed in good faith*.
- 3) if there was no possession, to the person who *presents the oldest title*, provided that the title had been acquired in good faith.

(6) Cases Illustrative of Art. 1544 (Double Sale)

Po Sun Tun v. Price
54 Phil. 192

FACTS: A sold and delivered his land to B. Later, A sold the same land to C. But C, *not knowing* that B had previously bought the land, registered said land in his (C's) name. Who should be considered the owner?

HELD: C should be considered the owner since he was the first one to register the land, and he was in good faith.

[NOTE: But is it not true that one cannot sell what he does not own anymore?]

ANS.: Yes, but Art. 1544 precisely constitutes the exception to the aforementioned rule. Art. 1544 is based on public convenience. Moreover, since B's right is not registered, it does *not bind* innocent third persons, as to whom A is still the owner. (See *Hernandez v. Katigbak Vda. de Salas*, 69 Phil. 744 stating that the *contrary doctrine in Lanci v. Yangco*, 52 Phil. 563 has been abandoned.) There is no doubt however that for breach of the warranty against eviction, A should indemnify B.]

Victoriano Hernandez v. Macaria Katigbak
Vda. de Salas
69 Phil. 744

FACTS: Leuterio sold in 1922 a parcel of registered land (with a Torrens Title) to Villanueva. The deed of sale was however *never registered*. In 1926, a creditor of Leuterio named Salas Rodriguez sued Leuterio for recovery of the debt, and a writ of execution was levied on Leuterio's land (the same lot

that had been sold to Villanueva). Salas Rodriguez did *not* know of this sale. Upon the other hand, the levy on execution was duly registered. One month *after* this registration of the levy, Villanueva filed a third party claim. The very next day, the execution sale was made and Salas Rodriguez was the highest bidder. *Issue*: Who should be considered the owner of the land — Salas Rodriguez or Villanueva?

HELD: Salas Rodriguez should be considered as the owner because of the following reasons:

- (a) It is a well-settled rule that, when property sold on execution is registered under the Torrens system, registration is the operative act that gives validity to the transfer or creates a lien on the land, and a purchaser on execution sale is *not* required to go behind the registry to determine the conditions of the property. Such purchaser acquires such right, title, and interest as appear on the certificate of title issued on the property subject to no liens, encumbrances or burdens that are not noted thereon. Be it observed that Villanueva's right was never registered nor annotated on the Torrens Certificate.
- (b) The doctrine in *Lanci v. Yangco* (52 Phil. 563), which purports to give effect to all liens and encumbrances existing prior to the execution sale of a property registered under the Torrens System, even if such liens and encumbrances are not noted in the Certificate of Title (on the theory that if for example a previous sale had been made by the registered owner, he can no longer convey what he does not have) has long been ABANDONED by the Supreme Court. (See *Philippine National Bank v. Camus*, L-46870, June 27, 1940).
- (c) The only exception to the rule enunciated in (a) is where the purchaser had knowledge, prior to or at the time of the levy, of such previous lien or encumbrance. In such case, his knowledge is equivalent to registration, and taints his purchase with bad faith. (*Gustilo v. Maravilla*, 48 Phil. 442; *La Urbana v. Bernardo*, 62 Phil. 790; 23 C.J. Sec. 812; *Parsons Hardware Co. v. Court of Appeals*,

L-46141). But if knowledge of any lien or encumbrance upon the property is *acquired after* the levy, the purchaser *cannot be said to have acted in bad faith* in making the purchase; such lien or encumbrance cannot therefore affect his title.

- (d) In the present case, the third-party claim was filed one month after the levy was recorded. The validity of the levy is thus *unaffected* by any subsequent knowledge which the judgment creditor might have derived from the third-party claim. The fact that this third-party claim was presented *one day before* the execution sale is immaterial. If the levy is valid, as it was, the execution sale made in pursuance thereof is also valid, just as a mortgage lien validly constituted may validly be foreclosed regardless of any equities that may have arisen after its constitution.

Compuesto v. Sales
39 O.G. 47, p. 1183

FACTS: A sold real property first to *B* who took possession of it, and then to *C*. *C* knew of the previous sale to *B*, nevertheless, he (*C*) registered it in his own name. Later, *B* registered the property. Who is the owner?

HELD: *B* is the owner since the registration and purchase by *C* had been made in *bad faith*.

Bernas v. Balo
(CA) GR 650, May 14, 1948

FACTS: A sold the same land to *B* in a private document (1929), and later to *C* in a public document (1939). Although *C* knew of the previous sale of the land to *B*, he (*C*) nevertheless registered the land in his name. The lower court rendered judgment in favor of *C* on the ground that *B*'s document, being private, was not and cannot be registered. *B* appealed the case. Decide.

HELD: *B* should be considered the owner. *Reason:* *C*'s registration was made in bad faith, therefore, his registration cannot affect *B*'s right.

Arcenas v. del Rosario
38. O.G. 3693
(reiterating Tuason v. Raymundo, 28 Phil. 635)

The purchaser must *not* only register in good faith if he wants to avail himself of Art. 1544. He must also have given a valuable *consideration* for the land. [Hence, it follows also that if the sale is fictitious, the Article cannot apply. (See *Cruzado v. Bustos and Escaler, 34 Phil. 17.*)].

Emas v. De Zuzuarregui and Aguilar
53 Phil. 197

A person who presents for registration a *forged* document of sale, knowing it to be forged, cannot be said to be in good faith.

[QUERY: Suppose he did not know that it was a forgery, would Art. 1544 still apply?]

ANS.: Although this time he is in good faith, still Art. 1544 cannot apply since it was not purchased from the owner of the land or at least from the original owner who had made a double sale of it.]

Salvoro v. Tañega
L-32988, Dec. 29, 1978

As between a buyer of a parcel of land who first takes possession of it and a subsequent buyer who registers the sale in his name, despite knowledge of the first sale, the former is preferred, because the registration of the latter is in bad faith.

(7) Problem if There are Two Sellers

A sold his land to B who began to possess it. C, a stranger, sold the same land, unauthorized by anyone, and in his (C's) own name to D, who registered the same in good faith. Who is the owner, B or D?

HELD: B should be considered as the owner even if he did not register the land, because D, who registered the same, did

not buy the land from its lawful owner, but from a complete stranger totally unconnected with the land. Art. 1544 *cannot* therefore apply, for it *cannot* be said that it had been sold twice by the *same* person.

Carpio v. Exenea
38 O.G. 65, p. 1336

FACTS: A sold his land to B. Later, A sold the same land to C. B in turn sold the same to D, who took possession of the land. C, a purchaser in good faith, registered the land in his name. Who is the owner now, C or D?

HELD: D is the owner. It is true that C was in good faith, and it is also true that C was the first one to register the land, but Art. 1544 can be applied only if the 2 buyers (C and D) had bought the same property from the *same* person (or at least from another in *representation* of the same seller). Art. 1544 indeed does not apply if there are two different sellers, one of whom, when he made the conveyance, had long before disposed of his rights as owner of the same.

Adalin v. CA
88 SCAD 55
(1997)

It cannot be denied that Palanca and the said tenants, in the instant case, entered into the subsequent or second sale notwithstanding their full knowledge of the subsistence of the earlier sale over the same property to private respondents Yu and Lim.

Though the second sale to said tenants was registered, such prior registration cannot erase the gross bad faith that characterized such second sale, and consequently, there is no legal basis to rule that such second sale prevails over the first sale of the said property to private respondents Yu and Lim.

(8) Query

On Jan. 30, 2003, A who owns a piece of agricultural land, gave a general power of attorney to B. On Feb. 20, 2003, A with-

out the knowledge of *B* executed in favor of *C* a special power of attorney to sell said piece of land. On February 25, 2003, *B* as attorney-in-fact of *A* executed a deed of sale in favor of *D*. On the same date, February 25, 2003, *C* under the special power given by *A*, sold the same piece of land to *E*.

Assuming that the vendees have not yet registered their respective documents nor have taken possession of the land, which of the two sales is valid and enforceable, and who is responsible for damages, if any? Reasons.

[NOTE: The reader will please answer this question himself. Hint: What is the difference between a general and a special power of attorney?].

(9) Another Query

A sold a parcel of land with a Torrens Title to *B* on January 5. A week later, *A* sold the same land to *C*. Neither sale was registered. As soon as *B* learned of the sale in favor of *C*, he (*B*) registered an adverse claim stating that he was making the claim because the second sale was in fraud of his rights as first buyer. Later, *C* registered the deed of sale that had been made in his favor. Who is now the owner — *B* or *C*?

ANS.: *C* is clearly the owner, although he was the second buyer. This is so, not because of the registration of the sale itself, but because of the AUTOMATIC registration in his favor caused by *B*'s knowledge of the first sale (actual knowledge being equivalent to registration). The purpose of registration is to notify. This notification was done because of *B*'s knowledge. It is wrong to assert that *B* was only trying to protect his right — for there was no more right to be protected. He should have registered the sale BEFORE knowledge came to him. It is now too late. It is clear from this that with respect to the principle “actual knowledge is equivalent to registration of the sale about which knowledge has been obtained” — the knowledge may be that of either the FIRST or the SECOND buyer.

[NOTE: The answer just given is CORRECT. However in Carbonell v. Court of Appeals, L-29972, Jan. 26, 1976, the Supreme Court ruled otherwise.]

Carbonell v. Court of Appeals
L-29972, Jan. 26, 1976

FACTS: A lot owner agreed to sell his lot to Rosario Carbonell, who then paid the arrears on the mortgage burdening the lot. Both then stipulated in a document that the “seller” could use the lot for one year without paying any rental thereon. Later, he sold the same lot to Emma Infante. When Carbonell subsequently asked him to execute the formal deed of sale, he refused stating he could not do so because he had already sold the same lot to Infante. What Carbonell did was to register her adverse claim in the Registry of Property. Four days later, Infante registered the sale that had been made in her favor. *ISSUE:* Who owns the lot — Carbonell, the first buyer, or Infante, the second buyer?

HELD: Carbonell should be considered as the owner because it was she who first registered the sale in good faith (*Art. 1544*). Infante’s registration four days later was a registration in bad faith. Justice Claudio Teehankee in his concurring opinion stated that Carbonell’s actual knowledge of the second sale did not put her in bad faith (but the good Justice failed to mention why). Her registration being in good faith and prior to Infante’s registration makes her the owner of the lot. Justice Cecilia Muñoz-Palma, citing *Paras’ Civil Code Annotated*, dissented, stating that Carbonell’s actual knowledge is equivalent to registration of Infante’s purchase, and so it is as if Infante was the first registrant in good faith, and Carbonell’s *later* registration of her own adverse claim may be said to have been done in bad faith.

COROLLARY ISSUE: Infante, during the 20 years she occupied the property had made certain improvements thereon such as filling up the land with garden soil, and constructing a house and a gate. What are Infante’s rights to the same?

HELD: Infante, being a possessor in bad faith has no right to be *refunded* or to *retain* the useful improvements (useful because they certainly increase the value of the lot). However, Infante can *remove* the improvements, unless Carbonell prefers to pay Infante their value (not the current high value but the value at the time said improvements were introduced.)

(10) Conflict Between a Sale and a Mortgage**Maria Bautista Vda. de Reyes v. Martin de Leon
L-22331, June 6, 1967**

ISSUE: Between an unrecorded sale of prior date of real property by virtue of a public instrument and a recorded mortgage thereof at a later date, which is preferred?

HELD: The former (the unrecorded sale) is preferred for the reason that if the original owner had parted with his ownership of the thing sold, he no longer had the ownership and free disposal of that thing so as to be able to mortgage it. Thus, registration of the mortgage under Act 3344 would, in such case, be of no moment, since it is understood to be without prejudice to the better right of third parties. Nor would it avail the mortgagee any to assert that he is in actual possession of the property for the execution of the conveyance in a public instrument earlier was equivalent to the delivery of the thing sold to the vendee. [*NOTE:* It would seem that this ruling is not accurate because the mortgagor should really still be considered the owner insofar as innocent third parties are concerned, the sale not having been registered. This comment however holds true only if somehow the land — even if not registered under the Torrens System was in the name of the mortgagor — as when for instance he had previously registered his purchase of it from someone.]

**Lapat v. Rosario
110 SCAD 896, 312 SCRA 539
(1999)**

A contract should be construed as a mortgage or a loan instead of a *pacto de retro* sale when its terms are ambiguous or the circumstances surrounding its execution or its performance are incompatible or inconsistent with a sale.

**Ching Sen Ben v. CA
112 SCAD 678, 314 SCRA 762
(1999)**

In case of doubt, a contract purporting to be a sale with right to repurchase should be considered an equitable mort-

gage. Thus, in a contract of mortgage, the mortgagor merely subjects the property to a lien, but the ownership and possession thereof are retained by him.

(11) Co-Possession

**Concha, et al. v. Hon. Divinagracia
L-27042, Sep. 30, 1981**

Co-possessors of a parcel of land that is mortgaged must be made parties to foreclosure proceedings, otherwise they cannot be deprived of possession of that portion of the land actually possessed by them.

Chapter 3

EFFECTS OF POSSESSION

Art. 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to said possession by the means established by the laws and the Rules of Court.

A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof.

COMMENT:

(1) Right to be Respected in Possession – General Nature

This article speaks of three important things:

- (a) right of a person to be *respected* in his possession (first effect of possession).
- (b) protection in said right or restoration to said possession thru legal means. [See discussion under *Art. 428* which speaks of the right of an owner (and also a possessor) to recover the property from whoever is holding the same.].
- (c) the writ of preliminary mandatory injunction.

[NOTE: An adverse possession of property by another is not an encumbrance in law, and does not contradict the condition that the property be free from encumbrance. Likewise, the adverse possession is not a lien for a lien signifies a security for a claim. (Ozaeta v. Palanca, L-17455, Aug. 31, 1964).]

Villanueva, et al. v. Court of Appeals, et al.
L-37653, June 28, 1974

FACTS: Villanueva and 47 others sued in the Court of Agrarian Relations their alleged landowner Carmen Egido Sala, whom they said was threatening to eject them from a portion of the hacienda of which they were tenants. To prevent their ouster, they asked for a restraining order *pendente lite*. This restraining order was granted. *ISSUE:* Should this order be allowed to continue?

HELD: Affording tenants a greater leverage, particularly in the area of security, is a fundamental governmental policy.

Presidential Decree 27 proclaimed the emancipation as of Oct. 21, 1972 of all tenant farmers of private agricultural lands devoted to rice and corn.

Presidential Decree 316 supplements PD 27 by prohibiting the ejection of said tenants until the respective rights of the tenant and the landowner are determined in accordance with the rules and regulations implementing PD 27.

In the light of the foregoing, the restraining order should be allowed to continue.

Wenceslao O. Valera v. Benjamin Belarmino
Adm. Matter P-159 Feb. 21, 1975

If a defeated defendant in a land case refuses to vacate the premises and to demolish his constructions thereon, the judge is justified in ordering the arrest of any person who may continue to defy his orders. Thus, an order to put the winner in possession of the properties covered by the writ of execution and demolition “and to arrest any and all persons who may resist, defy, and prevent the implementation of the writ ...” can be allowed.

Derecho v. Abiera
L-26697, July 31, 1970

When the factual existence of a leasehold tenancy relation between the parties is raised, in an ejection case, which if true, would vest original and exclusive jurisdiction over the case

in the Court of Agrarian Relations and not in the municipal court, it is essential that the CFI (now RTC) hold a *preliminary hearing* and receive the evidence solely on the facts that would show or disprove the existence of the alleged leasehold tenancy. A summary of the facts upholding or denying such jurisdiction must then be made.

(2) Specific Right to be Respected in Possession

- (a) *Reasons for Protection of Possession:*
- 1) Possession is very similar to ownership, and as a matter of fact modifies ownership.
 - 2) Possession almost invariably gives rise to the presumption that the possessor is the owner. (*4 Manresa 214*).
- (b) “*Every* possessor” is protected under Art. 539, whether in the concept of *owner* or in the concept of *holder*. (*See 4 Manresa 214*).

Philippine Trust Co. v. CA
117 SCAD 366, 320 SCRA 719
(1999)

The phrase “every possessor” in Art. 539 indicates that all kinds of possession, from that of the owner to that of a mere holder, except that which constitutes a crime, should be respected and protected by the means established by law and the rules of procedure.

- (c) Even in cases admittedly involving public lands, the courts of justice may decree the restoration of its possession to one who has been illegally divested thereof, or is being unlawfully deprived of his right to such possession. (*Lopez v. Santiago, L-14889, Apr. 25, 1960; Kimpo v. Tabanar, et al., L-16476, Oct. 31, 1961*).
- (d) The doctrine of exhaustion of administrative remedies is *inapplicable* to a party who claims the disputed land as his OWN PRIVATE property. (*Baladjay v. Castrillo, L-14756, Apr. 26, 1960; Guekeko v. Araneta, L-10182, Dec. 24, 1957; Kimpo v. Tabanar, et al., L-16476, Oct. 31, 1961*).

(e) *Decided Cases***City of Manila v. Gerardo Garcia, et al.**
L-26053, Feb. 21, 1967

FACTS: The City of Manila is the owner of parcels of land forming one compact area in Malate, Manila. Shortly after liberation, several persons entered upon these premises without the City's knowledge and consent, built houses of second class materials, and continued to live there till action was instituted against them. In 1947, the presence of the squatters having been discovered, they were given by then Mayor Valeriano Fugoso written permits each labelled a "lease contract." For their occupancy, they were charged nominal rentals. In 1961, the premises were needed by the City to expand the Epifanio de los Santos Elementary School. When after due notice, the squatters refused to vacate, this suit was instituted to recover possession. Defense was that they were "tenants."

HELD: They are squatters, not tenants. The mayor cannot legalize forcible entry into public property by the simple expedient of giving permits, or for that matter, executing leases. Squatting is unlawful and the grant of the permits fosters moral decadence. The houses are public nuisance *per se* and they *can* be summarily abated, *even without the aid of the courts*. The squatters can therefore be ousted.

Bañez v. Court of Appeals
L-30351, Sep. 11, 1974

A squatter has no possessory rights of any kind against the owner of the land into which he has intruded. His occupancy of the land is merely tolerated by the owner. Thus, there is an implied promise on his part to vacate upon demand.

J.M. Tuason and Co., Inc. v. Antonio Estabillo
L-20610, Jan. 10, 1975

ISSUE: Is a writ of execution and order of demolition appealable?

HELD: The rule is that it is *not appealable* where there is no allegation that it has varied the tenor of the judgment. If it were appealable, a case would never end, for as often as an order of execution is issued, it would be appealed.

(3) Legal Means for Restoration to Possession

- (a) *Reasons* for requiring legal means;
- 1) to prevent spoliation or a disregard of public order (*Roxas v. Mijares, 9 Phil. 520*);
 - 2) to prevent deprivation of property without due process of law;
 - 3) to prevent a person from taking the law into his own hands. (*Yuson v. Guzman, 42 Phil. 22*).
- (b) *Thus,*
- 1) The owner should go to court, and not eject the unlawful possessor by force. (*Bago v. Garcia, 5 Phil. 524*).
 - 2) A tenant illegally forced out by the owner-landlord may institute an action for forcible entry even if he had not been paying rent regularly. (*Mun. of Moncada v. Cajuigan, 21 Phil. 184*).
 - 3) The proper actions are forcible entry or unlawful detainer (summary action or *accion interdictal*), *accion publiciana*, *accion reivindicatoria*; replevin; injunction (to prevent further acts of dispossession). (*See discussion under Art. 428*). However, injunction is GENERALLY not the proper remedy to recover possession, particularly when there are conflicting claims of ownership. An *accion reivindicatoria* would be better. (*Cirila Emilia v. Epifanio Bado, L-23685, Apr. 25, 1968*). A final judgment in an unlawful detainer case may be executed even if there is still pending an *accion reivindicatoria*, for the two actions can co-exist. (*Alejandro v. CFI of Bulacan, 40 O.G. [9S] 13, p. 128*). A mere trespasser, even if ejected, has no right to institute an action of forcible entry. (*Schriwinn v. Perkins, 78 Atl. 19*).

**Catalina Bardelas, et al. v.
Hon. Antonio E. Rodriguez, et al.
L-38467, June 28, 1974**

FACTS: On Aug. 31, 1970, Paz Basa Andres filed in the Municipal Court of Las Piñas, Rizal an action for ejectment against several tenants, in view of the failure of the latter to pay rentals for the parcels of land leased by them. Defendants argued among other things that under Rep. Act No. 6126, ejectment of tenants was prohibited.

ISSUE: May said tenants be ejected?

HELD: Yes, they may be ejected. If the reason for ejectment is because they have failed to pay any increased rent, or because at the end of every month, the lease being paid monthly is considered terminated, we can say that indeed ejectment is prohibited. But here, neither reason applies, for there has been no increase in rent, and the monthly termination is now the ground for ouster. The ground is NONPAYMENT OF RENT, a valid ground under paragraph 2 of Art. 1673 of the Civil Code. RA 6126 has not amended said paragraph of Art. 1673.

[NOTE: Incidentally, the defendants were also questioning right of plaintiff to sue on the theory that plaintiff had not proved ownership and on the further theory that plaintiff's husband should have joined her in the complaint. The court, in answer to said allegations, stated that one who seeks to eject a usurper or intruder from a parcel of land or building, or who detains the same after termination of the right to possession, need *not* show ownership, provided he or she is lawfully in possession. In this case, Paz Basa Andres appears from the record not only as possessor but also owner of the land in dispute. Anent the allegation that the husband should have been joined as party plaintiff, the court said that the land was not conjugal but was her separate property, inherited from her own father.]

**Spouses Dolores Medina and Moises Bernal
v. The Honorable Nelly L. Romero Valdellon, et al.
L-38510, Mar. 25, 1975**

FACTS: Spouses Dolores Medina and Moises Bernal sued spouses Cipriano Villanueva and Rufina Panganiban for delivering of a parcel of land which allegedly should have been given more than a year before, the possession of the latter being on mere tolerance by the former. Defendants moved to dismiss, on the ground that pending in another branch of the same court (Bulacan CFI) was a land registration proceeding involving the same property. *ISSUE:* Should the case be dismissed?

HELD: No, the case should not be dismissed on the ground of *litis pendentia* for while the land registration case was indeed pending, the issues or causes of action involved in the two proceedings are not the same. Land registration involves ownership; the present suit involves recovery of possession, and it is well known that such an action can be brought even against the owner.

(4) Writ of Preliminary Mandatory Injunction

- (a) As a rule, injunction *cannot* substitute for the other, actions to *recover* possession. This is because in the meantime, the possessor has in his favor, the presumption of rightful possession, at least, till the case is finally decided. (See *Devesa v. Arbes*, 13 *Phil.* 273; see also *Rustia v. Franco*, 41 *Phil.* 280). The exception, of course, is a very clear case of *usurpation*. Similarly, a receiver should not ordinarily be appointed to deprive a party who is in possession of the property in litigation of such possession. (*Mun. of Camiling v. Hon. Aquino and Simbre*, L-11476, Feb. 8, 1958).
- (b) BUT the Civil Code allows in the meantime, the “writ of preliminary mandatory injunction” because “there are at present prolonged litigations between the owner and the usurper, and the former is frequently deprived of his possession even when he has an immediate right thereto.” (*Report of the Code Commission*, p. 98).

(c) *Requisites for the Issuance of the Writ:*

- 1) in forcible entry cases (in the original court) — file *within 10 days* from the time the complaint for *forcible entry* is filed (not from the time the dispossession took place). (*Art. 538*).
- 2) in ejectment (unlawful detainer cases) in the CFI (RTC) or *appellate court* (Court of Appeals) — file within 10 days from the time the appeal is perfected (that is, from the time the attorneys are notified by the Court of the perfection of the appeal), only if:
 - a) the lessee’s appeal is frivolous or dilatory; or
 - b) the lessor’s appeal is *prima facie* meritorious. (*Art. 1674*).

[NOTE: In the original draft by the Code Commission, the period for asking for the writ with preliminary mandatory injunction was “ten days from the forcible entry.” A longer period could already result in a “stabilization” of the possession, so that the remedy could no longer be availed of. However, Congress changed the period to “ten days from the *filing of the complaint*.” Hence as worded now, even if the forcible entry case is filed, say *eleven months* from entry (after all the prescriptive period for forcible entry is *one year*), the extraordinary remedy here may still be availed of — contrary to the intent of the Code Commission.]

Alvaro v. Zapata
GR 50548, Nov. 25, 1982

Generally, the writ of preliminary mandatory injunction cannot be granted without a notice and a hearing where the adverse party can be held and this is true even in connection with the filing of a case of forcible entry.

NOTA BENE: The notice here is addressed to the defendant. (*Carole v. Abarintos, 80 SCAD 116 [1997]*).

**Commissioner of Customs v. Gaudencio Cloribel
and Herminio G. Teves
L-20266, Jan. 31, 1967**

Purpose of a Preliminary Mandatory Injunction — By Sec. 1, Rule 58, Rules of Court, it is now expressly provided — though already long recognized — that a court, at any stage of an action *prior to final judgment*, may “require the performance of a particular act, in which case it shall be known as a preliminary mandatory injunction.” But stock must be taken of the truism that, like preventive injunctions, it is but a provisional remedy to which parties may resort “for the preservation or protection of their rights or interests, and *for no other purpose*, during the pendency of the principal action.” More than this, as a mandatory injunction “usually tends to do more than to maintain the *status quo*, it is generally improper to issue such an injunction prior to final hearing.” (*Manila Electric Railroad and Light Co. v. Del Rosario*, 22 Phil. 433). *Per contra* (upon the other hand), it may issue “in cases of *extreme urgency*; where the right is very *clear*; where consideration of relative inconvenience bear strongly in complainant’s favor, where there is a willful and unlawful invasion of plaintiff’s right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and *maintain a pre-existing continuing relation* between the parties, *recently and arbitrarily interrupted by the defendant, than to establish a new relation.*” (*Ibid.*). Indeed, “the writ should *not be denied* the complainant when he makes out a *clear case, free from doubt and dispute.*” (*Ibid.*; see also *Villadores, et al. v. Encarnacion*, 95 Phil. 913; *Bautista, et al. v. Barcelona, et al.*, 100 Phil. 1078, 1081-1082).

**City of Legaspi v. Mateo L. Alcasid, et al.
L-17936, Jan. 30, 1962**

FACTS: The Republic of the Philippines owned in the City of Legaspi a parcel of land with improvements, and used as a public vocational school, the Bicol Regional School of Arts and Trades. In Mar. 1960, agents of the City of Legaspi forcibly took possession of the premises on the allegation that same

belonged to the City. The forcible taking over was prompted by the refusal of the school authorities to vacate the premises. The Republic asked for a writ of preliminary mandatory injunction.

HELD: The writ can properly be granted for it is evident that the Republic was in prior physical possession before the City took over the property forcibly.

Sy v. CA
111 SCAD 488, 313 SCRA 328
(1999)

The Court is at a loss as to the basis of the issuance of a writ of preliminary injunction where the complainant only made general allegations of hazard and serious damage to the public due to violations of various provisions of the Building Code, but did not show any grave damage or injury that it was bound to suffer should the writ not issue.

Art. 540. Only the possession acquired and enjoyed in the concept of owner can serve as a title for acquiring dominion.

COMMENT:

(1) Possession in the Concept of Owner

- (a) If a person possesses *en concepto de dueño* — he may eventually become the owner by prescription.
- (b) Thus, a possessor merely in the *concept of holder cannot* acquire property by acquisitive prescription. (This is because here the possession, far from being adverse, recognizes right of ownership in others. [*See Corporacion v. Lozaro, 42 Phil. 119*].). One cannot recognize the right of another and at the same time claim adverse possession which can ripen to ownership through acquisitive prescription. For prescription to set in, the possession must be adverse, public and to the exclusion of all. (*Corpus v. Padilla, L-18099 and L-18136, July 31, 1962*).

(2) Possession in the Concept of Holder

The following cannot therefore acquire ownership by prescription (*as long as they remain such — mere possessors in the concept of holder*):

- (a) *Lessees. (Laureto v. Mauricio, [CA] 37 O.G. 68, p. 1287) or those merely permitted to occupy. (Mos v. Lanuza, 5 Phil. 457). The mere fact of working over a parcel of land without expressing the concept in which the land was being worked on is no proof that the land is owned by the one working nor proof that the possession is in the concept of owner. The possession may have been as mere tenant. (Alano, et al. v. Ignacio, et al., L-16434, Feb. 28, 1962).*
- (b) *Trustees. (Camagun v. Allingay, 19 Phil. 415).*

[These include:

- 1) parents over the properties of their unemancipated minor children or insane children (*Art. 1109*);
- 2) husband and wife over each other's properties, as long as the marriage *lasts*, and *even* if there be a separation of property which had been agreed upon in a marriage settlement or by judicial decree. (*Art. 1109*).].
- (c) *Antichretic creditors. (Barreto v. Barreto, 37 Phil. 234).*
- (d) *Agents. (De Borja v. De Borja, 59 Phil. 19).*
- (e) *Attorneys (regarding their client's properties). (Severino v. Severino, 44 Phil. 343).*
- (f) *Depositaries. (Delgado v. Arandez, 23 Phil. 308).*
- (g) *Co-owners (unless the co-ownership is clearly repudiated by unequivocal acts communicated to the other co-owners). (See Cabello v. Cabello, 37 Phil. 328).*

[NOTE: While a trust may be repudiated, this is not allowed if the beneficiary is a minor (or insane) because it is hard for the latter to protect his rights. (*See Castro v. Castro, 57 Phil. 675*).].

[NOTE: The reason is really to prevent the encouragement of fraud and the legalization of usurpation. (*Camagun v. Allingay, 19 Phil. 415*).].

(3) Payment of Land Taxes – Usefulness

Although payment of land taxes is not evidence of ownership (*Tupaz v. Ricamora*, [CA] 37 O.G. 58), and although a mere tax declaration or a tax assessment does not by itself give the title, and is of little value in proving one's ownership (*See Casimiro v. Fernandez*, 9 Phil. 562; *Prov. of Camarines Sur v. Dir. of Lands*, 64 Phil. 600), STILL payment of the land tax is one of the most persuasive and *positive indicia*, which shows the will of a person to *possess in concepto de dueno* or with claim of ownership. And therefore, prescription may eventually be had, provided that the other requisites for prescription are present. (*Tupaz v. Ricamora*, 37 O.G. 58).

Otherwise put, while tax declarations and receipts are NOT conclusive evidence of ownership, yet, when coupled with proof of actual possession, tax declarations and receipts are strong evidence of ownership. (*Gesmundo v. CA*, 117 SCAD 919, 321 SCRA 487 [1999]).

Art. 541. A possessor in the concept of owner has in his favor the legal presumption that he possesses with a just title and he cannot be obliged to show or prove it.

COMMENT:

(1) Presumption that Possessor Has a Just Title

There are two requirements under this article to raise the *disputable* presumption of *ownership* (of a *thing* or a *right*):

- (a) One must be in possession (actual or constructive).
- (b) The possession must be in the *concept of owner* (not mere holder). (A *tenant* cannot avail himself of the presumption of just title because he is not a possessor in the concept of owner). (*See Laureto v. Mauricio*, 37 O.G. 1287).

Thus, in a general way, we may say that: POSSESSION IS PRESUMED OWNERSHIP. (3 *Sanchez Roman* 439). The Supreme Court has ruled that actual possession of the property

under claim of ownership raises the disputable presumption of ownership; the true owner must resort to judicial process for the recovery of the property. (*Chan v. Court of Appeals, L-27488, June 30, 1970*).

[NOTE: The Article can apply to both real and personal property. Thus, if a person possesses the key to a car over which he claims ownership, he can be presumed to be the owner. But such presumption may be overcome by documentary evidence concerning the car’s ownership. (*See Narciso v. Ortiz, 45 O.G. No. 5 {S}, p. 162*).]

[NOTE: The failure to declare land for taxation shows claimant did not believe himself to be the owner. (*Cruzado v. Bustos and Escaler, 34 Phil. 17*). Upon the other hand, the mere payment of taxes on land does NOT prove title to it; it is evidence of claim of ownership, and when taken in connection with possession, may be valuable in support of title by prescription. (*Viernes v. Agpaoa, 41 Phil. 286*).]

(2) Reasons for the Presumption

- (a) presumption that one is in good faith — or that one is *innocent of wrong*.
- (b) inconvenience of carrying proofs of ownership around. (*See 4 Manresa 248*).

(3) Differences with Respect to ‘Just Title’ in the Chapter on POSSESSION and ‘Just Title’ in the Chapter on PRESCRIPTION

IN POSSESSION	IN PRESCRIPTION
(a) <i>just title</i> here is presumed. (<i>Title</i> refers either to <i>document</i> or <i>right</i>). (<i>4 Manresa 245</i>). (The term “show” evidently refers to a <i>document</i> ; while the term “prove” refers to the <i>right</i> .)	(a) <i>just title</i> here must be proved. (<i>Title</i> refers either to <i>document</i> or <i>right</i>). (<i>4 Manresa 245</i>).

<p>(b) <i>just title</i> here means “<i>titulo verdadero y valido</i>” (true and valid title sufficient to transfer ownership).</p>	<p>(b) <i>just title</i> here means “<i>titulo colorado</i>” (merely colorable title although there was a mode of transferring ownership, the grantor was NOT the owner). (See <i>Doliendo v. Biarnesa</i>, 7 Phil. 232).</p>
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(4) The Kinds of Titles (“Titulos”)

(a) True and Valid Title (*Titulo Verdadero y Valido*) –

Here, there was a mode of transferring ownership and the grantor was the owner. It is defined as a title which by itself is sufficient to transfer ownership *without* the necessity of letting the prescriptive period elapse. (See *Doliendo v. Biarnesa*, 7 Phil. 232).

Example: *B* bought a *Ford Expedition Limited* from *S*, the owner thereof. Then *S* delivered the car to *B*. *B* now has a *true* and *valid title*.

[NOTE: This is the *just title* referred to in Art. 541. Thus, if *B* possesses the vehicle and drives it around as an owner, other people *cannot* compel him to prove his ownership over the same.]

(b) Colorable Title (*Titulo Colorado*) –

That title where, although there was a mode of transferring ownership, still something is wrong, because the grantor is NOT the owner.

Example: *B* bought a *BMW* car from *S*. *S* then delivered the car to *B*. But it turns out that *S* never owned the car, and that somebody else was its owner. Whether *B* was in *good faith* or in *bad faith* is immaterial in deciding if he (*B*) is the owner; what is important is that he is not the owner because he did not acquire or purchase the property from the owner, his title being merely “*colorado*” or colorable.

[NOTE: *Titulo colorado* is what is meant by “just title” in the law of prescription, and *not titulo verdadero y valido*, for if it were the latter, *there would be no necessity of still acquiring ownership thru prescription, the grantee being already the owner.*].

[NOTE: It must be remembered that:

- 1) Ordinary prescription needs *good faith* and *just title*, hence in the example given, if *B* is in *good faith*, he may become owner of the car by prescription after 4 years (the car being *personal* property).
- 2) *Extraordinary* prescription does not need either good faith or just title, hence in the example given, if *B* is in *bad faith*, although there may be just title (*titulo colorado*), *B* may get ownership by prescription only after 8 years.]

[NOTE: In case of real properties, the prescriptive periods are 10 years and 30 years respectively for ordinary and extraordinary prescription.]

Samonte v. Court of Appeals
GR 44841, Jan. 27, 1986

FACTS: In 1930, *A* was the owner of five parcels of land. In 1931, these parcels were transferred from *A* to *B*. Two of the five parcels were later washed away by a river. *A* died in Dec. 1941, while *B* died in Apr. 1937. *B* was succeeded by her mother, who died in 1947, and the mother was succeeded by *C*, *B*'s sister. *C* died in Nov. 1962, and was succeeded by her adopted children, *D* and *E*. *C* claimed ownership of the remaining three parcels in May 1947, reiterated her claim in December 1962. *X* and *Y*, the children of *A*, sued *D* and *E*, for the return of the disputed parcels, claiming that *A* transferred the parcels to *B* only by way of *antichresis*. *D* and *E* claimed that *B* bought the land from *A* in 1931. The trial court dismissed *X* and *Y*'s complaint on the ground that *C*, having claimed the disputed property since 1952 and *X* and *Y*'s complaint having been filed only in April

1970, or more than 10 years after December 1952. *D* and *E*, the successor of *C*, should be deemed to have acquired title to the disputed property through ordinary prescription under the provisions of the present Civil Code. The appellate court affirmed the trial court's judgment, saying that *D* and *E* being in possession of the property in the concept of owner, they are presumed to own the land under just title, which they need not show, pursuant to Article 541 of the Civil Code. Also, even assuming the antichresis, *X* and *Y*'s right to recover the disputed property accrued in 1941 (when the alleged loan with interest at 6% had been fully paid) and they incurred in laches in not asserting such right within a reasonable time instead of waiting 29 years thereafter.

HELD: The appellate court correctly affirmed the trial court's decision based on ordinary acquisitive prescription, except that the required period should start from May 1947, when *C* executed the affidavit before a judge, in which *C* claimed ownership over the property. No judicial summons which could interrupt possession for purposes of prescription (*Art. 1123, Civil Code*) had been served on *C*. Neither have *D* and *E* been served with judicial summons prior to the institution of the suit for recovery filed by *X* and *Y*.

An instrument of antichresis could not have been executed in 1930, because on or about that time, an express contract of antichresis would have been unusual. *Laches:* The inaction of *X* and *Y* for a considerable period of time reflects on the credibility of their pretense.

(c) Putative Title (*Titulo Putativo*)

That title where although a person believes himself to be the owner, he nonetheless is not, because there was *no mode* of acquiring ownership.

Example: *A* is in possession of a piece of property in the *mistaken* belief that it had been inherited by him from *Y*.

[NOTE: In the example given, there was really *no* mode, *no* succession as when *Y*, for example, is still alive. (See *Viso, Derecho Civil Parte Segunda, p. 541, cited in Doliendo v. Biarnesa, 7 Phil. 232*).]

(5) Query Re Effect of Admission that Another Person Used to be the Owner

**Sarita v. Candia
23 Phil. 443**

FACTS: *A* was in possession of property, the ownership of which was claimed by *B*. *A* admitted however that the property used to belong to *X* while *X* was still alive. *A* further stated that he had acquired the property from *X*. Is it now essential for *A* to prove his just title over the property?

HELD: Yes, in view of the admission by *A* of *X*'s prior ownership over the property. *A* must indeed prove his just title even though he is in possession of the property.

(6) Query

Suppose I *really own* and *possess* a piece of land. Do I have to tell everybody that I am claiming the land as my own, in other words, do I have to show adverse possession?

HELD: No. Said adverse possession is needed only if I want to acquire something by prescription. In my case, I do not need prescription since I am already the owner of the land. (*Gamboa v. Gamboa, 52 Phil. 503*). The fact that my brothers or sisters may have persistently questioned my rights is of no moment, and does not impair my right. (*Gamboa v. Gamboa, supra*).

(7) Effect of Mere Assertion of a Right Instead of Possession

A person who is *not* in fact in possession cannot acquire a prescriptive right to the land by the mere assertion of a right therein. (*Gamboa v. Gamboa, supra*).

Art. 542. The possession of real property presumes that of the movables therein, so long as it is not shown or proved that they should be excluded.

COMMENT:**(1) Presumption of Possession of Movables Found in an Immovable***Example:*

If I possess a house (real property), it is presumed that I also possess the furniture (personal property) therein.

[NOTE: By analogy, if my possession of the house is in *concepto de dueno*, my possession of the furniture is also presumed to be in *concepto de dueno*. Therefore, my just title to BOTH the house and the furniture is presumed. (See Art. 541).].

(2) Applicability of the Article

- (a) whether the possessor be in *good faith* or *bad faith*
- (b) whether the possession be in *one's own name* or in *another's*
- (c) whether the possession be in *concepto de dueno* or in the *concept of holder*. Thus, the lessee of a building is presumed to be the possessor of the movables found therein, for he who needs them is supposed to have been the one who introduced the movables into the building. (*4 Manresa 250*).

(3) Rights Are Not Included Within the Scope of the Presumption

By "real property" and "movables" we mean only real or personal THINGS, not rights. (*4 Manresa 250*).

Art. 543. Each one of the participants of a thing possessed in common shall be deemed to have exclusively possessed the part which may be allotted to him upon the division thereof, for the entire period during which the co-possession lasted. Interruption in the possession of the whole or a part of a thing possessed in common shall be to

the prejudice of all the possessors. However, in case of civil interruption, the Rules of Court shall apply.

COMMENT:

(1) Example of Exclusive Possession by a Previous Co-Owner

A and *B* have been co-possessors of a piece of land in Greenhills since 2002. If in 2006, there is a *partition*, *A* is deemed to have possessed exclusively the *portion* given him, not since 2002, *but* since 2006. (This is useful in case of acquisition by prescription.)

(2) Meaning of ‘Shall be Deemed’

This does *not* establish a mere presumption. It gives a right.

(3) Example of Interruption in Possession of the WHOLE

A, *B*, and *C* have been co-possessors of a piece of land since 2002. If in 2006, *A*, *B*, and *C* lose possession over the *whole* land, it can be said that the three of them were in possession for *only four years*.

[NOTE: *If in the above example A, B, and C exercised their possession thru a mutual agent X, the same rule applies.*]

(4) Example of Interruption in Possession of PART of the Thing

A and *B* have been co-possessors of a piece of land since 2002 thru a mutual agent *X*. In 2006, *X* lost possession of one-fifth of the land. *A*'s and *B*'s possession over the remaining *four-fifths* continues, the interruption being *limited only to one-fifth*.

[NOTE: *If A and B had co-possessed the land in equal shares, the co-possession of the remaining four-fifths will also be in equal shares. If A and B had co-possessed in the proportion of 3 to 1, their shares in the remaining four-fifths would*

also be in the proportion of 3 to 1. In other words, there is a PROPORTIONATE losing in the area possessed.]

(5) Rules to Apply for Civil Interruption —

The “Rules of Court” applies (*Art. 543*)

- (a) Civil interruption is produced by *judicial summons* to the possessor. (*Art. 1123*).
- (b) Judicial summons shall be deemed *not* to have been issued, and shall not give rise to interruption:
 - 1) if it should be void for lack of legal solemnities;
 - 2) if the plaintiff should desist from the complaint or should allow the proceedings to lapse;
 - 3) if the possessor should be absolved from the complaint.

In all these cases, the period of the interruption shall be counted FOR the prescription. (*Art. 1124*).

Art. 544. A possessor in good faith is entitled to the fruits received before the possession is legally interrupted.

Natural and industrial fruits are considered received from the time they are gathered or severed.

Civil fruits are deemed to accrue daily and belong to the possessor in good faith in that proportion.

COMMENT:

(1) Right of a Possessor in Good Faith to Fruits Already Received

First Paragraph: “A possessor in good faith is entitled to the fruits received before the possession is legally interrupted.”

- (a) *Reason for the law:* Justice demands that the fruits be retained by the possessor who thought that he was really the owner of the property, and who, because of such

thought had regulated his daily life, income, and expenses by virtue of such fruits. Moreover, the possessor should be rewarded for having contributed to the INDUSTRIAL WEALTH, unlike the owner, who by his presumed negligence, had virtually discarded his property (*SALVAT*).

Ortiz v. Kayanan
L-32974, July 30, 1979

A possessor in good faith is entitled to the fruits received before the possession is legally interrupted. This occurs from the moment defects in the title are made known to the possessor, by extraneous evidence or by the filing of an action in court. Although because of the interruption his good faith ceases, the possessor can still retain the property, pursuant to Art. 546 of the Civil Code, until he has been fully reimbursed for all the necessary and useful expenses made by him on the property.

- (b) *Fruits* refer to natural, industrial, and civil fruits, *not to other things*. (If no actual fruits are produced, reasonable rents — civil fruits — must be given.) (See *Antonio v. Gonzales, [CA] O.G., July, 1943, p. 687*).
- (c) *Legal interruption* happens when a complaint is filed against him and he receives the proper judicial summons. (See *Art. 1123*). All fruits accrued and received since said date must be turned over to the winner, that is, either the owner or the lawful possessor adjudged as such by the court. (See *Tacas v. Tabon, 53 Phil. 356*). Before legal interruption, the fruits received are his own. (*Nacoco v. Geronimo, L-2899, Apr. 29, 1949*). After the receipt of the judicial summons, the right to get the fruits not yet gathered ceases. (*Mindanao Academy, Inc., et al. v. Ildefonso D. Yap, L-17681-82, Feb. 26, 1965*).
- (d) The reason why fruits should be returned from the TIME of legal interruption is that it is ordinarily *only* from said date that the possessor should be considered in BAD FAITH. Therefore, should there be proof that BAD FAITH had not set in *even* BEFORE legal interruption, fruits should be returned from that date of CONVERSION

into bad faith. This is because possessors in bad faith are not entitled to the fruits. As a matter of fact, the law provides that “the possessor in bad faith shall *reimburse* the fruits *received* and those which the *legitimate* possessor (or owner) *could have received*.” (Art. 549). This is true whether the possession in BAD faith was legally interrupted or not. (See *3 Sanchez Roman 442-443*). It is understood of course that he is entitled to the fruits received BEFORE the conversion into BAD FAITH, for then, he would still be in good faith. (See *Calma v. Calma, 56 Phil. 102; Tolentino v. Vitug, 39 Phil. 126*).

Calma v. Calma
56 Phil. 102

FACTS: A in good faith possessed land and received the fruits. In 1927, he was summoned to court. But in the meantime he collected fruits. Should he return the value of said fruits?

HELD: He should return only the value of the fruits he had collected after 1927, but not that prior to said date, since before said date, he was a possessor in good faith. (See also *Alunen v. Tilan, 66 Phil. 463*).

Aquino v. Tañedo
39 Phil. 517

FACTS: A bought and possessed land from B. Later, they mutually agreed to cancel or rescind the sale. A then returned the land, and B returned the price. Does A also have to return the fruits, considering the fact that under Art. 1385, rescission ordinarily requires return of the fruits?

HELD: No, since his possession of the land prior to the rescission was in good faith.

Cleto v. Salvador
11 Phil. 416

FACTS: A bought land from B who turned out to be not the owner. C, the true owner, sued A for recovery

of the land and the fruits. *A* in good faith had believed that he had purchased the land from the owner. *ISSUE*: Should *A* return the fruits?

HELD: Yes, but only the fruits received after *C* had instituted the action and *A* had received the summons.

DBP v. CA
114 SCAD 197, 316 SCRA 650
(1999)

When a contract of sale is void, the possessor is entitled to keep the fruits during the period for which it held the property in good faith, which good faith of the possessor ceases when an action to recover possession of the property is filed against him and he is served summons therefor.

(2) When Natural and Industrial Fruits are Considered Received

Second Paragraph: “Natural and industrial fruits are considered received from the time they are gathered or severed.”

- (a) If at the time of legal interruption, the crops are *still growing*, the rule on *pending crops*, not that on gathered crops, should apply. (*See Art. 545*).
- (b) If at the time of legal interruption, the crops have already been *gathered*, but are *sold* only *after* such interruption, the sale is *immaterial*, for the law requires only a gathering or severance, so *Art. 544 applies*.

(3) When Civil Fruits Are Deemed to Accrue

Third Paragraph: “Civil fruits are *deemed to accrue* daily and belong to the possessor in good faith in that *proportion*.”

- (a) If civil fruits (like rents) are accrued daily, *Art. 545* does not apply.
- (b) Actual receipt of the rents is *immaterial*; hence, even if received only, for example, on the 30th of a month, all rents

accrued before the 21st of the month (date for example of legal interruption) should belong to the possessor in good faith. (*See by analogy Waite v. Williams, Chandler and Co., 5 Phil. 571*).

Art. 545. If at the time the good faith ceases, there should be any natural or industrial fruits, the possessor shall have a right to a part of the expenses of cultivation, and to a part of the net harvest, both in proportion to the time of the possession.

The charges shall be divided on the same basis by the two possessors.

The owner of the thing may, should he so desires, give the possessor in good faith the right to finish the cultivation and gathering of the growing fruits, as an indemnity for his part of the expenses of cultivation and the net proceeds; the possessor in good faith who for any reason whatever should refuse to accept this concession, shall lose the right to be indemnified in any other manner.

COMMENT:

(1) Rights Re Pending Fruits

- (a) This article applies to PENDING fruits, *natural or industrial*.
- (b) *Example*

A possessed in good faith a parcel of land. At the time he received judicial summons to answer a complaint filed by B, the crops still growing had been there for 2 months. Harvest was made only after 4 more months (For his crop needed a total of 6 months from *planting to harvesting*). How should said crops be divided between A and B?

ANS.: In the proportion of 2 to 4 (or 1 to 2), 2 for A and 4 for B. This is what the law means when it says that the *net harvest* shall be divided in *proportion* to the time of possession.

(2) Sharing of Expenses and Charges

- (a) The *expenses* for cultivation shall also be divided *pro rata* (2 to 4). The law says “the possessor shall have a RIGHT to a part of the expenses for cultivation *in proportion* to the *time of possession*. (This may in certain cases be *UNFAIR* because although he may have spent MORE than the owner, still he will be *entitled* to a *reimbursement* of LESS since his possession is shorter. The better rule would be for the *expenses* to be *borne* in proportion to what each receives from the harvest.) (See Art. 443). Otherwise, unjust enrichment would result. (See 3 Manresa 187).
- (b) The *charges* (those incurred because of the land and the fruits, like TAXES, or INTEREST on MORTGAGES are what are referred to as CHARGES, and not those *incurred on or in them*, such as *improvements*) are also to be *divided in proportion to the time of possession*. (Art. 545, 2nd par.; see also 4 Manresa 276).
- (c) In the example given, *B* (the owner), if he so desires has an *option* —
 - 1) to get the right already discussed. (Art. 545, par. 1), or
 - 2) to *allow A* (the possessor in good faith) to FINISH the cultivation and gathering of the growing crops, as an INDEMNITY for his part of the expenses of cultivation and the net proceeds. (If *A refuses* for ANY REASON to accept this concession, *A loses* the right to be indemnified IN ANY OTHER MANNER). (*B* is given this option because he may *not* be interested in the pending fruits at all, or because he realizes that to continue the cultivation might result in a financial LOSS for him.) (The refusal causes LOSS of indemnity even if the fruits be LESS than the expenses.)
- (d) In the example given, if the fruits be LESS than the expenses, it is but just to reimburse *A* and *B* for their respective expenses, proportionate not to the time of possession (the rule given in Art. 545 cannot apply for there is NO NET

HARVEST), but to the amount of their *respective expenses*. And since said reimbursement must come from the value of the fruits, it follows that each bears a *pro rata* LOSS. This is equitable, and should be the rule applied unless *B* exercises the option referred to in (c).

(3) Effect of Unfortunate Illness

The phrase “for any reason whatever” in the third paragraph of Art. 545 seems unduly harsh because it may happen that an *unfortunate illness* will prevent the possessor from continuing the cultivation.

(4) Applicability of Article Only to Possessors in Good Faith

Note that Art. 545 applies only to a possessor in GOOD faith for a possessor in bad faith has no right whatsoever to fruits *already gathered* nor to fruits still pending, except that in the *former* case (gathered fruits), he gets back the necessary expenses for production, gathering, and preservation of fruits. (*Art. 443; see also Director of Lands v. Abagat, 53 Phil. 147*). In the case of pending fruits, the principle of accession applies, and the law clearly states that he who plants or sows in BAD FAITH on the land of another, *loses* whatever is planted or sown without right to indemnity. (*Art. 449; see also 3 Manresa 219-220; Jison v. Hernaez, O.G., May, 1943, p. 492*).

(5) Crops Not Yet Manifest

Art. 545 applies to pending crops. Suppose the crops have already been planted but are *not yet* manifest at the time there is a transfer of possession, should the article *also* apply? It is submitted that the answer is YES, by the application of the general rules stated in Art. 443. (*See 4 Manresa 282*).

(6) Probative Effect of Fruit Gathering

Gathering of part of the pending fruits by the possessor does not necessarily negate ownership of the land in another person. (*See Muyo v. Montilla, et al., 7 Phil. 498*).

(7) Similar Rules

For similar rules on pending or growing crops, see:

- (a) Art. 567 — in case of *change of usufruct*.
- (b) Art. 1617 — in case of *conventional redemption*.

Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

COMMENT:**(1) Necessary Expenses Defined (*Gastos Necesarios*)**

They are those without which the thing would physically deteriorate or be lost; hence, those made for the *preservation* of the thing. (*4 Manresa 270-271*).

(2) Sample of Necessary Expenses

- (a) Those incurred for cultivation, production, and upkeep. (*Mendoza v. de Guzman, 52 Phil. 104*).
- (b) Those made for *necessary repairs* of a house. (*Angeles v. Lozada, 54 Phil. 185; Alburo v. Villanueva, 7 Phil. 277*).

[By *ordinary repairs* are understood such as are required by the wear and tear due to the natural use of the thing, and are indispensable for its preservation. (*Art. 592*). They do not increase the thing's value; rather, they merely prevent the things from becoming useless. (*4 Manresa 270-271*).]. [Urgent repairs — *reparacion urgentisima* — are also necessary expenses. (*See Alburo v. Villanueva, 7 Phil. 277*).].

(3) The following are NOT Necessary Expenses

- (a) Those incurred for the filling up with soil of a vacant or deep lot. (This is *not* also a repair since the term “repair” implies the *putting back* into the condition in which it was originally, and not an improvement in the condition thereof by adding something new thereto. The expenses are indeed in the nature of USEFUL improvements. (*Alburo v. Villanueva*, 7 *Phil.* 277).
- (b) A house constructed on land possessed by a stranger (not the owner), because the house cannot be said to preserve the land. (*Valencia v. Ayala de Roxas*, 13 *Phil.* 45). (The house is USEFUL.)
- (c) Land taxes are, for the purposes of the Article, *not* necessary expenses, for they are needed, not for preservation of the land itself; but for its continued possession. Failure to pay said taxes results not in destruction, but forfeiture, therefore they should be merely considered CHARGES. (*4 Manresa* 271-272; *Cabigao v. Valencia*, 53 *Phil.* 646). Consequently, Art. 545 regarding PRO RATING of charges should apply.
- (d) Unnecessary improvements on a parcel of land purchased at a sheriff's auction sale, made just to prevent redemption from taking place. (*Flores v. Lim*, 50 *Phil.* 738).

**Flores v. Lim
50 Phil. 738**

FACTS: The real property of A, a debtor, was sold at a sheriff's sale to B. A, under the law, had one year within which to redeem said property (lands). But within said period, B, by force, took possession of the property, planted coconut trees thereon and make some extensive improvements. Before the time for redemption expired, A was able to redeem the property. **ISSUE:** Is B entitled to reimbursement for the coconut trees he had planted as well as for the other improvements?

HELD: No, B here is a possessor in *bad faith* (for he should have waited for the termination of the one-year

redemption period before entering into the possession of the property), and is therefore *not entitled* to a refund of *useful improvements*. On the other hand, the expenses he sought to recover were *not even necessary* expenses. Moreover, regarding judicial sales, the law defines and specifies what the redemptioner is required to pay in order to redeem, and in the absence of something unusual or extraordinary expense incurred in the preservation of the property (which incidentally has to be approved by the court), the redemptioner will not be required to pay any other or greater amount.

- (e) Expenses made by the possessor — not to preserve the property or to save it from being lost — but to enable him to use the property for his own purposes. (*Roberto Laperal v. William Rogers, L-16590, Jan. 30, 1965*).

(4) Rights of a Possessor (in the Concept of Owner) as to the Necessary Expenses

- (a) If in *good faith* — entitled to:
 - 1) *refund*
 - 2) *retain premises* till paid
- (b) If in *bad faith* — entitled ONLY to a *refund* (*no right of RETENTION*, as penalty). (*Dir. of Lands v. Abagat, 53 Phil. 147*).

[NOTE: If the owner sues the possessor for the recovery of the property, the possessor in good faith (who is thus entitled to a refund) must file a *counterclaim* for the refund of necessary and useful expenses, otherwise the judgment in the case for possession will be a BAR to a subsequent suit brought solely for the recovery of such expenses. The purpose is clearly to avoid the multiplicity of suits. (*Beltran v. Valbuena, 53 Phil. 697*).]

(5) Useful Expenses Defined (*Gastos Utiles*)

They are those that add value to the property (*Aringo v. Arenas, 14 Phil. 263*), or increase the object's productivity (*Valenzuela v. Lopez, 51 Phil. 279*), or useful for the satisfaction

of spiritual and religious yearnings (*Anacleto Gongon v. Tiangco*, [CA] 36 O.G. 822), or give rise to all kinds of fruits. (*Rivera v. Roman Catholic Archbishop of Manila*, 40 Phil. 717).

[NOTE: Depending upon individual capacities and needs, useful expenses may SOMETIMES be considered LUXURIOUS EXPENSES. Hence, if only certain or definite possessors would benefit, they may be *luxuries*; if in general every possessor gains, they are *useful expenses*. The determination is really a judicial question. (See 4 *Manresa* 274-275). In a sense, luxurious expenses can increase *civil fruits*, not the industrial or natural fruits. (See *Rivera v. Roman Catholic Archbishop of Manila*, 40 Phil. 717).]

(6) Examples of Useful Expenses

- (a) Those incurred for an *irrigation system*. (*Valenzuela v. Lopez*, 51 Phil. 279).
- (b) Those incurred for the erection of a *chapel*, because aside from its possibility of *conversion* into such materialistic things as a warehouse or a residence, the chapel satisfies spiritual and religious aspirations and the attainment of man's higher destinies. "To uphold the opposite view would be to reduce life to a mere conglomeration of desires and lust, when, as a matter of fact, life is also a beautiful aggregate of noble impulses and lofty ideals." (*Gongon v. Tiangco*, [CA] 36 O.G. 822).
- (c) Those incurred for the making of artificial *fishponds*. (*Rivera v. Roman Catholic Church*, 40 Phil. 717).
- (d) Those incurred for the construction of additional rooms in a house, for use as kitchen, bathroom, stable, etc. (*Robles v. Lizarraga*, 42 Phil. 584).
- (e) Those incurred for clearing up land formerly thickly covered with trees and shrubbery. (*Toquero v. Valdez*, 35 O.G. 1799).

(7) Rights of a Possessor (in the Concept of Owner) as to the USEFUL Expenses

- (a) *If in GOOD faith.*

- 1) right to REIMBURSEMENT (of *either the amount spent or the increase in value* — “plus value” — at OWNER’S OPTION). (*Art. 546*).

Chua v. CA
301 SCRA 356
(1999)

There is no provision of law which grants the lessee a right of retention over the leased premises on the ground that he made repairs on the premises — Article 448 of the Civil Code, in relation to Article 546, which provides for full reimbursement of useful improvements and retention of the premises until reimbursement is made, applies only to a possessor in good faith, *i.e.*, one who builds on a land in the belief that he is the owner thereof.

Kilario v. CA
GR 134329, Jan. 19, 2000

It is well settled that both Art. 448 and Art. 546, respectively, which allow full reimbursement of useful improvements and retention of the premises until reimbursement is made to apply only to a possessor in good faith, *i.e.*, one who builds on land with belief that he is the owner thereof. Verily, persons whose occupation of a realty is by sheer tolerance of its owners are not possessors in good faith.

- 2) right of RETENTION (till paid). (*Art. 546*).
- 3) right of REMOVAL (*provided no substantial damage or injury is caused to the principal, reducing its VALUE*) — UNLESS the winner (owner or lawful possessor) exercises the option in (1). (*Art. 547*).

[NOTE: Thus the law really gives preference to the WINNER.]

[NOTE: The possessor in good faith is entitled to both the fruits and expenses (necessary or useful), hence they do not compensate each other. (4 Manresa

290). (See also *Toquero v. Valdez*, 35 O.G. {102} 1799 which ruled against a SET-OFF).].

(b) *If in BAD faith.*

The possessor in BAD faith is NOT ENTITLED to any right regarding the useful expenses. [*BUT see Angeles v. Guevara*, L-15697, Oct. 31, 1960, where the Supreme Court thru Justice Gutierrez David made the statement that although a possessor in bad faith is NOT entitled to reimbursements for expenses incurred, he may nevertheless REMOVE the objects (repairs on buildings) provided the things suffer NO INJURY thereby, and that the lawful possessor does not prefer to retain them by paying the value they may have at the time he enters into possession. Evidently, here, the Court was thinking NOT of useful improvement, but of expenses for PURE LUXURY or MERE PLEASURE. (See Art. 549).].

In the case however of *Santos v. Mojica*, L-25450, Jan. 31, 1969, see facts and ruling in comments under Art. 449 — the Court held that a builder or possessor in bad faith is not entitled to indemnity for any useful improvement on the premises — because of Art. 449.

Reasons why there should be NO right:

- 1) The law OMITTS his right to *useful* expenses [but states his right regarding *luxurious expenses*. (See Art. 549).].
- 2) The law, in the chapter on accretion, provides that a builder in bad faith loses whatever is built without payment of *any indemnity*. (See Arts. 449, 450, 451).

[Thus, *even if* removal is possible without substantial injury, the possessor in *bad faith* has no right to make the removal. (See *4 Manresa*, 295; see also *Rivera v. Roman Catholic Church*, 40 Phil. 717; but as discussed above, see *Angeles v. Guevara*, L-15697, Oct. 31, 1960). (See also *Flores v. Lim*, 50 Phil. 738, where improvements made during the one-year period of redemption were *not reimbursed*.) (See

also Beltran v. Valbuena, 53 Phil. 697; Case, et al. v. Cruz, [CA] 50 O.G. 618).] In a case, the Court held that removable properties, like books and furniture brought into a building constructed in bad faith may be removed, but not the building itself. In the case of the building, there clearly is accession, but this is not so with reference to the removable objects. (*Mindanao Academy, Inc., et al. v. Ildefonso D. Yap, L-17681-82, Feb. 26, 1965*).

(8) Decided Doctrines and Cases

Valenzuela v. Lopez 51 Phil. 279

Useful expenses do not include the value of farming animals which the possessor retains and which do not remain on the land, nor the expenditures through which the possessor receives the fruits.

Monte de Piedad v. Velasco 61 Phil. 467

FACTS: A possessed land registered under the Torrens system in the name of another, but A did not know of such registration. Is A entitled to a refund for useful expenses?

HELD: No, since A is *not* a possessor in good faith, the registration being binding on the whole world.

Galit v. Ginosa and Hernandez 62 Phil. 451

FACTS: A, claiming to be the owner of a parcel of land, asked for its registration under the Torrens system. The land contained some useful improvements, the registration of which was also asked by B. B opposed the registration, and because of the evidence he presented, B was declared the owner of both the land and the improvements thereon. The court then ordered the registration of said things in B's name. Sometime later, A brought an action to recover the value of the improvements from B. Do you believe that the court should consider this new action?

HELD: No, the action will not prosper because the question of ownership of the lands and its improvements has already been decided in the registration case, and therefore, constitutes *res judicata*.

Raquel v. Lugay
40 O.G. 8, p. 74

FACTS: Mr. Raquel bought from Mr. Lugay a parcel of land with a Torrens Title, but the deed of sale was not registered. Later, the creditors of Mr. Lugay attached said land as Mr. Lugay's property, and in the sale on execution, a third party *G* was able to purchase the land from the sheriff. Mr. Raquel now seeks to get back the land, or at least to recover the useful expenses he had introduced thereon prior to his knowledge of the public sale in favor of *G*.

HELD: The third party *G* has a better right to the land because Raquel had failed to register the sale in his (Raquel's) favor. But Raquel is entitled to reimbursement of his necessary and useful expenses incurred prior to his knowledge of the public auction since he can be deemed a possessor in good faith.

Robles, et al. v. Lizarraga Hermanos, et al.
42 Phil. 584

A possessor in good faith of a house, who had introduced such improvements as "a dining room, kitchen, closet, and bathroom in the upper and lower stories of the house and a stable, suitable as a coach house and dwelling," was *being ousted* by the owner, who however did not want to pay for said useful improvements. Due to the non-reimbursement of the above-mentioned useful expenditures, the possessor is entitled to RETENTION. Damages cannot be assessed against the possessor for he was merely exercising his legitimate rights, when he refused to leave the premises.

Beltran v. Valbuena
53 Phil. 697

FACTS: *X* possessed in bad faith *Y*'s land. *Y* then brought an action to eject *X*. Although *X* had incurred some necessary

and useful expenses on the land, *X* did not set up these as a counterclaim in the ejectment proceedings. *Y* won the case. Later *X* sought to recover in another action said necessary and useful expenses. Will the recovery prosper?

HELD: The recovery *cannot* prosper:

- 1) since, regarding, the useful expenses, *X* is a possessor in bad faith, and is therefore not entitled to any refund;
- 2) and since, regarding the *necessary* expenses, the *failure* to present a counterclaim therefor in the ejectment proceedings, now constitutes a bar to their recovery.

Director of Lands v. Abagat, et al.
53 Phil. 147

FACTS: A lawyer, *P*, purchased from his client *S*, certain parcels of land involved in a court litigation concerning hereditary rights. The sale was declared void since a lawyer cannot purchase the property of his client while the same is involved in a suit. But *P* refused to surrender possession of the property till after he had been reimbursed the necessary and useful expenses. Is *P* correct?

HELD: *P* is not correct both with reference to the *necessary* and the *useful* expenses, because although he should be refunded necessary expenses, he has *no right of retention* because of his *bad faith*. Regarding useful improvements, he is entitled *neither refund nor retention*.

(9) Queries and Remarks

- (a) Regarding the option given to owner when the possessor is in good faith (refund useful expenses or pay *increase in value*), does not said option seem absurd since invariably the owner will always choose that which is LOWER?
- (b) In some instances, attempts to introduce useful improvements may *only decrease* (and not increase) the value of the premises. *Example:* If the 5th coat of painting of a house is in BLACK, instead of a more attractive color.

[NOTE: While 1, or 2, or 3 coatings of paint may be necessary to prevent rapid deterioration by exposure to the elements, a fifth coating is certainly no longer necessary.]

- (c) A is possessor in good faith of land and he has constructed various useful improvements thereon. Later, the real owner appears and wants to get back the property. A asks for reimbursement of the useful expenses, but the owner does not give him the amount, so A continues in the premises. After 5 months, the owner wants to give A the refund asked, but at the same time, he claims rental for the use of the premises. *Issue:* Is A obliged to pay rent for the 5-month period?

ANS.: No, in view of his right of retention, being a possessor in good faith. (*Art. 546, 2nd par.*)

- (d) In the preceding case, suppose A had introduced useful expenses *during* the period of retention, would he be entitled to a refund for said additional improvements?

ANS.: No, because at the time of introduction of the additional improvements, he already knew that he was not the owner of the land.

Art. 547. If the useful improvements can be removed without damage to the principal thing, the possessor in good faith may remove them, unless the person who recovers the possession exercises the option under paragraph 2 of the preceding article.

COMMENT:

(1) Right to Remove Useful Improvements

See discussion of this article under Art. 546.

(2) Problem

A possessed land in good faith, and he constructed a fence around it, a fence which he can remove *without* destroying the land. If A wants to remove them, but the landowner wants to retain them, who should prevail?

ANS.: The owner of the land prevails for the right of removal is subordinate to the option to retain granted the owner, but the proper indemnity must be paid. (*Art. 547*).

(3) Meaning of ‘Damage’

“*Damage*” here means a substantial one that reduces the value of the property, thus a slight injury curable by an ordinary repair *does not defeat* the right of removal, but the repairs should be chargeable to the possessor, for it is he who benefits by the removal and the object removed. (*See 4 Manresa 296-297*).

Art. 548. Expenses for pure luxury or mere pleasure shall not be refunded to the possessor in good faith; but he may remove the ornaments with which he has embellished the principal thing if it suffers no injury thereby, and if his successor in the possession does not prefer to refund the amount expended.

COMMENT:

(1) Expenses for Pure Luxury

The article deals with *expenses for pure luxury or mere pleasure* (ornamental expenses) defined as those which add value to the thing only for certain determinate persons in view of their particular whims. They are neither essential for preservation nor useful to everybody in general. (*See 4 Manresa 274-275*).

(2) Examples of Ornamental Expenses

- (a) hand paintings on the wall of a house
- (b) a garage made of platinum
- (c) water fountains in gardens

(3) Rights of a Possessor (in the Concept of Owner) with Reference to Luxurious or Ornamental Expenses

- (a) *If in GOOD faith:*

In general, *no right* of refund or retention but can

remove if no substantial injury is caused. However, owner has OPTION to allow:

- 1) possessor to remove
 - 2) or retain for himself (the owner) the ornament by REFUNDING the AMOUNT SPENT. (*Art. 548*).
- (b) *In BAD faith:*

In general, *no right* of refund or retention but can remove if no substantial injury is caused. However, owner has OPTION to allow:

- 1) possessor to remove
- 2) or retain for himself (the owner) the ornament by REFUNDING the VALUE it has at the TIME owner ENTERS INTO POSSESSION. (*Art. 549*).

[NOTE: Observe similarities in rights, the only difference being in the value of the REFUND if the option is exercised.]

[NOTE: The value of the refund if the possessor is in bad faith is obviously LESS, because in the meantime, depreciation has set in.]

(4) Meaning of ‘Injury’

Same as “damage” in the preceding article.

(5) Illustrative Problem

I possessed land in good faith, and introduced thereon ornamental expenses which *cannot* be removed without substantial injury. The owner does not want to refund me any amount for said ornaments. May I remove them?

ANS.: No, because in here, there would be substantial injury.

Art. 549. The possessor in bad faith shall reimburse the fruits received and those which the legitimate possessor could have received, and shall have a right only to the

expenses mentioned in paragraph 1 of Article 546 and in Article 443. The expenses incurred in improvements for pure luxury or mere pleasure shall not be refunded to the possessor in bad faith; but he may remove the objects for which such expenses have been incurred, provided that the thing suffers no injury thereby, and that the lawful possessor does not prefer to retain them by paying the value they may have at the time he enters into possession.

COMMENT:

(1) Rights of Possessor in Bad Faith

Regarding possessor's rights (if in bad faith) to ornamental expenses, see discussion under the next preceding article.

(2) Query

Suppose the value of the ornament at the time of change of possession is higher (instead of lower) than the amount spent, should the possessor in bad faith be paid the higher value?

ANS.: If we follow the letter of the law strictly, he should be given the higher value but considering the intent of the law to penalize him, it is submitted that the refund should *not* exceed the amount spent, otherwise he is placed in a better position than the possessor in good faith.

(3) Right of the Possessor (in the Concept of Owner) Regarding FRUITS

(a) If in *GOOD faith*:

- 1) *Gathered or severed or harvested fruits are his own. (Art. 544; see also Nacoco v. Geronimo, L-2899, Apr. 29, 1949).*
- 2) *pending or ungathered fruits* — (pro-rating between possessor and owner of *expenses, net harvest, and charges*). (*See Art. 545*).

(b) If in *BAD faith*:

- 1) *gathered fruits* — must return value of fruits *already received* as well as value of fruits which the *owner or*

legitimate possessor (not the possessor in bad faith) could HAVE received with due care or diligence, MINUS necessary expenses for cultivation, gathering, and harvesting, to prevent the owner from being unjustly enriched. (See Arts. 549, 443; Dir. of Lands v. Abagat, 53 Phil. 147).

- 2) pending or ungathered fruits — no rights at all, not even to expenses for cultivation because by accession, all should belong to the owner, without indemnity. (See Art. 449).

[NOTE: The possessor in bad faith is duty bound to render an accounting of the fruits received or could have been received (*Dir. of Lands v. Abagat, 53 Phil. 147*) and must pay damages amounting to a reasonable rent for the term of his possession. (*Lerma v. de la Cruz, 7 Phil. 581*).].

[NOTE: The rule as to fruits does not apply to a defendant in a *forcible* entry case where the recoverable damages are the reasonable compensation for the use and occupation of the premises — the fair rental value. (See *Basia, et al. v. Espada, [CA] 50 O.G. 5896*).].

Art. 550. The costs of litigation over the property shall be borne by every possessor.

COMMENT:

Costs of Litigation

- (a) “Every possessor” refers to one in *good faith* or *bad faith*, in the concept of *owner* or in the concept of holder, in one’s *own name* or in that of *another*, and *not* to the owner or the person adjudged by the court to be lawfully entitled to possess.
- (b) *Litigation* refers to a court action.

Art. 551. Improvements caused by nature or time shall always inure to the benefit of the person who has succeeded in recovering possession.

COMMENT:

(1) Improvements Caused by Nature or Time

Neither the possessor in *good faith* nor in *bad faith* is entitled to:

- (a) improvements caused by NATURE (like alluvium, etc.). (*See 4 Manresa 275-276*).
- (b) improvements caused by TIME (like the improved flavor of wine).

(2) Reason for the Law

These accrue to the owner or legitimate possessor, so no reimbursement occurs.

Art. 552. A possessor in good faith shall not be liable for the deterioration or loss of the thing possessed, except in cases in which it is proved that he has acted with fraudulent intent or negligence, after the judicial summons.

A possessor in bad faith shall be liable for deterioration or loss in every case, even if caused by a fortuitous event.

COMMENT:

(1) Liability for Loss or Deterioration

This article deals with liability for LOSS or DETERIORATION. It should be noted that the law is *more strict* with the possessor in bad faith (bad faith from the beginning) than with a possessor in *good faith* who becomes in bad faith upon receipt of the judicial summons.

(2) Rules Applicable

- (a) Possessor in GOOD FAITH —

- 1) BEFORE receipt of judicial summons — NOT LIABLE.
- 2) AFTER judicial summons
 - a) loss or deterioration thru fortuitous event — *not liable*.
 - b) thru *fraudulent intent or negligence* — *liable*
[NOTE: The possessor may become negligent or indifferent for he may sense that after all, he may lose the case.]
- (b) Possessor in BAD FAITH —
 Whether before or after judicial summons, and whether due to fortuitous event or not, such possessor is LIABLE.

(3) Illustrative Examples

- (a) Possessor in good faith burnt a house. Later, he received judicial summons to answer a complaint filed by the lawful owner. Is the possessor liable?
ANS.: No, and therefore he need not reimburse anything. (*Art. 552*).
- (b) Possessor in bad faith occupied a house. Before judicial summons, the house was destroyed by a fortuitous event. Is the possessor liable?
ANS.: Yes, in view of his bad faith, even if a fortuitous event had caused the loss or destruction. (*Art. 552*).

Art. 553. One who recovers possession shall not be obliged to pay for improvements which have ceased to exist at the time he takes possession of the thing.

COMMENT:

Improvements Which Have Ceased to Exist

The Article explains itself.

Art. 554. A present possessor who shows his possession at some previous time, is presumed to have held possession also during the intermediate period, in the absence of proof to the contrary.

COMMENT:

Presumption of Possession During Intervening Period

- (a) *Example:* If in 1951, A possessed the land which he NOW possesses, it is *disputably presumed* that he has been in continuous possession from 1951 up to now.
- (b) The presumption is particularly useful for prescriptive purposes.

Art. 555. A possessor may lose his possession:

- (1) By the abandonment of the thing;**
- (2) By an assignment made to another either by onerous or gratuitous title;**
- (3) By the destruction or total loss of the thing, or because it goes out of commerce;**
- (4) By the possession of another, subject to the provisions of Article 537, if the new possession has lasted longer than one year. But the real right of possession is not lost till after the lapse of ten years.**

COMMENT:

(1) Ways of Losing Possession

- (a) *Thru the Possessor's Voluntary Will and Intent*
 - 1) Abandonment. (*Art. 555*).
 - 2) Assignment (onerous or gratuitous conveyance). (*Art. 555*).
- (b) *Against the Possessor's Will*
 - 1) possession of another for more than one year. (*Art. 555*).

- 2) final judgment in favor of another (with a better right).
 - 3) expropriation.
 - 4) prescription in favor of another.
 - 5) recovery or reivindicacion by the legitimate owner or possessor. (*See 2 Castan 48*).
- (c) *Because of the Object*
- 1) destruction or total loss of the thing. (*Art. 555*).
 - 2) going out of commerce. (*Art. 555*).
 - 3) escaping from possessor's control of wild animals. (*Art. 560*).

(2) 'Abandonment' Discussed

- (a) *Abandonment* is the *voluntary renunciation* of a thing.
- (b) *Requisites*:
- 1) the abandoner must have been a possessor in the concept of owner (either an *owner* or *mere possessor* may respectively abandon either ownership or possession). (*See 4 Manresa 315*).
 - 2) the abandoner must have the capacity to renounce or to alienate (for abandonment is the repudiation of a property right). (*See 4 Manresa 315*).
 - 3) there must be a physical relinquishment of the thing or object. (*Yu v. De Lara, L-16084, Nov. 30, 1962*).
 - 4) there must be no more *spes recuperandi* (expectation to recover) and no more *animus revertendi* (intent to return or get back). (*U.S. v. Rey, 8 Phil. 500; Yu v. De Lara, L-16084, Nov. 30, 1962*).

U.S. v. Rey 8 Phil. 500

FACTS: A vessel *Cantabria* while on its way to Albay was shipwrecked, resulting among other things in

the loss of P25,000; P15,000 of which were later salvaged by a group of men who distributed the amount among themselves. The real owner, however, had no knowledge of the loss till after six weeks, shortly after which period, searchers were sent. But by that time, the money was nowhere to be found. *ISSUE*: Was there abandonment, and can the money still be recovered from the finders?

HELD: There was no abandonment for the *spes recuperandi* had not yet gone, nor the *animus revertendi* finally given up. This is evident from the fact that a search party had looked for the money. Hence, the owner can still recover, less the necessary expenses for salvaging the same.

(c) *Additional Doctrines*:

- 1) A property owner cannot be held to have abandoned the same until at least he has some knowledge of the loss of its possession or the thing. (*U.S. v. Rey, supra*).
- 2) There is no real intention to abandon property when as in the case of a shipwreck or a fire, things are thrown into the sea or upon the highway. (*U.S. v. Rey, supra; see 4 Manresa 315*).
- 3) An owner may abandon possession merely, leaving ownership in force, but a mere possessor cannot abandon ownership since he never had the same.
- 4) If an owner has not lost possession because there has been no abandonment, it surely cannot be acquired by another thru acquisitive prescription. Thus, the mere fact that land is covered by the sea completely during high tide for failure in the meantime of the owner to dam the water off, does not indicate an abandonment of the land in favor of public dominion. (*See Aragon v. Insular Gov't., 19 Phil. 223*). Moreover, abandonment can hardly refer to land much less to registered land. (*See Yu v. De Lara, L-16804, Nov. 30, 1962*).

- 5) There is no abandonment if an owner merely tolerated (permitted) another's possession, nor if the latter was done by stealth or effected thru force and intimidation. (*Arts. 537, 558*).

[NOTE: "What is difficult is the tracing of the dividing line between *tolerance* of and *abandonment* by, the owner of his rights, when the acts of the holder are repeated, and much more so when time lapses affirming and consolidating a relation which may be doubted whether or not the same was legitimate in its origin. Whether there was license or permission is most difficult to determine. The judges and the courts will have to decide whether or not, in each particular case, there has been mere tolerance, or a true abandonment of the right on the part of the owner." (*4 Manresa*).].

- 6) There is no abandonment of movables even if there is temporary ignorance of their whereabouts, so long as they remain under the control of the possessor (that is, so long as another has not obtained control of them). (*Art. 556; see also 3 Sanchez Roman 461; 4 Manresa 323*).
- 7) In true abandonment, both possession *de facto* and *de jure* are lost. (*See Bishop of Cebu v. Mangaron, 6 Phil. 286*).
- 8) Abandonment which converts the thing into *res nullius* (ownership of which may ordinarily be obtained by *occupation*), does not apply to land. (*See Art. 714, Civil Code*). Much less does abandonment apply to registered land. (*See Sec. 46, Act 496; Yu v. De Lara, L-16084, Nov. 30, 1962*).

(3) Assignment

- (a) *Assignment* as used in the article means the complete (not merely a limited) transmission of ownership rights to another person, onerously (as when a thing is *sold* and *delivered*) or *gratuitously* (as in the case of a *donation*).

- (b) *While in assignment*, at no time did the thing not have a possessor (for possession merely changed hands or control); in abandonment, there was a time, no matter how short, when the object did not have any possessor at all. (*See 4 Manresa 315*). Moreover, while assignment may in some cases be by onerous title, abandonment is always gratuitous, otherwise it becomes a virtual assignment.
- (c) In assignment, both possession *de facto* and *de jure* are lost, and no action will allow recovery. (*Bishop of Cebu v. Mangaron, 6 Phil. 286; see also 4 Manresa 321*).

(4) Possession of Another

- (a) If a person is not in possession for more than one year (but less than 10 years), he loses possession *de facto* (possession as a fact). This means that he can no longer bring an action of forcible entry or unlawful detainer, since the prescriptive period is one year for such actions. (*Bishop of Cebu v. Mangaron, 6 Phil. 286*). Moreover, “constructive possession” is also lost. (*See Leola v. Ibañez, 48 O.G. 2811*). But he may still institute an *accion publiciana* (for the better right of possession) to recover possession *de jure* possession as a legal right, or the real right of possession. (*See Rodriguez v. Taino, 16 Phil. 301*).
- (b) If a person loses possession for more than 10 years, he loses possession *de jure*, or the real right of possession. (*See Art. 555*). An *accion publiciana* or *reivindicatoria* is still possible unless prescription, either ordinary or extraordinary, has set in. (*See Rodriguez v. Taino, supra*).

Caballero v. Abellana **15 Phil. 534**

FACTS: A tenant share-cropper delivered to the landowner half of the harvest till 1904. For the next *two years*, however, the cropper failed not only to give the owner’s share but also to surrender the possession of the premises. When sued by the owner for recovery of the land’s possession as well as for his legitimate share of

the products, the cropper pleaded in defense his two-year possession of the property.

HELD: The cropper must still surrender the possession of the land and deliver the owner's share of the crops since the issue here is not possession *de facto* but possession *de jure*.

(5) Destruction, Total Loss, and Withdrawal from Commerce

- (a) A thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown, or it cannot be recovered. (*Art. 1189*).
- (b) Partial loss in general results only in the loss of possession of the part lost, although the rule in obligations and contracts is that "the courts shall determine whether, under the circumstances, the partial loss of the object of the obligation is so important as to extinguish the obligation." (*Art. 1264*).
- (c) If by the erosive action of the sea, it is essential for a landowner to set up a barrier or retaining wall to prevent his land from being covered at high tide, this necessity by itself constitutes as yet no loss. (*See Aragon v. Insular Gov't., 19 Phil. 223*).

(6) Reference of Article to Both Real and Personal Property

Does Art. 555 refer to both *real* and *personal* property?

ANS.: Yes (for the law does not distinguish) except in the case of paragraph 4, for it is evident that the reference to possession of more than one year concerns only real property, the rule as to *movable* property being explicitly stated in Art. 556. (*infra*).

Art. 556. The possession of movables is not deemed lost so long as they remain under the control of the possessor, even though for the time being he may not know their whereabouts.

COMMENT:**(1) When Possession of Movables is Lost or Not Lost**

If the possessor has no idea at all about the whereabouts of the movable, possession is lost, but not when he more or less knows its general location, though he may not know its *precise or definite* location. In the *former*, he has lost juridical control; in the latter, the object remains within *his patrimony* (not in the patrimony of another). (See *4 Manresa 323; 3 Sanchez Roman 461*).

(2) Example

The moment my lost Mont Blanc pen is found by another, I have lost its *possession*, for the finder now has juridical control over it (See *Arts. 599 and 719*) and unless the finder returns it to me or to the mayor (*Art. 719*) or to the police authorities, he is guilty of the crime of theft, regardless of whether or not he knows the identity of owner. (See *People v. Silverio, 43 O.G. 2205*).

Art. 557. The possession of immovables and of real rights is not deemed lost, or transferred for purposes of prescription to the prejudice of third persons, except in accordance with the provisions of the Mortgage Law and the Land Registration Laws.

COMMENT:**(1) Loss of Immovables With Respect to Third Person**

This refers to *possession* of real property, and other real rights over real property (like easement or usufruct).

(2) Example

I bought a parcel of land (without a Torrens Title) and registered the deed of sale in the Registry of Property. If I leave my land and another possesses the same for the required period, I have lost my possession and ownership over the same, insofar as the occupier is concerned, but not insofar as other

people (strangers) are concerned. For said strangers, relying on the Registry, are still privileged to consider me possessor and owner.

Art. 558. Acts relating to possession, executed or agreed to by one who possesses a thing belonging to another as a mere holder to enjoy or keep it, in any character, do not bind or prejudice the owner, unless he gave said holder express authority to do such acts, or ratifies them subsequently.

COMMENT:

Acts of Mere Holder

The Article explains itself.

Art. 559. The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same.

If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor.

COMMENT:

(1) When Possession of a Movable is Equivalent to Title

Possession of movable property acquired

- (a) in BAD FAITH — is never equivalent to title
- (b) in GOOD FAITH —
 - 1) D is equivalent to a title — as a *general rule*. (Hence, the owner, if he wants to get it back, must REIMBURSE).
 - 2) is NOT equivalent to title (*as the exception to the rule*) when the owner had LOST it or had been UNLAWFULLY DEPRIVED of it (as when it has been

stolen), UNLESS the possessor had acquired it in good faith at a “public sale” (an *auction* sale, where the public had properly been notified). (See *U.S. v. Soriano*, 12 *Phil.* 512).

[NOTE: This last case is considered an *exception to the exception*, and is therefore considered as somewhat *equivalent* to a title, that is even if the property had been stolen from the owner, he must, if he desires to get it back, *still reimburse* the possessor who had acquired it in *good faith* at a *public sale*. It is *not* however exactly a title, for the owner has still the *right to reimburse*. (Art. 559, par. 2).].

(2) Example

- (a) If I am in possession of a *Rolls Royce* automobile, having acquired it in *good faith* from the seller (who thought he owned it), I am considered entitled to said automobile, with an *actual title* that can be defeated only by the *true owner*. The true owner can get the car back only if he will *reimburse* me the price I had paid for the car.

[NOTE:

- 1) My title is not that of an absolute owner but one that can be defeated only by the true owner who gives reimbursement.
- 2) While I am not yet the absolute owner, my possession may eventually ripen into full ownership thru *acquisitive prescription* (4 years in this case for I have GOOD FAITH, and my just title is given by Art. 559, unlike in the case of REAL PROPERTY, where my just title must be proved for purposes of prescription). (See *Sotto v. Enage*, 43 *O.G.* 5057; *Manresa*). Should I acquire ownership by prescription, I cannot be compelled to give up the car’s ownership, even if a refund is offered to me. (*Sotto v. Enage, supra*).
- 3) It is necessary of course that my possession be in the *concept of owner* (4 *Manresa* 339), and that the true

owner had not lost the property nor been unlawfully deprived of it. (*Art. 559, see also 4 Manresa 339*).]

- (b) I purchased in good faith a stolen automobile. The owner now wants to get it back, but does not want to reimburse me the price I had paid. Will the owner prevail?

ANS.: Yes, because although my possession was in good faith, still it is *not equivalent* to title for the owner had been unlawfully deprived of his car. Hence, the owner can get it back without reimbursing me. (*See Tuason and Sampedro, Inc. v. Geminea, [CA] 46 O.G. 1113, Mar., 1950*).

- (c) I purchased in *good faith* at an *auction* sale a *stolen* automobile. Can the owner get it back without reimbursing me for the price I paid?

ANS.: The owner can get it back, but I should first be refunded the price I paid since my purchase had been made in *good faith*, at a *public auction or sale*. (*Art. 559, 2nd paragraph*).

(3) Some Definitions

- (a) Acquired in “*good faith*” — the possessor is of the “belief that the person from whom he received the thing was its owner and could transfer valid title thereto.” (*Art. 1127*).
- (b) “title” — the juridical act transferring or conferring ownership; and not a document. (*See 4 Manresa 399*).
- (c) “lost” — missed or misplaced.
- (d) “unlawfully deprived” — taken by another thru a crime such as *theft, robbery, estafa*. Under the Revised Penal Code, the object of the crime must be restored even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him. (*Art. 105, par. 2, RPC*).

Query: If a *depository* of a car sells the car to an innocent purchaser for value, may the depositor-owner recover the same from the buyer *without* reimbursement?

ANS.: It would seem that the answer is *yes*, because in selling the car, the depositary committed *estafa*, and there is no doubt that the car is an object of the crime. (See *Arenas v. Raymundo*, 19 *Phil.* 47; Art. 105, par. 2, *RPC*; see likewise *De Garcia v. Court of Appeals*, 37 *SCRA* 129 and *Dizon v. Suntay*, L-30817, Sep. 29, 1972, 42 *SCRA* 169). However, when no crime is committed but only a *civil liability arises* (as when a buyer who had not yet paid for the goods should sell them to *another* who is in good faith, the seller cannot recover from the third person the goods, for here there was neither a “losing” nor an “unlawful (criminal) deprivation.” (See *Asiatic Commercial Corporation v. Ang, et al.*, Vol. 40, O.G. S. No. 15, p. 102).

Asiatic Commercial Corporation v. Ang, et al.
Vol. 40, O.G. S. 15, p. 102

FACTS: A sold Gluco Tonic to B, delivered the tonics to B, but was not able to collect the price, B later on sold the goods to C, an innocent purchaser. Is A allowed to recover the goods from C on the ground that B had *not* yet paid the price to him (A)?

HELD: No, for here there was *no criminal or illegal deprivation*, the nonpayment of the price being immaterial insofar as the right to recover the goods from C is concerned.

Dizon v. Suntay
L-30817, Sep. 29, 1972

FACTS: The owner of a diamond ring entrusted same to Clarita Sison for the latter to sell upon promise of a commission. Instead of selling, Clarita pledged the ring with a pawnshop. As soon as he learned of the pledge, the owner tried to get back the ring from the pawnshop owner, but the latter refused.

ISSUE: Can the owner successfully get back the ring? If so, does the owner have to pay the pawnshop owner the amount borrowed by Clarita?

HELD: Under Art. 559 of the Civil Code, the owner can successfully get back the ring, and he does not have to reimburse the pawnshop owner the money lent to Clarita. This is because the ring owner had been “unlawfully deprived” of the same, and this right to recover cannot be defeated even if the pawnshop had acquired possession of the ring in good faith.

(4) Summary of Recovery or Non-Recovery Principle

- (a) Owner MAY RECOVER WITHOUT REIMBURSEMENT:
 - 1) from possessor in *bad faith*.
 - 2) from possessor in *good faith* (if owner had LOST the property or been *unlawfully deprived* of it) (the acquisition being from a private person). (*Art. 559*).
- (b) Owner MAY RECOVER but should REIMBURSE:
 - 1) if possessor acquired the object in *good faith* at a PUBLIC SALE or AUCTION. (*Art. 559*). [Because the publicity attendant to a public sale should have been sufficient warning for the owner to come forward and claim the property. (*Manresa*).].
- (c) Owner CANNOT RECOVER, even if he *offers* to REIMBURSE (*whether or not* the owner had lost or been unlawfully deprived):
 - 1) if possessor had acquired it in *good faith* by purchase from a *merchant's store*, or *in fairs*, or *markets* in accordance with the Code of Commerce and special laws. (*Art. 1505, Civil Code, see also Arts. 85, 86, Code of Commerce*).
 - 2) if owner “is by his conduct *precluded* from denying the seller’s authority to sell.” (ESTOPPEL). (*Art. 1505*).
 - 3) if possessor had obtained the goods because he was an *innocent purchaser for value* and *holder of a NEGOTIABLE document of title to the goods*. (*See Art. 1518*).

(5) Cases and Bar Questions

Rebullida v. Bustamante
(CA) 45 O.G. 17, Supp. 5, May, 1949

FACTS: Rebullida owned a platinum ring *kept* in a vault of the “La Estrella del Norte,” but one day, the ring was stolen and found in the possession of Bustamante, who in *good faith had purchased* it from a passing peddler, Gargantilla. Can Rebullida get back the ring without the necessity of reimbursement?

HELD: Yes, since the stolen ring had been acquired (though in good faith) at a *private sale*, and *not* a public one. There is thus no need of any REFUND of the purchase price. This action for REPLEVIN will therefore PROSPER.

United States v. Sotelo
28 Phil. 147

If *A entrusts* money to *B* who later gives the same to *C*, an innocent recipient for value, *A, cannot recover* the money (or negotiable document) from *C* since money ordinarily does not bear the earmarks of particular ownership. BUT if instead of money, the object had been an identifiable one, then recovery can be had for *C* had acquired same from someone (*B*) who had *no authority* to dispose of the same. And such recovery does *not need* reimbursement. *C* should require the indemnity from *B* and not *A*.

Arenas v. Raymundo
19 Phil. 47

FACTS: *A* asked *B* to sell jewelry. *B* instead of selling, borrowed money from a pawnshop, and as security, pledged the jewelry. After *B* was convicted of ESTAFA, *A* asked the pawnshop for the jewels, but the pawnshop refused to give them up unless *A* first pay the amount lent by the pawnshop to *B*.

HELD: *A* can get the jewels without giving to the pawnshop the money borrowed by *B* because in the *first*

place, the pledge was *not valid* (not having been done by the owner or his duly authorized agent); in the *second place*, there is no *contractual relation* between *A* and the pawnshop; in the *third place*, *A* had been *illegally deprived* of the jewels; and *finally* it would be unjust and unfair to the owner (*A*) considering the fact that ordinarily, most pawnshops do *not* require their customers to first prove their ownership of the objects being pledged.

U.S. v. Soriano
12 Phil. 512

The mere *registration* of a sale (such as that of *large cattle*) does not make the sale a PUBLIC SALE as referred to in Art. 559, for a public sale is one where after due notice to the public, bidders are allowed to bid for the objects they desire to purchase.

Tuason and Sampedro, Inc. v. Geminea
(CA) 46 O.G. 1113, Mar. 1950

FACTS: *A* owned a truck, which was later commandeered by the Japanese Army. After liberation, *A* discovered the truck in the possession of *B*, who alleged that he had purchased it from *X*. When *A* asked for the return of the truck to him, *B* alleged in defense:

- 1) that he (*B*) should be considered the owner because his possession of the movable had been in *good faith*;
- 2) that the property had *neither* been LOST by, nor STOLEN from *A*.

HELD: *A* is entitled to get the truck without necessity of reimbursing *B* for the purchase price given *B* to *X*.

Because:

- 1) ownership of the truck remained with *A*. While it is true that possession of a movable in good faith is equivalent to a title, still it is *not ab-*

solute title by itself, and the true owner may recover the property from the possessor.

- 2) it cannot be denied that the commandeering of the truck was an unlawful deprivation suffered by *A*. Since the acquisition by *B* was not thru a public sale, it follows that *A* can recover without the necessity of reimbursing *B* the purchase price paid by the latter.

BAR

X was the owner of a motor vessel which the Japanese Army confiscated during the occupation of the Philippines. After the liberation, the U.S. Armed Forces found the said vessel and sold it as enemy property to *Y*. An action is now filed by *X* against *Y* for the recovery of the vessel, plus damages. Will the action prosper? State reasons for your answer.

ANS.: The action will prosper. While the Japanese Army had the right to get the motor vessel, still it was under an obligation to restore it at the conclusion of peace, and to pay indemnities therefor. (*Art. 53, Regulations Respecting the Laws and Customs of War on Land, Appended to the Hague Convention of 1907*). The title to the vessel did NOT therefore pass to the Japanese Army, but remained with *X*. The vessel cannot consequently be considered as enemy property, and was not such when it was found by the U.S. Armed Forces and sold to *Y*. The sale cannot be considered valid as against *X*. (*Placido Noveda v. Escobar, L-2939, Aug. 29, 1950*).

Chua Hai v. Hon. Kapunan and Ong Shu L-11188, June 30, 1958

FACTS: Soto bought from Ong Shu several galvanized iron sheets. Soto paid with a check, which was subsequently dishonored by the bank. Later, Soto sold some of said sheets to an innocent purchaser Chua Hai. Soon after, Soto was prosecuted for estafa. While the criminal

case was pending, the iron sheets were taken by the police. Ong Shu, the original seller, then petitioned for the return to him of the sheets. To this petition, Chua Hai objected, but the trial court granted the petition for Chua Hai's failure to put up a bond, and so Ong Shu recovered the sheets. *ISSUE*: Was the return to Ong Shu of the iron sheets proper?

HELD: No, for the following reasons:

- 1) Chua Hai, the acquirer and possessor in good faith of the sheets, is entitled to be respected and protected in his possession as if he were the true owner thereof, until ruled otherwise by a competent court.
- 2) Being considered in the meantime as the true owner, Chua Hai cannot be required to surrender possession, nor be compelled to institute an action for the recovery of the goods, whether or not there is an indemnity bond.
- 3) The mere filing of a criminal charge, that the chattel had been illegally obtained thru estafa from its true owner by the transferor or the possessor does not warrant disturbing the possession of the chattel against the will of the possessor; this is so because the mere filing of an estafa complaint is no proof that estafa had in fact been committed.
- 4) Under Article 1505, recovery is *denied even* if the former owner was deprived of his chattels thru crime, where the purchase is made in *merchant's stores, or in fairs, or markets*.
- 5) The judge taking cognizance of the criminal case against the vendor of the possessor in good faith has no right to interfere with the possession of the latter, who is not a party to the criminal proceedings, and such unwarranted interference is not made justifiable by requiring a bond to answer for damages caused to the possessor.

BAR

A agreed to sell his car to B for P200,000, the price to be paid after the car is registered in the name of B. After the execution of the deed of sale, A together with B, proceeded to the Land Transportation Office (formerly, Motor Vehicles Office) where the registration of the car in B's name was effected. When A asked for payment, B told him that he was P10,000 short, and informed him that he would get from his mother. Together, A and B rode in the car to the supposed residence of B's mother. Upon entering the house, B told A to wait in the sala while he asked his mother for the money. In the meanwhile, on the pretext that B had to show his mother the registration papers of the car, A gave them to B, who thereupon entered the supposed room of his mother, ostensibly to show her the papers. That was the last time A saw B or his car. In the meantime, B succeeded in selling the car to C who bought the same in good faith and for value. *Question:* May A recover the car from C? Reasons.

ANS.: A may successfully recover the car of C because despite C's good faith, and despite the registration of the car in B's name, still A had been *unlawfully* deprived of it. Consequently, A can recover the car, and he does not have to reimburse anything to C. The doctrine of *caveat emptor* (let the buyer beware) can apply here. C's remedy would be to go against B, his seller. The principle in common law that where of two innocent persons defrauded by a stranger, the person who makes possible the fraud by a misplaced confidence should suffer — cannot be applied in this problem because of the express provisions of Art. 559. (*See Jose B. Aznar v. Rafael Yapdiangco, L-18536, Mar. 31, 1965*).

(6) Possession of Stolen Property

Suppose recently stolen property is found in possession of A, is A presumed to be the thief?

ANS.: Yes, it is a disputable presumption "that a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and doer of the whole act." (*Rule 131, Sec. 3[j], Rules of Court*). It is true that one who possesses a

movable, acquired in good faith, has what is called an equivalent of title, but this is destroyed when it is proved that said movable belongs to somebody else who has lost it, or has been unlawfully deprived of its possession. (*See Art. 559*).

(7) Purpose of Art. 559

“For the purpose of facilitating transaction on movable property which are usually done without special formalities, this article establishes not only a mere presumption in favor of the possessor of the chattel, but an *actual right*, valid against the true owner, except upon proof of loss or illegal deprivation.” (*Sotto v. Enage, 43 O.G. 17, p. 5075*).

(8) How to Contest the Title of a Possessor in Good Faith

In order to contest the title of the possessor in good faith, what should the true owner do?

ANS.: The true owner should present sufficient proof of the identity of the object AND that he had either lost it or has been illegally deprived of it. This proof is an indispensable requisite a *conditio sine qua non* in order that the owner of the chattel may contest the apparent title of its possessor. Without adequate proof of such loss or illegal deprivation, the present holder cannot be put on his defense, even if as possessor he has no actual proprietary title to the movable property in question. (*Sotto v. Enage, supra; Rebullida v. Bustamante, [CA] 45 O.G. 5 [S], p. 17*).

(9) Rule When Possessor Has Already Become the Owner

Art. 559 in fact assumes that the possessor is as yet not the owner, for it is obvious that where the possessor has come to acquire indefeasible title, let us say adverse possession for the necessary period, no proof of loss, or illegal deprivation could avail the former owner of the chattel. He would no longer be entitled to recover it under any condition. (*Sotto v. Enage, supra*).

[NOTE: The abovementioned rule is still in force. However, if the possessor is himself the criminal who had stolen or taken said property, there can never be any prescription

in his favor (*See Art. 1133*), otherwise we would be allowing a “wrong and perverse” thing to continue. (*See Report of the Code Commission, p. 129*).].

Art. 560. Wild animals are possessed only while they are under one’s control; domesticated or tamed animals are considered domestic or tame, if they retain the habit of returning to the premises of the possessor.

COMMENT:

(1) Possession of Wild Animals

One’s possession of wild animals is lost when they are under ANOTHER’S control or under NO ONE’S control (as when they have regained their NATURAL FREEDOM and have become *res nullius*). *Reason:* Possession of them was possible only when power or force could be exercised over them. Eliminate that control, and you eliminate possession automatically. (*4 Manresa*).

(2) Domesticated or Tamed Animals

Wild animals which have become tame and now generally submit to man’s control are called DOMESTICATED and TAMED animals.

Rules:

- (a) The possessor does not lose possession of them — AS LONG AS habitually they return to the possessor’s premises. (*Art. 560*).
- (b) Impliedly, possession of them is lost if the aforementioned habit has *ceased*. (But insofar as OWNERSHIP is concerned, Art. 716 applies. It says: “The owner of domesticated animals may claim them within *twenty days*, to be counted from their occupation by another person. This period having expired [without the claim having been made], they shall pertain to him who has CAUGHT and KEPT them.”).

Ciriaco Landa v. Francisco Tobias, et al.
L-24490, May 29, 1968

FACTS: On June 23, 1962, defendants Juanito Pecate and Juanito Alfaro, members of the police force of Cabatuan, Iloilo, purporting to act pursuant to Sec. 538 of the Revised Adm. Code, seized from plaintiff Ciriaco Landa, a carabao, for which he produced a Certificate of Ownership in the name of Pantaleon Elvas. Said peace officers turned over the carabao to the municipal treasurer, who on July 25, 1962, upon the authority of Sec. 540 of said Code, sold the animal at public auction, which was duly approved by the Provincial Board on July 26, 1963. In an affidavit dated July 25, 1962, Landa tried to explain that he had acquired the carabao by barter with an older carabao from Marcelino Mayormente. On Apr. 16, 1963, Landa commenced this action against the peace officers and other officials for damages on the ground that he had been wrongfully deprived of the possession of the carabao. He alleged among other things that while he could not produce a transfer certificate concerning the carabao (as required by the Revised Administrative Code), still under Art. 1356 of the Civil Code, a contract is obligatory in whatever form it may have been entered into provided that all the essential requisites for its validity are present.

HELD: Landa cannot recover damages because of the following reasons:

- (a) While ordinarily, no special form is needed for a contract, still, in this particular case of transfer of title to cattle, the Rev. Adm. Code prescribes an additional requisite, namely, the registration of said transfer and the issuance to the transferee of the corresponding certificate of transfer. (*See Sec. 529 of the Rev. Adm. Code*). This certificate was not produced. In fact he could not have produced such certificate, for the carabao was allegedly conveyed to him by Marcelino Mayormente, whereas the registered owner is Pantaleon Elvas — and the plaintiff knew this fact and there is no competent proof that Elvas had ever assigned the carabao to Mayormente.
- (b) The policemen had reasonable grounds to suspect that plaintiff's possession of the carabao was unlawful, as

well as to seize the animal and deliver the same to the municipal treasurer.

- (c) The municipal treasurer had, not only the authority, but also the DUTY to issue, post, and cause to be served a notice of the seizure, or taking of said animal, and if the owners thereof “fail to *present themselves* within the time specified in the notice and *prove title* to the animals taken or seized as aforesaid,” notice of such fact shall be given by said officer to the provincial board “which shall order said animals to be sold at public auction,” after giving the notice prescribed in said legal provision. The “purchaser at such sale shall” in the language of Sec. 540 “receive a good and indefeasible title to the animal sold.”
- (d) Even if plaintiff were hypothetically the true owner of the carabao in question, his only remedy was to claim it before the municipal treasurer and prove to the latter his (the plaintiff’s) title, either prior to or at the time of the auction sale. Not having done so, plaintiff cannot now make such claim judicially and try to prove his title — which after all, he has failed to establish — much less seek indemnity from the public officers who, by reason of their official duties, had a hand in the seizure and sale of the carabao.
- (e) Regarding the allegation that the carabao was not found stray, the fact is, although the animal was not really stray, still Sec. 540 refers not only, to stray animals but also to “all animals recovered from thieves or *taken by peace officers* from persons unlawfully or reasonably suspected of being unlawfully in possession of the same — the owners of which fail to present themselves within the time fixed in the notice and prove the title to the animals taken or seized.”

Art. 561. One who recovers, according to law, possession unjustly lost, shall be deemed for all purposes which may redound to his benefit, to have enjoyed it without interruption.

COMMENT:**(1) Lawful Recovery of Possession that Had Been Unjustly Lost**

Example: If on Mar. 1, 2002 I bought a diamond ring, and the ring was subsequently stolen Apr. 1, 2002 but I was able to lawfully recover it on May 1, 2003, then I am supposed to have possessed the ring continuously from Mar. 1, 2002 up to now, for all purposes that may redound to my benefit (as in the case of *acquisitive prescription*).

Bishop of Cebu v. Mangaron
6 Phil. 286

FACTS: The City of Manila *unjustly deprived* X of his possession of a piece of land. After a few years, X forced his way into the premises instead of applying to the proper authorities. Should the intervening years be counted so as to give X uninterrupted *possession of the land*?

HELD: No, because X's recovery was not had "according to the law." Recovery according to law does not mean taking the law into one's own hands BUT thru the proper *writs* and *actions* or with the aid of the competent authorities. (*See also 4 Manresa 356*).

(2) Applicability of Article only if Beneficial

Art. 561 applies to BOTH possessors in GOOD and in BAD faith, but only if BENEFICIAL to them. Thus, a possessor in GOOD faith, for the purpose of *prescription* can make use of this article. But a possessor in BAD faith is not required to return the fruits which the owner could have received during the period of interruption, for to impose this duty would prejudice, not benefit, said possessor. (*See 4 Manresa 356*).

Title VI. — USUFRUCT

Chapter 1

USUFRUCT IN GENERAL

Art. 562. Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides.

COMMENT:

(1) Three Fundamental Rights Appertaining to Ownership

Ownership really consists of three fundamental rights:

- (a) *jus disponendi* (right to dispose)
- (b) *jus utendi* (right to use)
- (c) *jus fruendi* (right to the fruits)

[NOTE: The combination of the latter two (*jus utendi* and *fruendi*) is called USUFRUCT (from the term “usufructus”). The remaining right (*jus disponendi*) is really the essence of what is termed “naked ownership.”].

Hemedes v. CA
113 SCAD 799, 316 SCRA 347
(1999)

In a usufruct, only the *jus utendi* and *jus fruendi* over the property is transferred to the usufructuary — the owner of the property maintains the *jus disponendi* or the power to alienate, encumber, transform, and even destroy the same.

For instance, the annotation of usufructuary rights in a certificate of title in favor of another does not impose upon

the mortgagee the obligation to investigate the validity of its mortgagor's title.

(2) Formulae

- (a) Full ownership *equals* Naked ownership plus Usufruct.
- (b) Naked ownership *equals* Full ownership minus Usufruct.
- (c) Usufruct *equals* Full ownership minus Naked ownership.

(3) Concept and Definition of 'Usufruct'

- (a) *Usufruct is the right to enjoy the property of another, with the obligation of preserving its form and substance, unless the title constituting it or the law provides otherwise. (Art. 562).*
- (b) Usufruct is a "real right, of a temporary nature, which authorizes its holder to enjoy all the benefits which result from the normal enjoyment (or exploitation) of another's property, with the obligation to return, at the designated time, either the same thing, or in special cases, its equivalent." (*De Buen, Derecho Comun, p. 225*). (It includes BOTH the *jus utendi* and the *jus fruendi*). (*Eleizegui v. Manila Lawn Tennis Club, 2 Phil. 309*).

(4) Characteristics or Elements of Usufruct

- (a) *ESSENTIAL characteristics* (those *without which* it cannot be termed USUFRUCT):
 - 1) It is a REAL right (whether registered in the Registry of Property or not). (*See 2 Navarro Amandi 199-200*).
 - 2) It is of a *temporary nature* or *duration* (not perpetual, otherwise it becomes emphyteusis). (*See De Buen's Definition*).
 - 3) Its purpose is to *enjoy the benefits* and derive all advantages from the object as a consequence of NORMAL USE or EXPLOITATION. (*See De Buen's Definition*).

- (b) *NATURAL characteristic* or element (that which *ordinarily* is present, but a contrary stipulation can eliminate it because it is *not essential*).

The obligation of CONSERVING or PRESERVING the FORM AND SUBSTANCE (value) of the thing. (*Example: a swimming pool must be conserved as a swimming pool.*)

[This obligation being merely a natural requisite, the *title* or the *law* may provide otherwise (*Art. 562*), giving rise to what is known as the *abnormal* or *imperfect* or *irregular usufruct* such as the usufruct over *STERILE animal*.].

[*NOTE*: Stated otherwise, the requisites of usufruct are:

- 1) The *essential* — the real, temporary right to enjoy another's property.
 - 2) The *natural* — the obligation to preserve its form or substance. (*4 Manresa 322*).].
- (c) ACCIDENTAL characteristics or elements (those which may be present or absent depending upon the stipulation of the parties).

Examples:

- 1) whether it be a *pure* or a *conditional usufruct*;
- 2) the *number* of years it will exist;
- 3) whether it is in favor of one person or several, etc.

(5) Reasons for CONSERVING Form and Substance

- (a) to prevent extraordinary exploitation;
- (b) to prevent abuse, which is *frequent*;
- (c) to prevent impairment.

(*See Memorandum of the Code Commission, Feb. 17, 1951.*)

(6) Object of Usufruct

- (a) may be *real* or *personal* property. (Thus, there can be a usufruct over an automobile or over money). (*See Alunan v. Veloso, 32 Phil. 545.*)
- (b) may be sterile or productive (fruitful things). (Thus, there can be a usufruct over sterile animals.) (*See Art. 591.*)
- (c) may be created over a *right* (as long as it is *not strictly personal* or *intransmissible*, and as long as it has an independent existence). (Thus, there can be *no usufruct* over an easement, for the latter has no independent existence.).

(7) Rights of Action Available to Usufructuary

Rights of action available to *usufructuary* (the person entitled to the usufruct):

- (a) action to protect the usufruct itself;
- (b) action to protect the *exercise of the usufruct*. (*See 4 Manresa 269.*)

(8) ‘Usufruct’ Distinguished from ‘Easements’ (Servitudes)

USUFRUCT	EASEMENT
(a) The object here may be real or personal property.	(a) This involves only real property.
(b) What can be enjoyed here are ALL uses and fruits of the property.	(b) Easement is limited to a <i>particular use</i> (like the right of way).
(c) A usufruct <i>cannot</i> be constituted on an easement; but it may be constituted on the land burdened by an easement.	(c) An easement may be constituted in favor of, or burdening, a piece of land held in usufruct.
(d) Usually extinguished by death of usufructuary.	(d) Not <i>extinguished</i> by the death of the owner of the dominant estate.

(9) Similarities Between a Usufruct and an Easement

- (a) Both are real *rights*, whether registered or not.
- (b) Both rights may be *registered*, provided that the usufruct involves *real property*. All easements of course concern *real property*. (Thus, a usufruct over personal property though a real right, cannot be registered because it is a *real right over personal property*).
- (c) Both may *ordinarily* be alienated or transmitted in accordance with the formalities set by law.

(10) ‘Usufruct’ Distinguished from ‘Lease’

BASIS	USUFRUCT	LEASE
1. as to EXTENT	1. covers all fruits and uses as a rule	1. generally covers only a particular or specific use
2. as to NATURE of the right	2. is always a <i>real</i> right	2. is a real right only if, as in the case of a lease over REAL PROPERTY, the lease is REGISTERED, or is for MORE THAN ONE YEAR, otherwise, it is only a personal right
3. as to the CREATOR of the right	3. can be created only by the owner, or by a duly authorized agent, acting in behalf of the owner	3. the lessor <i>may</i> or <i>may not</i> be the owner (as when there is a sublease or when the lessor is only a usufructuary)
4. as to ORIGIN	4. may be created by <i>law, contract, last will, or pre-</i>	4. may be created as a rule only by contract: and by way of

	<p><i>scription. (Art. 563).</i></p>	<p>exception by law (as in the case of an <i>implied new lease</i>, or when a builder has built in good faith on the land of another a building, when the land is considerably worth more in value than the building, etc.). (See Art. 448).</p>
5. as to CAUSE	5. The owner is more or less PASSIVE, and he ALLOWS the usufructuary to enjoy the thing given in usufruct — “ <i>deja gozar.</i> ”	5. The owner or lessor is more or less ACTIVE, and he MAKES the lessee enjoy — <i>hace gozar.</i>
6. as to REPAIRS	6. The usufructuary has the duty to make the ordinary repairs.	6. The lessee <i>generally</i> has no duty to pay for repairs.
7. as to TAXES	7. The usufructuary pays for the annual charges and <i>taxes</i> on the fruits.	7. The lessee <i>generally</i> pays no taxes.
8. as to other things	8. A usufructuary may lease the property itself to another. (See Art. 572).	8. The lessee cannot constitute a usufruct on the property leased.

Art. 563. Usufruct is constituted by law, by the will of private persons expressed in acts *inter vivos* or in a last will and testament, and by prescription.

COMMENT:

(1) Classification of Usufruct as to ORIGIN

(a) *LEGAL* (created by law). (Example: Usufruct of parents over the property of their unemancipated children. (Art. 321.) Such usufruct cannot, because of family reasons, be mortgaged or alienated by the parents. (See *TS*, July 7, 1892; *TS*, Sep. 27, 1893).

(b) *VOLUNTARY* (or *CONVENTIONAL*)

1) Created by will of the parties *INTER VIVOS* (as by contract or donation). (Example: when an owner sells or alienates the usufruct.)

[NOTE: If this is created by sale or for any valuable consideration, the Statute of Frauds applies, always in the case of real property; and in the case of personal property, if the value is P500 or over. (See Art. 1403, par. 2{e}.].

2) Created *MORTIS CAUSA* (as in last will and testament).

[NOTE: The formalities of a will or codicil must be complied with, either *notarial* or *holographic*.].

(c) *MIXED* (or *PRESCRIPTIVE*)

Created by both law and act of a person. Example of usufruct acquired by prescription: *I* possessed in good faith a parcel of land which really belonged to another. Still in good faith, *I* gave in my will to *X*, the *naked ownership* of the land and to *Y*, the *usufruct*. In due time, *Y* may acquire the *ownership of the USUFRUCT by acquisitive prescription*. (Manresa).

(2) Requirements Must Be Complied With

To constitute a valid usufruct, all the requirements of the law must be complied with.

(3) Registration of Usufruct over Real Property

A usufruct over real property, being a real right, must be duly registered in order to bind innocent third parties. (*Art. 709, Civil Code*).

Art. 564. Usufruct may be constituted on the whole or a part of the fruits of the thing, in favor of one or more persons, simultaneously or successively, and in every case from or to a certain day, purely or conditionally. It may also be constituted on a right, provided it is not strictly personal or intransmissible.

COMMENT:

(1) Classification of Usufruct According to Quantity or Extent (of Fruits or Object)

- (a) as to fruits — *total* or *partial* (depending on whether all the fruits are given or not).
- (b) as to object — *universal* (if over the entire patrimony) (*Art. 598*) or *singular* or *particular* (if only individual things are included).

(2) Classification of Usufruct as to the Number of Persons Enjoying the Right

- (a) *Simple* — if *only one* usufructuary enjoys
- (b) *Multiple* — if *several* usufructuaries enjoy
 - 1) *simultaneous* — (at the same time)
 - 2) *successive* — (one after the other)

BUT in this case, if the usufruct is created by *donation*, all the donees must be alive, or at least already conceived, at the time of the perfection of the donation (*Art. 756*); and in the case of *testamentary* succession, there must only be *two successive* usufructuaries; moreover, both must be alive or at least conceived at the time of the testator's death. (*See Arts. 863 and 869*).

(3) Classification of Usufruct as to the QUALITY or KIND of OBJECTS Involved

- (a) *usufruct over RIGHTS*. (The right must not be strictly personal or intransmissible in character, hence, the right to receive *present or future support* cannot be the object of a usufruct). (A usufruct over a real right is also by itself a real right.)
- (b) *usufruct over THINGS*
- 1) *NORMAL* (or *perfect* or *regular*) *USUFRUCT*: This involves non-consumable things where the form and substance are preserved.
 - 2) *ABNORMAL* (or *imperfect* or *irregular*) *USUFRUCT*:

[Examples: Usufruct over consumable property, like vinegar or money. This is also called quasi-usufruct (See Alunan v. Veloso, 52 Phil. 545); usufruct over non-consumable things that gradually deteriorate by use. Example: the usufruct over furniture or over an automobile; the usufruct over sterile or unproductive animals. (See Art. 591 — which provides that as to effects, a usufruct on sterile animals is to be considered a usufruct over consumable or fungible things.)].

(4) Classification of Usufruct According to Terms or Conditions

- (a) *Pure usufruct* — (no term or condition)
- (b) *With a term or period* (“*a termino*”)
 - 1) *ex die* — from a certain day
 - 2) *in diem* — up to a certain day
 - 3) *ex die in diem* — from a certain day up to a certain day
- (c) *With a condition* (conditional)

Art. 565. The rights and obligations of the usufructuary shall be those provided in the title constituting the usufruct; in default of such title, or in case it is deficient, the provisions contained in the two following Chapters shall be observed.

COMMENT:

(1) Rules Governing a Usufruct

- (a) *First*, the agreement of the parties or the title giving the usufruct (thus, by agreement, the usufructuary may be allowed to alienate the very thing held in usufruct *although generally*, this alienation is *not* allowed by the codal provisions).
- (b) *Second*, in case of deficiency, apply the Civil Code.

(2) Rule in Case of Conflict

In case of conflict between the rights granted a usufructuary by virtue of a will, and codal provisions, the former, unless repugnant to the *mandatory* provisions of the Civil Code, should prevail. (*Fabie v. Gutierrez David*, 75 Phil. 536).

(3) Naked Ownership of an Ecclesiastical Body

The naked ownership of properties endowed to a chaplaincy belongs to the proper ecclesiastical authority within whose jurisdiction such properties are found. (*See Trinidad v. Roman Catholic Bishop of Manila*, 63 Phil. 881).

Chapter 2

RIGHTS OF THE USUFRUCTUARY

Art. 566. The usufructuary shall be entitled to all the natural, industrial and civil fruits of the property in usufruct. With respect to hidden treasure which may be found on the land or tenement, he shall be considered a stranger.

COMMENT:

(1) Fruits to which a Usufructuary is Entitled

The usufructuary is entitled to the *natural, industrial, and civil fruits* that will accrue during the existence of the usufruct. (Regarding pending fruits at the beginning and end of the usufruct, see the *next article*.).

(2) Dividends of Corporations

A *dividend* (whether in the form of cash or stock) is *income or civil fruits* and should belong to the *usufructuary* and not to the remainderman (naked owner). This is because dividends are declared out of corporate profits, not corporate capital (the “*corpus*”). Dividends declared out of the capital are seriously prohibited by the law. (*See Bachrach v. Seifert and Elianoff, 87 Phil. 483; See also Orozco and Alcantara v. Araneta, et al., L-3691, Nov. 21, 1951*).

Incidentally, stock dividends may be sold independently of the original shares just as the offspring of an animal may be alienated independently of the parent animal. (*See Bachrach v. Seifert, supra*).

Bachrach v. Seifert and Elianoff
87 Phil. 483

FACTS: E.M. Bachrach gave to Mary MacDonald Bachrach the usufruct of his estate, among the properties of which were 108,000 shares of stock of the Atok Big Wedge Mining Co., Inc. When the company declared a 50% stock dividend (54,000 shares), Mary wanted said dividend-shares transferred in her name, alleging that although they were in the form of stocks, they were nevertheless still fruits and income, and as usufructuary, she was entitled to them. The other heirs of E.M. Bachrach, on the other hand claimed that the stock dividends were not income or fruits, and that they instead formed part of the capital; hence, that Mary was not entitled to them.

HELD: They are fruits or income, and therefore, they belong to Mary, the usufructuary. Moreover, dividends cannot be declared out of the capital.

(3) Products Which Diminish the Capital

Generally, products which *diminish* the capital (like stones from stone quarries) cannot, for that reason, be considered fruits, unless a contrary intent between the parties is clear.

(4) Share of Usufructuary Re Hidden Treasure

The law says that “as to hidden treasure which may be found on the wall or tenement, he (the usufructuary) shall be considered a *stranger*.” What does this mean?

ANS.: This means that the usufructuary, *not being* the landowner, is not entitled as owner, but is entitled as *finder* (to *one-half* of the treasure, as a rule, unless there is a contrary agreement) if he really is the finder. If somebody else is the *finder*, the usufructuary gets nothing. (*See 4 Manresa 386-387*).

Art. 567. Natural or industrial fruits growing at the time the usufruct begins, belong to the usufructuary.

Those growing at the time the usufruct terminates, belong to the owner.

In the preceding cases, the usufructuary, at the beginning of the usufruct, has no obligation to refund to the owner any expenses incurred; but the owner shall be obliged to reimburse at the termination of the usufruct, from the proceeds of the growing fruits, the ordinary expenses of cultivation, for seed, and other similar expenses incurred by the usufructuary.

The provisions of this article shall not prejudice the rights of third persons, acquired either at the beginning or at the termination of the usufruct.

COMMENT:

(1) Pending Natural or Industrial Fruits

This Article refers to *PENDING NATURAL OR INDUSTRIAL* fruits (there can be no pending *civil* fruits or rents, for they accrue daily). (*Art. 569*).

(2) Rules

(a) *Fruits pending at the BEGINNING of usufruct:*

- 1) belong to the usufructuary;
- 2) *no necessity* of refunding owner for expenses incurred, (for the owner gave the usufruct evidently without any thought of being reimbursed for the pending fruits, or because the value of said fruits must already have been taken into consideration in fixing the terms and conditions of the usufruct, if for instance, the usufruct came about because of a contract);
- 3) BUT without prejudice to the right of third persons. (Thus, if the fruits had been planted by a possessor in *good faith*, the pending crop *expenses* and *charges* shall be pro-rated *between* said *possessor* and the *usufructuary*). (*See Art. 545*). (*See also 4 Manresa 392*).

- (b) *Fruits pending at the TERMINATION of usufruct:*
- 1) Belong to the OWNER;
 - 2) BUT the owner must reimburse the usufructuary for *ordinary* cultivation expenses and for the *seeds* and similar expenses, from the proceeds of the fruits. (Hence, the excess of expenses over the proceeds need *not* be reimbursed.)
 - 3) Also, rights of innocent third parties should not be prejudiced. (*See No. [3] of [a], supra; also Arts. 545 and 567.*)

Art. 568. If the usufructuary has leased the lands or tenements given in usufruct, and the usufruct should expire before the termination of the lease, he or his heirs and successors shall receive only the proportionate share of the rent that must be paid by the lessees.

COMMENT:

(1) Rule When Usufructuary Leases Property to Another

As a rule, the lease executed by the usufructuary should terminate at the end of the usufruct or earlier (*Art. 572*), *except* in the case of leases of rural lands, because in said case, if the usufruct ends earlier than the lease, the lease continues for the remainder of the agricultural year. (*Ibid.*)

Example: In 2002, A gave his land in usufruct to B for 4 years. B leased the land in favor of C for 8 years. Ordinarily, the lease should end in 2006, because at that time, the usufruct ends. BUT if the naked owner so desires, he may allow the lease to continue for 4 more years. The rent of the first four years belongs to the usufructuary; that for the remaining four belongs to the naked owner. (*Art. 568*). (*See 4 Manresa 396-397*). Whether the rents consist of money or goods is immaterial, the important thing is that the rents constitute civil fruits. (*See 4 Manresa 396-397*).

[NOTE: It is not the naked owner, but the usufructuary who has the right to choose the tenant. (*Fabie v. David, 75 Phil. 536*).]

Fabie v. David
75 Phil. 536

FACTS: Juan Grey was the administrator of certain premises, and Fabie was the usufructuary. Fabie leased the property to David, but when David violated certain conditions of the lease, Fabie brought an action of unlawful detainer against him. Grey intervened in this action, and alleged that he, and not the usufructuary, had the right to select the tenants; and that therefore, Fabie had no right to institute the suit. *ISSUE:* Who can select the tenants — Grey, the administrator; or Fabie, the usufructuary?

HELD: Fabie, the usufructuary, has the right because a usufructuary is allowed to administer and manage the property, to collect rents and to make the necessary repairs. Included in this right to administer is the right to select the tenant over the premises, presently held by Fabie in usufruct.

(2) Problem

A leased his land to *B*, and *before* the expiration of the lease, A gave the usufruct of his land to *C*. Can *C* oust tenant *B*?

ANS.: No, because Art. 1676 (applicable to a *purchaser* of the whole property) *cannot* apply, the usufructuary not having the *jus disponendi* over the property. (*See 4 Manresa 397-398*). A contrary agreement among the three of them will of course be allowed. Nevertheless, the usufructuary, instead of the naked owner, would be entitled to the rents for the duration of the usufruct. (*See Art. 566*).

Art. 569. Civil fruits are deemed to accrue daily, and belong to the usufructuary in proportion to the time the usufruct may last.

COMMENT:

Ownership and Accrual of Civil Fruits

The Article explains itself. Because of the daily accrual, Art. 567 cannot apply.

Art. 570. Whenever a usufruct is constituted on the right to receive a rent or periodical pension, whether in money or in fruits, or in the interest on bonds or securities payable to bearer, each payment due shall be considered as the proceeds of fruits of such right.

Whenever it consists in the enjoyment of benefits accruing from a participation in any industrial or commercial enterprise, the date of the distribution of which is not fixed, such benefits shall have the same character.

In either case they shall be distributed as civil fruits, and shall be applied in the manner prescribed in the preceding article.

COMMENT:

(1) Rule as to Certain Rights (Rent, Pension, Benefits, Etc.)

The things referred to in Art. 570 are considered civil fruits and shall be deemed to accrue *proportionately* to the naked owner and usufructuary, for the time the usufruct lasts.

Examples:

- (a) A gave to B in usufruct the profits of a certain factory for 10 years. If the usufruct lasts really for 10 years, all profits during that time must go to B.
- (b) Suppose, however, B died at the end of 5 years, and the following were the profits of the factory:

<i>2nd year</i>	—	P30 million
<i>3rd year</i>	—	P50 million
<i>8th year</i>	—	P10 million
<i>10th year</i>	—	P20 million

[NOTE: A business enterprise may sometimes have a profit; at times, may incur a loss; and in the case of profits — these may be irregular.]

How should the profits be divided?

ANS.: It is UNFAIR to give the heir of the usufructuary P80 million (2nd and 3rd year's profits) and only P30

million (8th and 10th year's profits) to the naked owner. If this were so, we would be applying the rule for industrial or natural fruits, not civil fruits. It is indeed *unfair* because a business is expected to have its ups and downs. *Therefore*, considering that the usufruct was supposed to last for *10 years* (though it actually lasted for only 5 years), it is fairer to give half of the total profits to the heirs of the usufructuary, and half to the naked owner.

[NOTE: Similarly, if during the first five years, no profits were realized because the company came out even, and profits came only after the last five years, the rule set forth above should be followed, otherwise gross injustice would result since it is well-known that it takes a company sometime before it becomes a gaining proposition. Of course, the parties *can stipulate otherwise* in their contract, but in the absence of stipulation, Art. 570 should apply. (See *4 Manresa 393-395*).]

(2) Rule When Date of Distribution of Benefits is Fixed

In speaking of *benefits* from industrial or commercial enterprises, the law says, "the date of distribution of which is *not fixed*." Does this mean that if the date is fixed, Art. 570 does not apply?

ANS.: No. Art. 570 applies *whether or not* the date of distribution is fixed. The law does not mention anymore the case when the *date is fixed* because this after all is the usual state of things, and the rule enunciated in *Art. 570* clearly applies. Whether or not, however, Art. 570 applies to a case where the *date is not fixed* was *doubtful* before, hence, the necessity of an express provision on the subject. (See *4 Manresa 393-395*).

(3) Stock Dividends and Cash Dividends

Our Supreme Court has ruled that both *stock dividends* and *cash dividends* are civil fruits. (*Orozco and Alcantara v. Araneta, L-3691, Nov. 21, 1951*). The same rule should apply to profits of a partnership.

(4) Example With Respect to Rents

If *A* gives *B* the usufruct of *A*'s land, and *A*'s land is being rented by *C*, each payment of rent shall go to *B* for the duration of the usufruct, each payment being considered as part of the proceeds of the property.

Art. 571. The usufructuary shall have the right to enjoy any increase which the thing in usufruct may acquire through accession, the servitudes established in its favor, and, in general, all the benefits inherent therein.

COMMENT:**(1) Increases in the Thing Held in Usufruct**

Aside from the right to the fruits (already discussed), the usufructuary has the right to the enjoyment (use, not ownership) of:

- (a) accessions (whether artificial or natural),
- (b) servitudes and easements,
- (c) all benefits inherent in the property (like the right to hunt and fish therein, the right to construct rain water receptacles, etc.). (*See 4 Manresa 413-415*).

(2) Reason

The usufructuary, as a rule, is entitled to the:

- (a) ENTIRE *jus fruendi* (including *fruits of accessions*)
- (b) ENTIRE *jus utendi* (so he can make use for example of an easement).

(3) Query

If co-owners of a parcel of land will give its usufruct to a relative, and subsequently they build a house thereon and leases the same to others, will the rents go to the co-owners or to the usufructuary?

ANS.: To the co-owners, because this is the evident intent of the parties.

Art. 572. The usufructuary may personally enjoy the thing in usufruct, lease it to another, or alienate his right of usufruct, even by a gratuitous title; but all the contracts he may enter into as such usufructuary shall terminate upon the expiration of the usufruct, saving leases of rural lands, which shall be considered as subsisting during the agricultural year.

COMMENT:

(1) Rights with Reference to the THING ITSELF (in Addition to the Usufruct)

- (a) He may *personally enjoy* the thing (that is, entitled to *possession* and *fruits*).

[NOTE: The enjoyment may also be thru another unless the contrary has been provided or stipulated.]

- (b) He may *lease* the thing to another. (This can be done even without the owner's consent; moreover, ordinarily the lease must not extend to a period longer than that of the usufruct, unless the owner consents. Thus, the lease ends at the time the usufruct ends, except in the case of *rural leases*.)

[NOTE: If the lessee should damage the property, the usufructuary shall answer to the owner. (Art. 590). The relation between the owner and the usufructuary, does not end just because a lease has been made. The usufructuary, however, can demand reimbursement from the lessee, because of the latter's breach of the contract of lease. If the usufructuary cannot pay the damage to the naked owner, his bond shall be liable. This is precisely one reason for the requirement of a bond. (See Art. 583).]

(2) Rights with Reference to the USUFRUCTUARY RIGHT ITSELF

- (a) He may *alienate* (sell, donate, bequeath, or devise) the usufructuary right (except a *legal usufruct*, *i.e.*, the usufruct which parents have over the properties of their unemancipated children, because said usufruct is to be

used for certain obligations towards children) (*See TS, Sep. 27, 1893*); or a usufruct granted a usufructuary in consideration of his person (*4 Manresa 375*); or a usufruct acquired thru a *caucion juratoria*, for here, the need of the usufructuary himself is the reason for the enjoyment. (*See Art. 587*).

- (b) He may *pledge* or *mortgage* the usufructuary right (because he OWNS said right) BUT he cannot pledge or mortgage the thing itself because he does not own the thing. (*See Art. 2085[2]*). Neither can he sell or in any way alienate the thing itself, or future crops, for crops pending at the termination of the usufruct belong to the naked owner. (*Art. 567*). (*See also Art. 572 and Mortgage Law, Art. 106*).

[NOTE: *Parental usufruct* cannot be alienated or pledged or mortgaged. (*See TS, July 7, 1892*).].

(3) Cases

Fabie v. David **75 Phil. 536**

FACTS: In his will, A made B administrator of his estate, but gave to C the *usufruct* of a particular house. D was occupying the house as tenant. For violation of the lease contract, D was being ejected by C, the usufructuary. D said that C was merely the usufructuary, and was entitled only to collect rent but had no right to select and oust tenants, this being the right of B, the general administrator of A's estate. *ISSUE:* Has C the right to bring the action?

HELD: Yes. While it is true that there was a general administrator (B), still insofar as that particular house is concerned, C should be considered the administrator. This is because as usufructuary, he is entitled not only to collect the rent or income but also to lease the property in favor of another. (*Art. 572*). And this right to lease carries with it the right to select and oust tenants for contractual violations. To permit B to arrogate unto himself the right to select tenants, dictate the conditions of the lease, and to sue when the lessee fails to

comply therewith would be to place the usufructuary *C* at his mercy. This should *not* be allowed.

Seifert v. Bachrach
79 Phil. 748

FACTS: A donated her usufructuary right over certain properties. Later, she brought an action to get her right back on the ground that she did *not* own the properties. Will the action prosper?

HELD: No, for after all, she donated the usufruct (which belonged to her) and *not* the properties themselves. And under the law, the usufructuary has the right to alienate (*even by gratuitous title, as in this case*) the right to the usufruct. It has been proved that the donation was made *knowingly* and *freely*. She deserves commendation for the beauty of her act in donating. Charity is the choicest flower of the human spirit. We are not willing to help her withdraw now what she had given voluntarily, and in a noble spirit of liberality.

Art. 573. Whenever the usufruct includes things which, without being consumed, gradually deteriorate through wear and tear, the usufructuary shall have the right to make use thereof in accordance with the purpose for which they are intended, and shall not be obliged to return them at the termination of the usufruct except in their condition at that time; but he shall be obliged to indemnify the owner for any deterioration they may have suffered by reason of his fraud or negligence.

COMMENT:

(1) Abnormal Usufruct on Things that Deteriorate

This article deals with an *ABNORMAL* or *imperfect* usufruct. It is true that *ALL* things deteriorate, but there are some things that deteriorate *much* faster than others (such as clothes, furniture, carriages, vehicles, computers, copiers, or books).

(2) Effect of the Deterioration on the Usufructuary's Liability

If these fast *deteriorating* things:

- (a) deteriorate because of NORMAL USE, the usufructuary is not responsible. Therefore, he can return them in the condition they might be in at the termination of the usufruct. There is *no necessity* for him to make any repairs to restore them to their former condition (*See 4 Manresa 430-431*), for after all, they can be PRESERVED without the necessity of repairs (as when the varnish of a chair has disappeared). Failure to return the thing will result in indemnification for the value the object may have at the end of the usufruct. (*See 3 Sanchez Roman 569*).
- (b) deteriorate because of an event or act that *endangers their preservation* (as when by fortuitous event, lightning splits a table into three pieces), then even though there was no *fault* or *negligence* or *fraud* on the part of the usufructuary, he is still required, under Art. 592, to make the NECESSARY OR ORDINARY REPAIRS. (*See 4 Manresa 430-431*). Thus, mere deterioration thru *normal* use does not require the ordinary repairs referred to in Art. 592. (*See 3 Sanchez Roman 585*).
- (c) deteriorate because of fraud (*dolo incidente* or fraud amounting to an EVASION of the obligation to preserve) or NEGLIGENCE (*culpa*), the usufructuary is responsible. (*Art. 573*). (Such liability may however be set off against improvements.) (*See Art. 580*).

Art. 574. Whenever the usufruct includes things which cannot be used without being consumed, the usufructuary shall have the right to make use of them under the obligation of paying their appraised value at the termination of the usufruct, if they were appraised when delivered. In case they were not appraised, he shall have the right to return the same quantity and quality, or pay their current price at the time the usufruct ceases.

COMMENT:**(1) Abnormal Usufruct on Consumable Things**

This is another instance of abnormal usufruct, and is sometimes referred to as a “quasi-usufruct” because the form and substance is not really preserved. Thus, this is really a SIMPLE loan. It has been included however in the title on usufructs because in what are called UNIVERSAL USUFRUCTS, both *non-consumable* and *consumable* properties are included. While we seldom find usufructs on *consumable properties* alone, it is a fact that they indeed exist. Thus, the Supreme Court has held that even money may be the object of a usufruct. (*Alunan v. Veloso*, 52 Phil. 545; see 4 Manresa 432-433).

(2) RULES for this ‘QUASI-USUFRUCT’

- (a) The usufructuary (debtor-borrower) can use them (as if he is the owner, with *complete* right of pledge or alienation).
- (b) BUT at the end of the usufruct, he must
 - 1) pay the APPRAISED value (if appraised when first delivered)
 - 2) Or, if there was no *appraisal*, return same kind, quality, and quantity OR pay the price *current at the termination of the usufruct* (therefore not at the original price or value).

Art. 575. The usufructuary of fruit-bearing trees and shrubs may make use of the dead trunks, and even of those cut off or uprooted by accident, under the obligation to replace them with new plants.

COMMENT:**(1) Usufruct on Fruit-Bearing Trees and Shrubs**

- (a) Note the phrase “*fruit-bearing trees and shrubs*” replacing “*vineyards and olive orchards*” used under the old Civil Code but eliminated in view of their non-existence in the Philippines.

- (b) This is a SPECIAL usufruct.

(2) RIGHTS

The usufructuary can use (even for *firewood*, though he is NOT the naked owner) the following:

- (a) dead trunks
- (b) those cut off or uprooted by accident

BUT he must REPLACE them with new plants (for indeed, he was not the naked owner).

(3) Other SPECIAL Usufructs

- (a) of periodical pension, income, dividends. (*Art. 570*).
- (b) of woodland. (*Art. 577*).
- (c) of right of action to recover real property, real right, or movable property. (*Art. 578*).
- (d) of part of property owned in common. (*Art. 582*).
- (e) of the entire patrimony of a person. (*Art. 598*).
- (f) on a mortgaged immovable. (*Art. 600*).
- (g) on a flock or herd of livestock. (*Art. 591*).

Art. 576. If in consequence of a calamity or extraordinary event, the trees or shrubs shall have disappeared in such considerable number that it would not be possible or it would be too burdensome to replace them, the usufructuary may leave the dead, fallen or uprooted trunks at the disposal of the owner, and demand that the latter remove them and clear the land.

COMMENT:

Effect of a Calamity on the Trees and Shrubs

Example:

A is usufructuary of trees and shrubs belonging to B. As a result of an earthquake, many of the trees and shrubs

disappeared or were destroyed. What are *A*'s rights and obligations?

ANS.:

- (a) If it is *impossible* or too *burdensome* to replace them, the *usufructuary* has an **OPTION**. He —
 - 1) may use the trunks but should replace them (*Art. 575*);
 - 2) or may leave the dead, fallen, or uprooted trunks at the owner's disposal, and *demand* that the latter remove them and clear the land. (*Art. 576*).
- (b) If it is slightly burdensome to replace them, the *usufructuary* **MUST** replace them (whether he uses the dead trunks or not), and he cannot demand clearance of the land by the owner. (*See 4 Manresa 435-437*).

Art. 577. The usufructuary of woodland may enjoy all the benefits which it may produce according to its nature.

If the woodland is a copse or consists of timber for building, the usufructuary may do such ordinary cutting or felling as the owner was in the habit of doing, and in default of this, he may do so in accordance with the custom of the place, as to the manner, amount and season.

In any case the felling or cutting of trees shall be made in such manner as not to prejudice the preservation of the land.

In nurseries, the usufructuary may make the necessary thinnings in order that the remaining trees may properly grow.

With the exception of the provisions of the preceding paragraphs, the usufructuary cannot cut down trees unless it be to restore or improve some of the things in usufruct, and in such case he shall first inform the owner of the necessity for the work.

COMMENT:**(1) Special Usufruct over a WOODLAND**

This is not a common or frequent usufruct because:

- (a) natural resources (including forest or timber lands) belong to the State (*Regalian Doctrine under Art. XII, Sec. 3 of the 1987 Philippine Constitution*);
- (b) a license is generally essential if one desires to gather forest products. (*See Sec. 47, Revised Administrative Code*).

(2) Obligations of the Usufructuary

In the enjoyment of the usufruct, the usufructuary:

- (a) must bear in mind that he is *not* the owner, and therefore, in the exercise of the diligence in caring for the property (required under Art. 589 he must see to it that the woodland is preserved, either by development or by replanting, thus he cannot consume all, otherwise nothing would be left for the owner. (*See 4 Manresa 439*).
- (b) in the cutting or felling of trees, he must —
 - 1) follow the owner's habit or practices;
 - 2) in default thereof, follow the *customs* of the place (as to MANNER, AMOUNT and SEASON) (*Art. 577*) — all without prejudice to the owner, for while he can USE, he cannot ABUSE. (*See 4 Manresa 439*).

[NOTE: The rule above is applicable if the woodland:

- a) is a COPSE (thicket of small trees),
- b) or consists of *timber* for BUILDING.]
- 3) if there be no customs, the only time the usufructuary can CUT DOWN trees will be for REPAIR or IMPROVEMENT, but here the owner must first be *informed* (the owner, thus, does not need to consent).
- (c) *cannot alienate* the trees (for the trees are not considered fruits) unless he is permitted, expressly or impliedly by

the owner (as when the purpose of the usufruct was really to sell the timber) or unless he needs the money to do some repairs (but in the last case, the owner must be informed). (*See 21 Corpus Juris 950-951*).

(3) BAR

A is the usufructuary of a parcel of land belonging to *B*. He (*A*) transferred his usufructuary right to *C* who took possession of the land. While possessing it, *C*, without the knowledge of *A*, cut 100 coconut trees on the land. Is *A* liable to *B*, for the damages caused by *C*, on the land under usufruct? Give your reasons.

ANS.: Yes, *A* is liable to *B*, for a usufructuary (*A*) who alienates his usufructuary right, is liable for the negligence of his substitute (*C*). (*Art. 590*). It is clear that *C* had no right to cut down the trees, for the article on woodland (*Art. 577*) cannot apply. There is a vast difference between a woodland and coconut land. In the former, the usufructuary can in certain cases cut down the trees precisely because the way to enjoy the usufruct would be to convert the timber into lumber; in the case of coconut land, the usufruct extends merely to the fruits produced. At any rate, it would have been different had the naked owner's approval been obtained.

Art. 578. The usufructuary of an action to recover real property or a real right, or any movable property, has the right to bring the action and to oblige the owner thereof to give him the authority for this purpose and to furnish him whatever proof he may have. If in consequence of the enforcement of the action he acquires the thing claimed, the usufruct shall be limited to the fruits, the dominion remaining with the owner.

COMMENT:

(1) Usufruct of an Action to Recover Through the Courts

This SPECIAL usufruct deals with the right to recover by COURT ACTION:

- (a) real property
- (b) personal property
- (c) real *right over real or personal property*

[NOTE: In a sense, this is a usufruct over an expectancy or a hope.]

(2) What the Usufructuary Can Demand

To bring the action, the usufructuary can DEMAND from the owner:

- (a) *authority* to bring the action (usually a special power of attorney).
- (b) *proofs* needed for a recovery.

(3) How Third Parties Can Be Prejudiced

To prejudice third parties, the usufruct must either be registered or known to them. (*Art. 709*).

(4) Institution of the Action

The action *may* be instituted in the *usufructuary's* name, for being the owner of the usufruct, he is properly deemed a real party in interest. (*See Sec. 2, Rule 3, Rules of Court*).

- (a) If the purpose is the recovery of the property or right, he is still required under Art. 578 to obtain the naked owner's authority.
- (b) If the purpose is to object to or prevent disturbance over the property (once the property is given him), *no* special authority from the naked owner is needed. (*See Pascual v. Angeles, 4 Phil. 604*).

(5) Effect of Judgment

When judgment is awarded him and he gets the property:

- (a) its naked ownership belongs to the OWNER;

- (b) its usufruct belongs to him (the USUFRUCTUARY).
(*Art. 578, last part*).

[NOTE: Usually, this usufruct occurs when a UNIVERSAL USUFRUCT has been given. (*See 4 Manresa 444*).].

[NOTE: After successful suit, the usufruct is now over the thing acquired.].

Art. 579. The usufructuary may make on the property held in usufruct such useful improvements or expenses for mere pleasure as he may deem proper, provided he does not alter its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove such improvements, should it be possible to do so without damage to the property.

COMMENT:

(1) Useful and Luxurious Improvements

The usufructuary has the RIGHT (not the duty) to make:

- (a) useful improvements;
(b) luxurious improvements (for mere pleasure).

BUT —

(a) He must not alter the form or substance of the property held in usufruct (he *cannot* build a house if to do so would destroy an orchard, if the usufruct is on an orchard, unless the owner consents).

(b) He is NOT entitled to a REFUND (otherwise he might improve the naked owner out of his property) (*Castan*), but he may —

- 1) either *remove* the improvements if *no substantial damage* to the property in usufruct is caused (*Art. 579*);
- 2) OR set off (compensate) the improvements against damages for which he may be liable. (*Art. 580*).

(2) Problems

- (a) If the improvement cannot be removed without substantial injury, is the usufructuary entitled to a refund?

ANS.: No. (*See Art. 579*). But he may still avail himself of the set-off. (*Art. 580*).

- (b) A usufructuary introduced useful improvements, which he *can remove without* damage, but he does not want to remove them. Can he be compelled by the naked owner to make the removal?

ANS.: No, for the law says “may,” and therefore he may or may not remove, the *right* being potestative (dependent on his will). (*See 4 Manresa 445*).

- (c) A usufructuary introduced useful improvements which he *can remove without* damage. He wants to remove them, BUT the owner wants to retain them, and offers to reimburse him. Who should prevail?

ANS.: The usufructuary prevails for the right of removal granted him by the law. The rule here is *different* from that in Arts. 546 and 548, where the right to remove may be defeated by the right of the owner to retain, upon proper indemnification. (*Arts. 546 and 548* refer to a possessor, not to a usufructuary). (*See 4 Manresa 445*).

- (d) On a *parcel* of land held by A in usufruct, A constructed a building and planted some trees. Upon the termination of the usufruct, may A *destroy* the building, and cut down the trees?

ANS.: Yes, because he, after all, owned the improvements and he could thus remove them for the land would not be injured. However, he must leave the land in the way it had been before construction of the building and planting of the trees. (*See 4 Manresa 445-446*).

(3) Registration of Improvements

Improvements made by a usufructuary belong to him, and may therefore be *registered, not independently*, but in the registration proceedings of the *land* held in usufruct. The purpose

of the registration is *to protect him against third persons*, for while he cannot obtain a refund therefor, still he may *remove* them or set them off against damages chargeable to him. (If the property is sold to an *innocent* purchaser for value, the right to remove the useful improvements since NOT REGISTERED can not be enforced against said third person. [See *Mella v. Bismanos, CA, 45 O.G. 2099*].).

(4) Usufructuary Compared With Possessor in Good Faith

While a possessor in good faith is entitled to a refund for useful improvements, a *usufructuary is not*. (See *Rivera v. Trinidad, 48 Phil. 396*).

[NOTE: Under the old Civil Code, a tenant or lessee was also not allowed a refund and therefore was in the same position as a usufructuary because BOTH of them know that the land is not theirs, but under the new Civil Code, the lessee (not the usufructuary) is entitled to a refund of one-half. (See *Rivera v. Trinidad, supra; Castro v. Kiener Co., Ltd., 51 O.G. 5240; Art. 1678*).].

Art. 580. The usufructuary may set off the improvements he may have made on the property against any damage to the same.

COMMENT:

(1) Right to Set-Off Improvements

See discussion under the preceding article.

(2) Rules

- (a) If damage *exceeds* the value of the improvements, usufructuary is still liable for the difference.
- (b) If the value of the improvements *exceeds* the damage, the difference does not go to the usufructuary, but accrues instead in the absence of a contrary stipulation in favor of the naked owner, otherwise, it is as if the usufructu-

ary would be entitled to a partial refund in cash. (*See 4 Manresa 446*).

(3) Requisites Before a Set-Off Can Be Made

- (a) The damage must have been caused by the usufructuary.
- (b) The improvements must have augmented the value of property.

Art. 581. The owner of property the usufruct of which is held by another, may alienate it, but he cannot alter its form or substance, or do anything thereon which may be prejudicial to the usufructuary.

COMMENT:

(1) Alienation by Naked Owner

Since the *jus disponendi* and the title (*dominium directum*) reside with the naked owner, he retains the right to ALIENATE the property BUT —

- (a) he cannot alter its form or substance;
- (b) or do anything prejudicial to the usufructuary (as when he should illegally lease the property to another, since this right ordinarily pertains to the usufructuary).

(2) When Buyer Must Respect the Usufruct

A purchaser of the property must respect the usufruct in case it is *registered* or *known* to him (*See Art. 709*), otherwise, he can oust the usufructuary, who can then look to the naked owner for damages. (*See Art. 581*).

(3) Rule in Case of Succession

If the naked owner *bequeathes* (if personal property) or *devises* (if real property) to another thru a will, the legatee or devisee should respect the usufruct. (*See Art. 934, last paragraph*).

(4) Double Sale by Naked Owner

The naked owner is ordinarily *not allowed* to sell the usufruct to another after having sold it first to the usufructuary; but if he does so, Art. 1544 relating to a double sale applies. Thus, if the second buyer in *good faith registers* the usufruct, he can oust the first buyer who did *not* register, even though the latter be in possession. The right of the first usufructuary would be to proceed against the naked owner for breach of the warranty against eviction.

(5) Other Rights of the Naked Owner

Aside from the right of the naked owner to alienate the property, he may also —

- (a) construct any works
- (b) and make any improvements
- (c) or make new plantings thereon if it be rural BUT always, such acts must not cause:
 - 1) a *decrease* in the value of the usufruct;
 - 2) or *prejudice* the right of the usufructuary. (*Art. 595*).

Art. 582. The usufructuary of a part of a thing held in common shall exercise all the rights pertaining to the owner thereof with respect to the administration and the collection of fruits or interest. Should the co-ownership cease by reason of the division of the thing held in common, the usufruct of the part allotted to the co-owner shall belong to the usufructuary.

COMMENT:**(1) Usufructuary of a Part of Common Property**

A co-owner may give the usufruct of his share to another, even without the consent of the others, unless personal considerations are present. (*See Art. 493*).

The usufructuary in such a case takes the owner's place as to:

- (a) administration (management);
- (b) collection of *fruits or interest*. (*Art. 582*). (BUT not as to *alienation, disposition*, or creation of any real right over the property, since these are strict acts of ownership, unless of course he is authorized by the naked owner.).

(2) Effect of Partition

- (a) If there be a partition, the usufructuary continues to have the usufruct of the *part* allotted to the co-owner concerned. (*Art. 582*).
- (b) If the co-owners make a partition, *without* the intervention of the usufructuary, this is all right, and the partition binds said usufructuary. (*Pichay v. Querol, 11 Phil. 386*). Necessarily however, the naked owner must also respect the usufruct. (*Ibid.*).

Chapter 3

OBLIGATIONS OF THE USUFRUCTUARY

INTRODUCTORY COMMENT

(1) The usufructuary has obligations:

- (a) *before* the usufruct (like the making of inventory)
- (b) *during* the usufruct (like taking due care of property)
- (c) *after* the usufruct (like the duty to *return* and *indemnify* in the proper cases).

(2) The naked owner has also corresponding obligations.

Art. 583. The usufructuary, before entering upon the enjoyment of the property, is obliged:

(1) To make, after notice to the owner or his legitimate representative an inventory of all the property, which shall contain an appraisal of the movables and a description of the condition of the immovables;

(2) To give security, binding himself to fulfill the obligations imposed upon him in accordance with this Chapter.

COMMENT:

(1) Obligation Re the Inventory and the Security

This article speaks of two obligations (*inventory* and *security*). They are not necessary however before the right to the usufruct begins; they are merely necessary before *physical possession* and *enjoyment* of the *property* can be had, thus

if the usufructuary fails to give security (unless exempt) the usufruct still begins but the naked owner will have the rights granted him under Art. 586. (*See 3 Sanchez Roman 574-575*).

(2) Requirements for the Making of the Inventory

- (a) The owner (or his legitimate representative) must be previously NOTIFIED (his *presence* or *absence* is *not important*). (*Purpose of notice: To enable him to correct errors in the inventory; if he desires*).
- (b) The condition of the IMMOVABLES must be *described*.
- (c) The movables must be *appraised* (in view of easy deterioration or loss).
- (d) As a rule, NO FORM is required except that when there are real properties, Art. 1358 demands a public instrument to affect *third parties*.
- (e) *Expenses* are to be borne by the usufructuary, since the duty is his. (*4 Manresa 451-452*).
- (f) Effect of *not making inventory* (except when excused) — same as when the security is not given. (*See Arts. 586 and 599; see also 3 Sanchez Roman 575-576*).
- (g) When inventory is not required.
 - 1) When no one will be injured thereby (as in the case of usufruct over a *periodical pension* or incorporeal right) (*See Art. 570*) provided the naked owner consents, for the law says “may.” (*Art. 585*). (*See 4 Manresa 464-467*).
 - 2) In case of *waiver* by the *naked owner* or the law (*See 4 Manresa 464-467*), or when there is a stipulation in a will or contract.

(3) The Giving of Security

- (a) *Purpose*: To insure faithful compliance of the duties of the usufructuary (whether required *during* or at *end* of the usufruct — like the duty to *return*). (*See 4 Manresa 455-456*).

- (b) *Form of Security* — Since the law does not specify what kind of security should be given, it follows that any kind of sufficient security should be allowed — such as a cash or personal bond, mortgage, etc.
- (c) *When Security Is Not Required:*
- 1) When no one will be injured thereby (NO PREJUDICE). (See Art. 585). Example: in the usufruct over a periodical income or life annuity. Provided naked owner consents for the law says “may.” (Art. 585).
 - 2) When there is waiver by the naked owner (See 4 Manresa 464-465), or there is a stipulation either in a will or by contract.
 - 3) When the usufructuary is the *donor* of the property (who has reserved the usufruct). (The naked owner should be grateful enough not to require the security). (Art. 584).
 - 4) When there is a *parental usufruct* (that is, in the case of parents who are usufructuaries of their children’s property, except when the parents contract a second or subsequent marriage, PROVIDED that each child’s property does not exceed P50,000 in which case, the parents have to file a bond (See Art. 225, the Family Code) not as usufructuary, but as guardian or administrator.
 - 5) When there is a *caucion juratoria*, which takes the place of a bond, and is made by taking an oath to fulfill properly the duties of a usufructuary, BUT this is available only under the conditions prescribed in Art. 587 (*promise under oath*).
- (d) *Effect of not giving Security:*
(See Arts. 586 and 599).

Art. 584. The provisions of No. 2 of the preceding article shall not apply to the donor who has reserved the usufruct of the property donated, or to the parents who are usufructuaries of their children’s property, except when the parents contract a second marriage.

COMMENT:**Usufruct of Donor or of Parents**

- (a) See discussion under the preceding article.
- (b) Note that the law says donor, not seller (for sale is an onerous contract).
- (c) While the law says “donor,” the word “remitter” can also be used, for “remission” is gratuitous.
- (d) The formalities of “donation” or “remission” must be complied with.
- (e) “Second” marriage may be “third, fourth, etc.” or any subsequent marriage, as the case may be.
- (f) In case of “remuneratory” (with a future burden) donation, the parties may stipulate on the necessity of a security. (*See 4 Manresa 460*).

Art. 585. The usufructuary, whatever may be the title of the usufruct, may be excused from the obligation of making an inventory or of giving security, when no one will be injured thereby.

COMMENT:**Effect if No One Will Be Injured**

- (a) See discussion under Art. 583.
- (b) The law says “*may*,” therefore the usufructuary is not *always* excused, the exemption being dependent on the naked owner. In case the naked owner refuses to make the exemption, appeal can be had before the courts, and the judge should consider all the circumstances in deciding whether or not to give the grant. (*See 4 Manresa 464-467*).
- (c) While ordinarily, it is the naked owner who grants the exemption, the grant may be made by somebody else authorized by said naked owner. (*See 4 Manresa 466-467*).

Art. 586. Should the usufructuary fail to give security in the cases in which he is bound to give it, the owner may demand that the immovables be placed under administration, that the movables be sold, that the public bonds, instruments of credit payable to order or to bearer be converted into registered certificates or deposited in a bank or public institution, and that the capital or sums in cash and the proceeds of the sale of the movable property be invested in safe securities.

The interest on the proceeds of the sale of the movables and that on public securities and bonds, and the proceeds of the property placed under administration, shall belong to the usufructuary.

Furthermore, the owner may, if he so prefers, until the usufructuary gives security or is excused from so doing, retain in his possession the property in usufruct as administrator, subject to the obligation to deliver to the usufructuary the net proceeds thereof, after deducting the sums which may be agreed upon or judicially allowed him for such administration.

COMMENT:

(1) Effects of Failure to Give Security (Unless Exempted)

(a) On the Rights of the Naked Owner:

- 1) He may deliver the property to the usufructuary (since the article gives the owner a *right*, and *not a duty*) (but even if delivery is made, the naked owner may still later on demand the needed security). (*TS, Mar. 12, 1903*).
- 2) OR the naked owner may *choose* RETENTION of the property as ADMINISTRATOR (here the usufructuary gets the *net* proceeds, *minus administration* expenses, the amount of which is fixed by mutual agreement or by the *courts*).
- 3) OR the naked owner may demand RECEIVERSHIP or ADMINISTRATION (*by another*) of the REAL

PROPERTY, sale of movable, conversion or deposit of credit instruments, or investment of cash or profits.

(b) *On the Rights of the Usufructuary:*

- 1) The usufructuary *cannot possess* the property till he gives the security.
- 2) The usufructuary *cannot administer* the property, hence, he cannot execute a lease thereon. (*4 Manresa 471-472*).
- 3) The usufructuary *cannot collect credits* that have *matured*, nor invest them unless the Court or the naked owner consents. (*Art. 599*).

[NOTE: This No. (3) applies also even if the usufructuary is EXEMPTED from giving security. (*Art. 599*).]

- 4) But the usufructuary can *alienate* his right to the usufruct (since failure to give the security did not extinguish the usufruct). The grantee may of course possess, the moment he gives security. (*See 4 Manresa 471-472; see also Art. 603*).

(2) Administration Expenses

The receiver or administrator (a third person) is entitled naturally to administration expenses.

(3) Retention of Property by Naked Owner

Although the owner may demand the *sale of movables* (public or private sale), still he may want to retain some of them for their *artistic worth or sentimental value*, in which case, he may demand their delivery to him *provided* he gives security for the payment of legal interest on their appraised value. (*See Art. 587; see also 4 Manresa 468-470*).

(4) Interest on Cash Proceeds of Sale

Note that if the movable be sold, the cash belongs to the naked owner, but the *interest thereon* (6% *per annum*) belongs to the usufructuary. (*Art. 586, Second par.*).

Art. 587. If the usufructuary who has not given security claims, by virtue of a promise under oath, the delivery of the furniture necessary for his use, and that he and his family be allowed to live in a house included in the usufruct, the court may grant this petition, after due consideration of the facts of the case.

The same rule shall be observed with respect to implements, tools and other movable property necessary for an industry or vocation in which he is engaged.

If the owner does not wish that certain articles be sold because of their artistic worth or because they have a sentimental value, he may demand their delivery to him upon his giving security for the payment of the legal interest on their appraised value.

COMMENT:

(1) ‘Caucion Juratoria’

The “promise under oath” is called a “*caucion juratoria*” – a sworn duty to take good care of the property and return same at the end of the usufruct. It takes the place of the bond or security and is based on necessity and humanity (*See 3 Sanchez Roman 578*) as when a poor family acquires by inheritance, the usufruct of a badly needed house. (*See 4 Manresa 473-474*).

(2) Requisites Before the Caucion Juratoria Is Allowed

- (a) proper court petition
- (b) necessity for delivery of *furniture, implements or house* included in the usufruct
- (c) approval of the court
- (d) sworn promise.

(3) Restriction on Usufructuary

He *cannot alienate or lease* the property for this means he does not need them. (*4 Manresa 474*).

(4) Rule in Case Usufructuary is Exempted from the Duty to Give Security

Art. 587 does *not* apply when the usufructuary is exempted from giving security. It applies only if he is *required but cannot afford* to give the security.

Art. 588. After the security has been given by the usufructuary, he shall have a right to all the proceeds and benefits from the day on which, in accordance with the title constituting the usufruct, he should have commenced to receive them.

COMMENT:

Retroactive Effect of the Security Given

- (a) Notice that once the bond is given, there is RETROACTIVITY.
- (b) Hence, if the usufruct commences Jan. 3, 2003 but security is given Mar. 3, 2003, the usufructuary is entitled to all the proceeds and benefits of the usufruct from Jan. 3, 2003.

Art. 589. The usufructuary shall take care of the things given in usufruct as a good father of a family.

COMMENT:

(1) Duty of Usufructuary to Take Care of Property

- (a) Although care of a *pater familias* is required (*Art. 589*), still a usufruct is not extinguished by bad use. Bad use, if owner suffers considerable injury, entitles him to demand its administration without prejudice to the usufruct. (*Art. 610*).
- (b) In the exercise of prudent care, the usufructuary is required to make ORDINARY repairs (*Art. 592*) and to notify the naked owner of *urgency* of EXTRAORDINARY REPAIRS (*Art. 593*), and of any acts which may prove detrimental to ownership. (*Art. 610*). Moreover, the

usufructuary answers for damage caused by the fault or negligence of his alienee, grantee, agent, or lessee. (*See Art. 590*).

(2) Rule When Property Has Been Damaged

Damage to property caused by the fault or negligence of the usufructuary is demandable *right away*, and therefore the naked owner need not wait for the end of the usufruct before bringing the proper action for indemnity. (*4 Manresa 477*). [The usufructuary is not entitled to reimbursement for *ordinary repairs* (*Art. 592*) but may retain the property till he is reimbursed of extraordinary expenses, which he may have been compelled to do. (*See Art. 612*).].

Art. 590. A usufructuary who alienates or leases his right of usufruct shall answer for any damage which the things in usufruct may suffer through the fault or negligence of the person who substitutes him.

COMMENT:

Liability of Usufructuary for Acts of the Substitute

- (a) The usufructuary is made liable for the acts of the substitute (fault, negligence, or even willful deceit). Thus, while the substitute answers to the usufructuary, the usufructuary answers to the naked owner. (*See 4 Manresa 478*).
- (b) Even when there is a *sub-usufructuary*, it is still the *usufructuary* who answers to the naked owner for ordinary repairs, taxes on the fruits, etc. (*See 4 Manresa 478*).

Art. 591. If the usufruct be constituted on a flock or herd of livestock, the usufructuary shall be obliged to replace with the young thereof the animals that die each year from natural causes, or are lost due to the rapacity of beasts of prey.

If the animals on which the usufruct is constituted should all perish, without the fault of the usufructuary, on

account of some contagious disease or any other uncommon event, the usufructuary shall fulfill his obligation by delivering to the owner the remains which may have been saved from the misfortune.

Should the herd or flock perish in part, also by accident and without the fault of the usufructuary, the usufruct shall continue on the part saved.

Should the usufruct be on sterile animals, it shall be considered, with respect to its effects, as though constituted on fungible things.

COMMENT:

(1) Usufruct on Livestock

This article applies only when the usufruct is on a FLOCK and HERD of livestock (not two or three animals merely).

(2) Rules in case of FRUITFUL or PRODUCTIVE Livestock

(a) Where there is obligation to REPLACE —

- 1) if some animals die from natural causes;
- 2) or if some animals are lost due to *rapacity of beasts of prey*.

[NOTE: Notice that even though the cause be fortuitous, there is the duty to replace. This is because such loss is more or less EXPECTED and is NATURAL. (The remains of the dead animals belong to the usufructuary.)]

[NOTE: Replacement should be made from the YOUNG produced. Hence, if 15 cattles died, but only 3 were produced, only 3 must be replaced; hence also, if 15 died, but 20 were produced, the excess of 5 belong to the usufructuary since they are FRUITS.]

[NOTE: If 15 died, and 15 were produced, but only 12 remain because the 3 were SOLD, the usufruct

ructuary must still replace the remaining three, even in cash, otherwise he could, by his own act, defeat the law. (*See 4 Manresa 480-483*).].

[NOTE: Although the law says “each year,” this does not necessarily mean that the computation will have to be done yearly. It is sufficient to sum up the losses and produce for all the time the usufruct may last. For there can be no conceivable reason why computation should be done *yearly*.].

- (b) Where there is NO obligation to replace —
- 1) if there is a total loss of the animals because of some UNEXPECTED or UNNATURAL loss (like some *contagious disease* or any other *uncommon event*, provided the usufructuary has NO FAULT).
 - 2) if there is a *partial* loss (under the same conditions).

[NOTE: Since there is no obligation to replace, it follows that even if all should perish, the remains (bones, carcass) must be delivered to the owner. The same is true in case of *partial* loss. The *remains*, not the remainder, must be given to the naked owner.].

[NOTE: In case of partial loss, the usufruct continues on the *remainder*, provided that the loss be by accident and *without* fault of the usufructuary.].

[NOTE: If the partial loss be because of the usufructuary’s FAULT, does the usufruct continue on the remainder?

ANS.: Manresa says “yes” because bad use or abuse does not extinguish the usufruct, without prejudice however to the right of the naked owner to demand administration by him. (*See Art. 610; see also 4 Manresa 480-483*).].

(3) Rule in Case of Sterile Animals

Since there are no young (broods) here, the rule of usufruct over fungibles applies. (*Art. 574*).

Art. 592. The usufructuary is obliged to make the ordinary repairs needed by the thing given in usufruct.

By ordinary repairs are understood such as are required by the wear and tear due to the natural use of the thing and are indispensable for its preservation. Should the usufructuary fail to make them after demand by the owner, the latter may make them at the expense of the usufructuary.

COMMENT:**(1) Duty to Make Ordinary Repairs**

For the usufructuary to be responsible for ordinary repairs, the following conditions must be present:

- (a) They are required by NORMAL or NATURAL use.
- (b) They are *needed* for preservation.
- (c) They must have occurred DURING the usufruct (because those occurring *before* and *after* the end of the usufruct should be borne by the naked owner). (*4 Manresa 487*).
- (d) They must have happened *with* or *without* the fault of the usufructuary.

[NOTE: If he was at FAULT, the usufructuary must pay indemnity for damages.]

(2) Query

Can usufructuary exempt himself from the duty to make or pay for the necessary repairs by RENOUNCING the usufruct?

ANS.:

- (a) If he had NO fault — yes, but he must surrender the fruits received.

- (b) If he was at FAULT — no. He would still be liable for damages. (*See 4 Manresa 487*).

(3) Remedy if Usufructuary Does Not Make the Necessary Repairs

Remedy of naked owner if usufructuary does *not* make the necessary repairs: If naked owner had demanded the repair, and the usufructuary still fails to do so, the owner may make them (personally or thru another) at the expense of the usufructuary.

(4) Definition of Ordinary Repairs as Used in this Article

“Those required by the wear and tear due to the *natural* use of the thing and are *indispensable* for its preservation.” (*Art. 592, 2nd sentence*).

[*Note that under Art. 573, the deterioration results even if there be repairs, hence, they are not chargeable to the usufructuary.*]

Art. 593. Extraordinary repairs shall be at the expense of the owner. The usufructuary is obliged to notify the owner when the need for such repairs is urgent.

COMMENT:

Duty of Naked Owner to Make Extraordinary Repairs

The Article explains itself.

Art. 594. If the owner should make the extraordinary repairs, he shall have a right to demand of the usufructuary the legal interest on the amount expended for the time that the usufruct lasts.

Should he not make them when they are indispensable for the preservation of the thing, the usufructuary may make them; but he shall have a right to demand of the owner, at the termination of the usufruct, the increase in value which the immovable may have acquired by reason of the repairs.

COMMENT:**(1) Kinds of Extraordinary Repairs**

- (a) those caused by *natural use* but NOT NEEDED for preservation. (*4 Manresa 485; see Art. 592 – by implication*).
- (b) those caused by ABNORMAL or EXCEPTIONAL circumstances *and* needed for preservation (as when an earthquake renders the stairs of a house *unsafe*, or when lightning splits a table into two).
- (c) those caused by ABNORMAL or EXCEPTIONAL circumstances but are *NOT NEEDED* for preservation. (*See 4 Manresa 485; see also 2nd paragraph of Art. 594 – by implication*).

(2) Who Should Pay Extraordinary Repairs?

- (a) those in 1(a) – the NAKED OWNER (whether or not he is notified by the usufructuary).

[NOTE: Observe however that the law does NOT require the naked owner to make them. If he does not want to, it is also all right. What is important is that if made, the expenses must be borne by the naked owner.]

[NOTE: Also the clause “If the owner should make the extraordinary repairs.” This means that he is not required by the law to make them, nor can he be compelled by the usufructuary to make them. (See 4 Manresa 488-489).]

- (b) those in 1(b) – the NAKED OWNER (whether or not he is notified).

[NOTE: Again here, he cannot be compelled by the usufructuary to make them, but HERE the usufructuary is allowed to make them, with the right to get the increase in value and the right of RETENTION (till paid) at the termination of the usufruct, provided that there was NOTIFICATION by the usufructuary and FAILURE to repair by the naked owner.]

- (c) those in 1(c) — the NAKED OWNER (whether or not he has been notified). (Here the usufructuary *cannot* compel the naked owner to make them, nor is the *usufructuary allowed* to make them, even if the naked owner has failed to make them. This is because there is *no necessity* for preservation here.).

(3) Reason Why Generally the Naked Owner Pays for the Extraordinary Repairs

It is his *property*.

(4) Right of Naked Owner If He Makes the Extraordinary Repairs

He can demand from the usufructuary the LEGAL interest on the *amount* for the *duration* of the usufruct. *Reason*: The usufructuary has really benefited, otherwise the thing may not properly be used.

(5) Requisites Before Usufructuary Is Allowed to Make Extraordinary Repairs

- (a) There must be due notification to naked owner of *urgency*.
- (b) The naked owner *failed* to make them.
- (c) The repair is needed for preservation.

(6) Right of Usufructuary Who Has Made Extraordinary Repairs

- (a) get increase in value (PLUS Value) (*Art. 594*) or get reimbursement of expenses. (*Art. 612*).

(To compute *increase in value*, get the difference between the value BEFORE and the value AFTER the repairs). (*4 Manresa 489*).

- (b) right of RETENTION till paid (*Art. 612*) (reimbursement is to be made only at the END of the usufruct).

Art. 595. The owner may construct any works and make any improvements of which the immovable in usufruct is susceptible, or make new plantings thereon if it be rural, provided that such acts do not cause a diminution in the value of the usufruct or prejudice the right to the usufructuary.

COMMENT:

(1) Constructions, Improvements, and Plantings by the Naked Owner

Although the property is in the possession of the usufructuary, the naked owner may still —

- (a) construct works
- (b) make improvements
- (c) make new plantings (if rural)

PROVIDED:

- (a) the value of the usufruct is not diminished
- (b) or the right of the usufructuary is not prejudiced.

(2) Effect of Increase in the Value of the Usufruct

If because of said constructions or plantings, the value of the usufruct increases —

- (a) the usufructuary profits by said increase (for he will still be entitled to the use and fruits thereof);
- (b) the usufructuary does not have to pay legal interest on the improvement. *Reason:* This was a VOLUNTARY act of the naked owner. (*See 4 Manresa 491-492*).

Art. 596. The payment of annual charges and taxes and of those considered as a lien on the fruits, shall be at the expense of the usufructuary for all the time that the usufruct lasts.

COMMENT:**(1) What Charges or Taxes the Usufructuary Must Pay**

The *usufructuary* should pay for:

- (a) the annual charges (on the fruits)
- (b) the annual taxes on the fruits
- (c) theoretically, also the *annual* taxes on the land (including the real estate tax). (*Quirante v. Quirante, CA [40 O.G.] 4th (Supp.), No. 8, p. 242*). (*CONTRA: Rizal, Mercado v. Hidalgo, 67 Phil. 608*, where the Supreme Court who, months previous to the Quirante case (Court of Appeals), said “the land tax directly burdens the *capital* and should be paid by the naked owner.”). (Manresa believes that indeed annual taxes, being paid annually, should be charged against the usufructuary since it is he who possesses the land during said period. [*See 4 Manresa 493*]). Upon the other hand, the Supreme Court ruling concurs with Sanchez Roman’s opinion that taxes and charges should be paid by the usufructuary only when they can be considered as liens on the fruits. (*See 3 Sanchez Roman 587*).

[*NOTE*: According to the Code Commission, the term “*taxes*” in Art. 596 includes LAND TAXES, considering the fact that in the Philippines, land taxes are based on the value of the land as affected by the FRUITS that are produced./]

Ruling as to who should pay the Land Taxes.

**The Board of Assessment Appeals of Zamboanga
del Sur v. Samar Mining Company
L-28034, Feb. 27, 1971**

HELD: In the instant case, the court cited *Bislig Bay Lumber Co., Inc. v. Prov'l. Gov't. of Surigao, 100 Phil. 303* which stated among other things that “it is well-settled that a real property tax, being a burden upon the capital, should be paid by the owner of the land, and not by a usufructuary.” (*Mercado v. Rizal, 67 Phil. 608; Art. 597, Civil Code*).

(2) Other Charges

Other examples of charges on the fruits payable by the usufructuary:

- (a) ordinary repairs
- (b) necessary cultivation expenses. (*See 4 Manresa 493*).

(3) Effect of Payment of the Annual Real Property Tax

Just because the usufructuary pays for the annual land taxes, it does not necessarily follow that he has adverse possession over the land, for after all, it is he who must pay for said taxes. (*Quirante v. Quirante, supra*).

Art. 597. The taxes which, during the usufruct, may be imposed directly on the capital, shall be at the expense of the owner.

If the latter has paid them, the usufructuary shall pay him the proper interest on the sums which may have been paid in that character; and, if the said sums have been advanced by the usufructuary, he shall recover the amount thereof at the termination of the usufruct.

COMMENT:**(1) Taxes Which are Imposed Directly on the Capital**

The naked owner pays for taxes imposed directly on the capital (provided they are not *annual* – example, the estate tax). (*See preceding article*.)

(2) Rules

- (a) If paid by naked owner, he can demand *legal interest* on the sum paid. (*Reason: The usufructuary is enjoying the property*).
- (b) If advanced (*in the meantime*) by the usufructuary, said usufructuary —

- 1) should be REIMBURSED the amount paid *without* legal interest.
- 2) is entitled to RETENTION (till paid). (*Art. 612*).

[NOTE: Reimbursement should be made, not immediately after advancing, but only at the TERMINATION of the usufruct, provided advance had been made VOLUNTARILY. If the usufructuary had been forced to pay (as when the tax had been deducted from his share of the fruits, reimbursement, with damages, should be made immediately thereafter). (See Rizal Mercado v. Hidalgo, supra).]

Art. 598. If the usufruct be constituted on the whole of a patrimony, and if at the time of its constitution the owner has debts, the provisions of Articles 758 and 759 relating to donations shall be applied, both with respect to the maintenance of the usufruct and to the obligation of the usufructuary to pay such debts.

The same rule shall be applied in case the owner is obliged, at the time the usufruct is constituted, to make periodical payments, even if there should be no known capital.

COMMENT:

(1) When Usufructuary Has to Pay For the Debts of the Naked Owner

- (a) A distinction must be made as to whether there was a stipulation to pay for the debts of the naked owner, or not.
- (b) There being no stipulation regarding the payment of debts, the donee shall be responsible therefor only when the donation has been made in fraud of creditors.

The donation is always presumed to be in fraud of creditors, when at the time thereof, the donor did not reserve sufficient property to pay his debts prior to the donation. (*Art. 759, Civil Code*).

- (c) When the donation imposes upon the donee the obligations to pay the debts of the donor, if the clause does not contain any declaration to the contrary, the former is understood to be liable to pay only the debts which appear to have been previously contracted. In no case shall the donee be responsible for debts exceeding the value of the property donated, unless a contrary intention clearly appears. (*Art. 758, Civil Code*).

(2) Applicability of the Article

Art. 598 applies:

- (a) if the usufruct is a UNIVERSAL ONE (constituted on the WHOLE of a patrimony).
- (b) and the naked owner —
 - 1) has *debts*
 - 2) or is obliged to make periodical payments (whether or not there be known capital).

(3) Donation of Everything Except the Usufruct

Art. 598 particularly applies if a person donates *everything* but reserves to him the usufruct thereof. (*See Art. 750*).

Art. 599. The usufructuary may claim any matured credits which form a part of the usufruct if he has given or gives the proper security. If he has been excused from giving security or has not been able to give it, or if that given is not sufficient, he shall need the authorization of the owner, or of the court in default thereof, to collect such credits.

The usufructuary who has given security may use the capital he had collected in any manner he may deem proper. The usufructuary who has not given security shall invest the said capital at interest upon agreement with the owner; in default of such agreement, with judicial authorization; and, in every case, with security sufficient to preserve the integrity of the capital in usufruct.

COMMENT:**(1) Rules on Usufruct of a Matured Credit**

- (a) If usufructuary has *given security, collection and investment* can be done without the approval of the court or of the naked owner.
- (b) If usufructuary has NOT given security, or when he is EXEMPTED or when there was only a *CAUCION JURATORIA*, *collection and investment* can be done only *WITH* the approval of the court *or* of the naked owner.

(2) Ownership of the Credit Collected

If the credit is collected, same belongs to the naked owner, but the usufructuary gets its usufruct.

(3) Failure to Collect Due to Usufructuary's Fault or Negligence

The usufructuary shall be liable if the credit that has matured (due and demandable) is not collected because of his fault or negligence. (*See 4 Manresa 502-503*).

Art. 600. The usufructuary of a mortgaged immovable shall not be obliged to pay the debt for the security of which the mortgage was constituted.

Should the immovable be attached or sold judicially for the payment of the debt, the owner shall be liable to the usufructuary for whatever the latter may lose by reason thereof.

COMMENT:**(1) Usufruct of Mortgaged Immovable (PARTICULAR Usufruct)**

Example:

A mortgaged his land to B and gave its usufruct to C. Since A did not pay his debt, B foreclosed the mortgage, and at the foreclosure sale, D bought the property. Can C demand anything from A?

ANS.: Yes, because A is held by law liable for the loss.

(2) How Liability of the Naked Owner May Be Extinguished

Liability of the naked owner may be *extinguished*:

- (a) by constituting a usufruct over an equivalent estate;
- (b) or by payment of a periodical pension equivalent to the loss;
- (c) or in any other similar way. (*See 4 Manresa 508-509*).

(3) Rule if Usufruct is a UNIVERSAL One

If the usufruct be a UNIVERSAL one (as when the usufruct involves the entire patrimony, some objects of which are mortgaged, the more applicable article is Art. 598 with its cross-references to Arts. 758 and 759). Thus if *no stipulation* for payment by the usufructuary is made, and the usufruct was not created to *defraud creditors*, the usufructuary has *NO DUTY* to pay off the debt. (*See 4 Manresa 510*).

(4) Mortgaging of the Usufruct Itself

Since usufruct is a real right, the usufruct (as distinguished from the property itself) may be mortgaged, not by the naked owner, but by the usufructuary. In such a case, it is the usufructuary who should pay his own debt.

(5) Pledge of a Movable

It is believed that although Art. 600 speaks only of a *mortgaged immovable*, it can also apply, by analogy, to a *pledged movable*, provided that the movable is in the *usufructuary's possession*, since in the law of pledge, it is essential that "the thing pledged be placed in the *possession* of the *creditor*, or a third person by common agreement." (*See Art. 2093*).

Art. 601. The usufructuary shall be obliged to notify the owner of any act of a third person, of which he may have knowledge, that may be prejudicial to the rights of ownership, and he shall be liable should he not do so, for damages, as if they had been caused through his own fault.

COMMENT:**(1) When Notification by the Usufructuary Is Required**

- (a) if a third party commits acts prejudicial to “the rights of ownership” (both rights of the naked owner and rights of the usufructuary, in the latter case, insofar as the naked owner is also affected — as in the case of a disturbance to the *possession*) (*See 4 Manresa 516-519*);
- (b) if urgent repairs are needed (*Art. 593*);
- (c) if an inventory (at the beginning of the usufruct) is to be made. (*Art. 583*).

(2) Effect of Non-notification

- (a) In (a), the usufructuary is liable for damages, *as if* they had been caused thru his own fault. (*Art. 601, last part*).
- (b) In (b), the usufructuary *cannot* even make the extraordinary repairs needed. (*See Art. 594*).
- (c) In (c), the inventory can go on, but the naked owner may later point out discrepancies and omissions in the inventory. (*See 4 Manresa 450-452*).

Art. 602. The expenses, costs and liabilities in suits brought with regard to the usufruct shall be borne by the usufructuary.

COMMENT:**(1) Liability for Expenses and Costs**

This article *particularly* applies only when the usufructuary has LOST the case.

(2) Defense of the Naked Ownership

The defense of the naked ownership is naturally chargeable to the naked owner. (*See 4 Manresa 521*).

Chapter 4

EXTINGUISHMENT OF USUFRUCT

Art. 603. Usufruct is extinguished:

(1) By the death of the usufructuary, unless a contrary intention clearly appears;

(2) By the expiration of the period for which it was constituted, or by the fulfillment of any resolutive condition provided in the title creating the usufruct;

(3) By merger of the usufruct and ownership in the same person;

(4) By renunciation of the usufructuary;

(5) By the total loss of the thing in usufruct;

(6) By the termination of the right of the person constituting the usufruct;

(7) By prescription.

COMMENT:

(1) Death of the Usufructuary Ends the Usufruct. Exceptions:

(a) in the case of multiple usufructs [here it ends on the death of the *last survivor*. (*Art. 611*).];

(b) in case there is a *period fixed* based on the number of years that would elapse before a person would reach a certain age (*Example: until X who is now 25 years old will become 40 years old, where the period is 15 years*), *UNLESS* the period was expressly granted only in consideration of the existence of such person, in which case it ends at the death of said person (*Art. 606*);

- (c) in case the contrary intention CLEARLY (expressly or impliedly) appears. (*TS, Oct. 1, 1919*). (*Example: A was made usufructuary only in order that he could enable his son to get a college degree. Even if A dies before the son graduates, the usufruct is deemed to continue. [See 4 Manresa 525-528].*).

(2) Expiration of the Period

- (a) *Example: If the usufruct is for 5 years, it ends at the lapse of 5 years, UNLESS the usufructuary dies prior to the end of 5 years, since as a rule, “the utmost period for which a usufruct can endure, if constituted in favor of a natural person is the lifetime of the usufructuary.” (See Eleizegue v. Lawn Tennis Club, 2 Phil. 390).*
- (b) If the usufruct is on *real property*, or on a *real right on real property*, the period must be recorded to bind third persons. (*Art. 709*).
- (c) The term should not exceed *fifty years* if the usufructuary is a juridical person (town, corporation, or association). Premature abandonment or dissolution of the juridical entity *extinguishes* the usufruct. (*Art. 605*).

(3) Fulfillment of the Resolutive Condition

- (a) *Example: A is the usufructuary of land unless he marries X. Marriage to X ends the usufruct.*
- (b) *Another example: A testator gave a parcel of land to his son (in naked ownership) and to a friend (in usufruct as long as the son remained the owner of the land). If the son sells the land to another, the usufruct in favor of the friend is extinguished. (TS, Oct. 1, 1919).*
- (c) If the usufruct is on *real property* or on *real right over real property*, the resolutive condition must be registered to bind third persons. (*Art. 709*).

(4) Merger of the Usufruct and Ownership in the Same Person

Example: H was the usufructuary of land owned by X. X died, leaving in his will, the naked ownership of the land to H.

The usufruct is extinguished because now, *H* is both the naked owner and the usufructuary. (See *Chingen v. Arguelles*, 7 Phil. 296).

(5) Renunciation or Waiver by the Usufructuary

- (a) *Example*: *A* is the usufructuary of *B*'s land. Later, *A* waived his usufruct *willingly and voluntarily*. The usufruct is now extinguished.

**City of Manila v. Monte de Piedad
5 Phil. 234**

FACTS: The City of Manila owned a parcel of land in Plaza Goiti which it gave to the Monte de Piedad in usufruct, allowing the latter to use said land for the purposes authorized in the grant. After a time, the Monte de Piedad began to *claim it as its own*. The City wanted to punish the usufructuary and inquired as to whether or not the usufructuary could be made to forfeit its usufruct under the laws in force. Because the authorities then said that the usufructuary could be made to surrender the land, the Monte de Piedad surrendered the land. *Issue*: Was there a renunciation of the usufruct here?

HELD: *No, for renunciation under the law refers to a voluntary surrender* of the rights of the usufructuary, made by him with the *intent* to so surrender them. In this case, there was a *claim of ownership* and there was also a *forced surrender*. Hence, there is no renunciation or waiver.

- (b) Renunciation, according to Manresa, must be made expressly. (4 *Manresa* 530). It is submitted, however, that since this partakes of a remission or donation, it can be made *expressly or impliedly*, as long as it is done clearly, with intent to renounce. (See *Art. 1270*). When made expressly, the formalities of a donation must be complied with. (*Art. 1270*).
- (c) Does renunciation need the naked owner's consent? *Navarro Amandi* says "no," since here, there is a mere abandonment of one's own right. (2 *Navarro Amandi* 262). It is believed, however, that renunciation is not necessarily

a mere abandonment, but an abandonment in favor of another. Thus, if *A* is the usufructuary and *B* is the naked owner, *A*'s renunciation makes *B* the complete owner, effecting, either a donation or a remission, both of which are acts of liberality, requiring the recipient's consent. (*See Arts. 1270 and 725*). In the example given, it is wrong to say that *A*'s renunciation did not make *B* full owner. It is wrong to say so, because if *B* is not yet the full owner, it means that the *usufruct still exists*, but it is clear that renunciation *extinguishes* the usufruct. (*Art. 603*).

- (d) If the renunciation is made gratuitously and in fraud of *creditors*, said creditors can rescind the renunciation, to the extent of their credits. (*Arts. 1381, 1384, 1387*).

(6) Total Loss of the Thing in Usufruct

- (a) Total loss ends the usufruct, but *not partial loss*, for in the latter case, the usufruct, continues on the remaining part. (*Art. 604*).
- (b) For total loss of a *building* (*whether or not* the land is included in the usufruct; and whether or not the building has been insured). (*See Arts. 607-608*).
- (c) For legal loss (as in the case of expropriation). (*See Art. 609*).

(7) Termination of the Right of the Person Constituting the Usufruct

- (a) *Example: A* thought he was the owner of a parcel of land. *A* gave its usufruct to *B* for 5 years. If at the end of 2 years, *C*, the real owner gets the land, it necessarily follows that *B*'s usufruct is extinguished, without prejudice of course to *B* being allowed to continue by *C*. (*See 4 Manresa 531*).
- (b) If the usufructuary has a sub-usufructuary, the sub-usufruct ends at the time the usufruct is extinguished, because by that time, the right of the usufructuary to constitute the sub-usufruct has ended. If the sub-usufructuary dies ahead of the usufructuary, the sub-usufruct ends, unless a contrary intention appears.

- (c) Death of the *naked owner* does not extinguish the usufruct for the rights of the naked owner are transmitted to his own heirs.

(8) Prescription

- (a) This refers to acquisitive prescription by a stranger either of the usufruct (here, the usufructuary is no longer entitled to the usufruct) or of the *naked ownership* (for here, the right of the person constituting the usufruct has been terminated or resolved). (*See No. 6, Art. 603*).
- (b) Mere non-user by the usufructuary of the usufruct does not terminate the usufruct, unless it is also a renunciation. (*See 4 Manresa 533*).

(9) Other Causes for the Extinguishment of Usufruct

- (a) annulment
- (b) rescission
- (c) mutual withdrawal
- (d) legal causes ending legal usufruct, as when attainment of the age of majority extinguishes parental usufruct. (*See 4 Manresa 534*).

[NOTE:

- 1) ABUSE or MISUSE of the usufruct does not extinguish it, unless by virtue of such abuse or misuse, the thing has been totally lost. (*See Art. 610*).
- 2) *Non-fulfillment* of a *suspensive* condition does *not* extinguish usufruct, for the simple reason that the usufruct never came into existence.]

Art. 604. If the thing given in usufruct should be lost only in part, the right shall continue on the remaining part.

COMMENT:

Effect of Partial Loss

The Article explains itself.

Art. 605. Usufruct cannot be constituted in favor of a town, corporation, or association for more than fifty years. If it has been constituted, and before the expiration of such period the town is abandoned, or the corporation or association is dissolved, the usufruct shall be extinguished by reason thereof.

COMMENT:

(1) Usufruct In Favor of Entities

- (a) Under Sec. 11 of the Corporation Code, 50 years are allowed for the existence of a private corporation (*See E. Paras, et al., Corporate Law Practice and Litigation, 2002 ed.*); in the case of towns or municipal corporations, a period longer than 50 years may militate against the public policy which prohibits the perpetual entailment of property.
- (b) Note the effect of *abandonment* of the town or the *dissolution* of the corporation or association.

(2) Article not Applicable to Trusts

Since trusts are different from usufructs, Art. 605 does not apply to the former such as a trust for the establishment of a high school with the governor as trustee and the townspeople the beneficiary. Said trust can continue despite the restrictions in Art. 605. (*Palad v. Governor of Quezon, L-24302, Aug. 18, 1972; see also Gov't. v. Abadilla, 46 Phil. 642.*)

Art. 606. A usufruct granted for the time that may elapse before a third person attains a certain age, shall subsist for the number of years specified, even if the third person should die before the period expires, unless such usufruct has been expressly granted only in consideration of the existence of such person.

COMMENT:

(1) Usufruct For The Time That May Elapse Before a Third Person Reaches a Certain Age

Example:

A gave B his land in usufruct until C becomes 40 years old. A constituted the usufruct when C was only 20 years old. This means that the usufruct should last for 20 years, even if C dies before attaining the age of 40. If therefore C dies at the age of 30, the usufruct in B's favor generally continues.

(2) Example of the Exception

If in the example given, B was made the usufructuary only because he had to *support* C, it follows that the usufruct was expressly constituted only in consideration of the existence of C. Thus, on C's death, the usufruct ends.

Art. 607. If the usufruct is constituted on immovable property of which a building forms part, and the latter should be destroyed in any manner whatsoever, the usufructuary shall have a right to make use of the land and the materials.

The same rule shall be applied if the usufruct is constituted on a building only and the same should be destroyed. But in such a case, if the owner should wish to construct another building, he shall have a right to occupy the land and to make use of the materials, being obliged to pay to the usufructuary, during the continuance of the usufruct, the interest upon the sum equivalent to the value of the land and of the materials.

COMMENT:**(1) Usufruct on a Building And/Or the Land Concerned**

This article distinguishes between:

- (a) a usufruct constituted both on the building and the land
- (b) and a usufruct constituted only on the building.

(2) Rules

- (a) Usufruct on BOTH building and land (but the building is

destroyed in *any manner whatsoever* before the expiration of the period of the usufruct):

- 1) The usufruct on the building is *ended*, but the usufruct on the land *continues*. (See also Art. 604).
 - 2) Therefore the usufructuary is still entitled to the *use of the land* and the *use of whatever materials of the house remain*.
 - 3) Therefore, also, if the naked owner wants to rebuild but the usufructuary *refuses*, it is the usufructuary who prevails for the use of the land is still his for the remainder of the period.
- (b) Usufruct on the building ALONE (but the building is destroyed before the termination of the period):
- 1) The usufruct on the building ends, but the usufructuary can still make use of whatever materials of the house remain.
 - 2) *Also*, the usufructuary is entitled to the use of the *land*. (Why? Because although there was no usufruct on the land, still it cannot be denied that in *using* the building before, he was also *automatically using* the land.)
 - 3) But precisely because there was *no* usufruct on the land, the naked owner has preferential right to its use. (Thus, if the naked owner wants to *rebuild*, but the usufructuary *refuses*, it is the naked owner who should prevail). [Thus also, the law states that if the owner wants to construct another building (or to rebuild), he (the naked owner) shall have a right to occupy the *land* and to make use of the materials, being OBLIGED to pay to the usufructuary, during the *continuance* (remaining part of the period) of the usufruct the *interest* (legal interest) upon the sum equivalent to the value of the land and of the materials.].
- [NOTE: There should be interest —
- a) on the *materials* — because the usufruct was on the building (including its materials);

- b) on the *land* — because although there was no usufruct on the land, still use of the building necessitated automatic use of the land.].

(3) Person At Fault Must Indemnify

NOTE the phrase “destroyed in *any manner whatsoever*” (whether thru fault, deceit, or fortuitous event). Should the destruction be due to the fault of the naked owner, usufructuary, or a third person, the person at fault must indemnify.

Art. 608. If the usufructuary shares with the owner the insurance of the tenement given in usufruct, the former shall in case of loss, continue in the enjoyment of the new building, should one be constructed, or shall receive the interest on the insurance indemnity if the owner does not wish to rebuild.

Should the usufructuary have refused to contribute to the insurance, the owner insuring the tenement alone, the latter shall receive the full amount of the insurance indemnity in case of loss, saving always the right granted to the usufructuary in the preceding article.

COMMENT:

(1) Payment of Insurance on the Tenement Held in Usufruct

This article distinguishes between a case where both the usufructuary and the naked owner share in the payment of the insurance premium; and a case where it is *only the naked owner* who pays because the usufructuary REFUSED (deliberate non-sharing and not *mere failure to contribute or lack of payment* because of ignorance of the fact that insurance is being paid). (See 4 Manresa 546).

[Note that the law does not provide for two cases:

- (a) where the usufructuary FAILED (not refused) to contribute because of ignorance or plain omission;
- (b) where the usufructuary ALONE pays the insurance premium.].

(2) Proportion in the Contribution or Sharing

Note also that the law does *not say*, in the case of *sharing*, in what proportion each must contribute. Thus, if the usufructuary contributes 1% of the premium and the naked owner gives 99%, is there a “sharing” as contemplated by the law, or should the proportion be 50-50; or should it be proportionate to their respective insurable interests?

According to Manresa, the amount respectively given is *immaterial*, and that as long as both shared in paying the first paragraph of Art. 608 applies, except if there be a stipulation between them to the contrary. (*See 4 Manresa 542-543*).

A better solution perhaps would be to make the sharing of the premiums *proportionate* to the respective insurable interests, the premium of the naked owner being based on the insurable interest of the naked ownership; that of the usufructuary being based on the insurable interest of the usufruct. The solution of Manresa may render absurd the applicability of Art. 608, if, for example, the usufructuary contributes only 1% of the insurance premium.

(3) Rules

- (a) If the Naked Owner and the Usufructuary Share in the Premiums (and the Property Is Destroyed):
 - 1) If the owner *constructs* a new building (or *rebuilds*), the *usufruct* continues on the new building. [If the cost of the new building is less than the insurance indemnity, the usufructuary should get legal interests on the difference (the amount *not* invested). If the cost is *more* than the insurance indemnity, the usufructuary enjoys the new building completely, with no obligation to give interest on the additional cost to the naked owner. (*See 4 Manresa 542-543*).].
 - 2) If the owner *does not* construct a new building or rebuild, the naked owner gets the insurance indemnity but should pay the interest (fruits) thereon to the usufructuary.

- (b) If the Naked Owner Alone Pays for the Insurance and the Usufructuary has REFUSED to Share (and the Property Is Destroyed):
- 1) The naked owner gets the *WHOLE indemnity* (with no obligation to give the interest thereon to the usufructuary).
 - 2) If usufruct was on the building *and* the land, the usufruct continues on the *land and the materials*. (The naked owner has no right to rebuild over the opposition of the usufructuary. If the naked owner rebuilds with the consent of the usufructuary, there is no usufruct on the new building, but the naked owner must pay interest on the value of the land and the old materials). (*See Art. 607*).
 - 3) If usufruct was on the building alone the naked owner may rebuild, *with* or *without* the approval of the usufructuary, but he must pay interest on the value of the land and the old materials that may have been used. (*See Art. 607*).
- (c) If the Naked Owner Alone Paid for the Insurance but There is FAILURE or OMISSION (not Refusal) of Usufructuary to Share:

Here, the effect is the same as if there was a SHARING, but the usufructuary *must reimburse* the naked owner his (the usufructuary's) share of the insurance premium. (*4 Manresa 546*).

- (d) If the Usufructuary Alone Pays the Insurance Premium:

[NOTE: It cannot be denied that a usufructuary all by himself has some sort of insurable interest on the property, more particularly, on the usufruct thereof. Under Sec. 17 of the Insurance Code (*PD 612, as amended*), the measure of an insurable interest in property is the extent to which the insured might be damnified (prejudiced) by loss or injury thereof.]

THEREFORE, it is submitted that the rules should be as follows:

- 1) The insurance indemnity (which cannot be more than the value of the usufruct) goes to the usufructuary ALONE, with no obligation on his part to share the indemnity with, nor to give legal interest thereon to, the naked owner.
- 2) The usufruct no doubt continues on the land for the remaining period of the usufruct (unless the usufruct had been constituted on the building ALONE).
- 3) And naturally also, the usufructuary has *no* obligation to construct a new building or to rebuild (whether the usufruct was constituted on the building alone, or on both the building and the land). (The usufructuary surely cannot be compelled to rebuild because the insurance indemnity will be much less than the cost of the building).

[NOTE: A contrary stipulation between the parties will of course prevail.]

Art. 609. Should the thing in usufruct be expropriated for public use, the owner shall be obliged either to replace it with another thing of the same value and of similar conditions, or to pay the usufructuary the legal interest on the amount of the indemnity for the whole period of the usufruct. If the owner chooses the latter alternative, he shall give security for the payment of the interest.

COMMENT:

Rules in Case of Expropriation

- (a) If *naked owner alone* was given the indemnity, he has the OPTION:
 - 1) to replace with equivalent thing
 - 2) or to pay to the usufructuary *legal* interest on the indemnity. (OPTION [2] requires SECURITY given by the naked owner for the payment of the interest.) (*Art. 609*).

- (b) IF BOTH the naked owner and the usufructuary were *separately* given indemnity, each owns the indemnity given to him, the usufruct being totally extinguished.
- (c) If usufructuary alone was given the indemnity, he must give it to the naked owner and compel the latter to return either the *interest* or to replace the *property*. He may even deduct the interest himself, if the naked owner fails to object.

[NOTE: Receipt by the usufructuary of the expropriation indemnity (in whole or in part) should not be considered proof of adverse possession, since after all, he is entitled to either the interest thereon or to a replacement. (See *Quirante v. Quirante*, {CA} {40 O.G.} 4th Supplement, No. 8, p. 242).]

[NOTE: In said *Quirante* case, the Court of Appeals made an error in stating that the usufructuary was entitled to the WHOLE of the indemnity if no replacement is made. The correct rule is, he is entitled only to the legal interest (fruits) on the indemnity, if no replacement is made.]

Art. 610. A usufruct is not extinguished by bad use of the thing in usufruct; but if the abuse should cause considerable injury to the owner, the latter may demand that the thing be delivered to him, binding himself to pay annually to the usufructuary the net proceeds of the same, after deducting the expenses and the compensation which may be allowed him for its administration.

COMMENT:

(1) Effect of Bad Use of the Property Held in Usufruct

- (a) BAD use — which does *not* cause considerable injury to the naked owner.

Rules: Usufruct continues; naked owner *cannot* demand administration by himself.

- (b) BAD use — which *causes* considerable injury to the naked owner (not necessarily to the thing). (*Examples: No security; no other property of usufructuary.*)

Rules: Usufruct continues; but naked owner can DEMAND delivery to and administration by him, but he will be obliged to pay NET PROCEEDS to usufructuary (that is, naked owner gets administration fee and administration expenses).

[NOTE: Being administrator merely, he cannot sell or alienate the right to the usufruct, though he may still alienate the property, without prejudice to the usufruct.]

(2) Intervention by the Court

Court will determine whether or not there is considerable injury to the naked owner. (*See 4 Manresa 548-549*).

Art. 611. A usufruct constituted in favor of several persons living at the time of its constitution shall not be extinguished until the death of the last survivor.

COMMENT:

(1) Rules in Case of a Multiple Usufruct

- (a) If constituted *simultaneously*, it is evident that all the usufructuaries must be alive (or at least conceived) at the time of constitution. Here, it is the death of the last *survivor* which, among other causes, terminates the usufruct.

Example:

If a usufruct is constituted in favor of 14 usufructuaries, and 3 of them die, will 3/14 of the usufruct (corresponding to the share of the 3 dead usufructuaries) accrue to the naked owner or will they accrue in favor of the surviving 11 usufructuaries?

ANS.: They will accrue in favor of the 11 surviving usufructuaries for the simple reason that the usufruct continues up to the death of the last survivor.

- (b) If constituted *successively* (one after the other). Art. 611 also applies. [However, to constitute successive usufructs, it is essential that —

- 1) If the successive usufructs were constituted by virtue of a DONATION, all the donees-usufructuaries must be living at the time of the *constitution-donation* of the usufruct. (*See Art. 756*).
- 2) If the successive usufructs were constituted by virtue of a last WILL, there should only be *two successive* usufructuaries; and both must have been alive (or at least conceived) at the time of the testator's death. (*See Arts. 863 and 869*).]

Art. 612. Upon the termination of the usufruct, the thing in usufruct shall be delivered to the owner, without prejudice to the right of retention pertaining to the usufructuary or his heirs for taxes and extraordinary expenses which should be reimbursed. After the delivery has been made, the security or mortgage shall be cancelled.

COMMENT:

Rights and Obligations at the Termination of the Usufruct

(a) *On the Part of the Usufructuary*

- 1) must RETURN the property to the naked owner, but he has the *rights* —
- 2) to RETAIN the property till he is reimbursed for TAXES ON THE CAPITAL (*which had been advanced by him*) (*Art. 597, par. 2*) and indispensable EXTRAORDINARY REPAIRS or EXPENSES (insofar as there has been an increase in the value). (*See Art. 594, second paragraph*).
- 3) to *remove* removable improvements (*Art. 579*) or set them off against damages he has caused. (*Art. 580*).

[NOTE: The removal may be done either during or after the usufruct.]

(b) *On the Part of the Naked Owner*

- 1) must cancel the security or mortgage (provided the usufructuary has complied with all his obligations). (*Art. 612*).
- 2) must in case of *rural leases, respect* leases made by the usufructuary, till the end of the agricultural year. (*Art. 572*).
- 3) make *reimbursements* to the usufructuary in the proper cases. (*See Arts. 597 and 594*).

(2) Meaning of ‘Landholder’ in a Tenancy Relationship not Limited to the Owner

**Esquival v. Reyes
410 SCRA 404
(2003)**

This is because the term “landholder” includes a lessee, a USUFRUCTUARY, or a legal possessor of land.

Title VII. — EASEMENTS OR SERVITUDES

Chapter 1

EASEMENTS IN GENERAL

INTRODUCTORY REMARKS

(1) 'Easement' (or 'Servitude') Defined

(It is an encumbrance imposed upon an *immovable* for the benefit of a community or one or more persons (*personal easements*) or for the benefit of another immovable belonging to a different owner (*real or predial easement*). (See Arts. 613 and 614). *Example*: the right of way across another's land. Sanchez Roman's Definition: It is a real right, constituted on another's property, corporeal and immovable whereby the owner of the latter must refrain from doing or *allowing* somebody else to do something on his property, for the benefit of another person or tenement. (2 Sanchez Roman 572).

(2) 'Easement' Distinguished from 'Servitude'

- (a) *Easement* is the name used in common law countries; *servitude*, in civil law countries.
- (b) An easement under common law is only one form of servitude (*servitus*), the latter term being broader.
- (c) An easement under common law is always *predial or real* (in favor of another realty); a *servitude* refers to a *predial or real* easement upon the one hand, or to a *personal* easement upon the other hand.

[NOTE: As used in the Civil Code, however, easement is equivalent to servitude. (See for reference *Salmond, Jurisprudence, pp. 458-460*). The term "easement"

was used instead of “servitude” because the *former* term is better known in the Philippines and because it is the accepted term in the English language, the Civil Code having been written in English.]

(3) ‘Easement’ Distinguished from ‘Lease’

LEASE	EASEMENT
(a) a real right only when it is registered or when the lease (of real property) exceeds one year.	(a) always a <i>real right</i> (whether the easement be a real or personal easement).
(b) there is rightful and limited <i>use</i> AND <i>possession</i> WITHOUT ownership (<i>Salmond, Jurisprudence, pp. 458-460</i>).	(b) there is rightful limited use WITHOUT ownership or possession.
(c) may involve real or personal property.	(c) can refer only to immovables.

(4) Effect of Acknowledgment of Easement

It is an admission that the property belongs to another. (*Bogo-Medellin Milling Co., Inc. v. CA, 407 SCRA 518 [2003]*).

Section 1

DIFFERENT KINDS OF EASEMENTS

Art. 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.

The immovable in favor of which the easement is established is called the dominant estate, that which is subject thereto, the servient estate.

COMMENT:

‘Real Easement’ Defined

The Article defines a *real* easement. The terms “dominant estate” and “servient estate” are also defined.

**Almendras v. CA
80 SCAD 465
(1997)**

Where the easement may be established on any of several tenements surrounding the dominant estate, the one where the way is *shortest* and will cause the *least* damage should be chosen. However, if these two circumstances do not concur in a single tenement, the way which will cause the least damage should be used, even if it will not be the *shortest*.

Art. 614. Servitudes may also be established for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong.

COMMENT:

(1) Personal Easement

While Art. 613 speaks of a *real easement*, Art. 614 speaks of a *personal easement*. (Both however are real rights, but will prejudice third persons only if duly registered.)

(2) ‘Personal Easement’ Distinguished From ‘Usufruct’

PERSONAL EASEMENT	USUFRUCT
(a) cannot be alienated (b) the use is specifically designated	(a) generally can be alienated (b) the use has a broader scope, and in general comprehends <i>all</i> the possible uses of the thing

(3) Characteristics of Easement

- (a) a *real right* — therefore an *action in rem* is possible against the possessor of the servient estate.
- (b) imposable only on ANOTHER'S property (hence, there can be no true easement on one's own property; thus, *merger* in the same person of the ownership of the dominant and servient estate extinguishes the easement). [*See Arts. 613, 631 (No. 1).*].
- (c) it is a *jus in re aliena* (a real right that may be alienated although the naked ownership — *nuda proprietas* — is maintained).
- (d) it is a *limitation* or *encumbrance* on the servient estate for another's *benefit*.

[NOTE: *It is an encumbrance on the servient estate, but confers a benefit on the dominant estate.*].

[NOTE:

- 1) It is essential that there be a BENEFIT otherwise there would be no easement.
- 2) It is *not* essential that the benefit be exercised. What is vital is that it can be exercised.
- 3) It is *not* essential for the benefit to be very great.
- 4) The benefit should not be so great as to completely absorb or impair the usefulness of the servient estate, for then, this would be not merely an encumbrance or a limitation but the *cancellation* of the rights of the servient estate. (*See 4 Manresa 586-587*).
- 5) The *benefit* or *utility* goes to the dominant estate (not necessarily to the owner of the dominant estate). There is *limited use* but there is NO POSSESSION.
- 6) The exercise is naturally restricted by the needs of the dominant estate or of its owner (*TS, Nov. 17, 1930*), such needs being dependent upon the progress of civilization (*Larracas v. Del Rio, [CA], 37 O.G. 287*, where the Court of Appeals held that “in an age when motor cars are a vital necessity, the dominant

proprietor has a *right* to demand a driveway for his automobile, and not a mere lane or pathway.”).

- 7) Easements, being an ABNORMAL restriction on ownership, are NOT PRESUMED, but may be imposed by LAW. (*See Art. 619*).]
- (e) there is INHERENCE (or INSEPARABILITY, from the estate to which it belongs). (*Art. 617*).
 - (f) it is INDIVISIBLE (even if the tenement be divided). (*Art. 618*).
 - (g) it is INTRANSMISSIBLE (unless the tenement affected be also transmitted or alienated). (*4 Manresa 621*).
 - (h) it is PERPETUAL (as long as the dominant and/or the servient estate exists unless sooner extinguished by the causes enumerated in the law). (*4 Manresa 621; see also Art. 631*).

(4) No Easement on Personal Property

There can be no easement imposed on personal property; only immovables (not as defined by the Code, but those which really *cannot* be moved) may be burdened with easements. (*See 4 Manresa 584*). Such immovables include lands, buildings, roads. (*4 Manresa 584*).

(5) Some Easements

- (a) A dam supplying water confers a benefit, and if there is an easement, the dam cannot be destroyed. (*See Relova v. Lavares, 9 Phil. 144*).
- (b) There is an easement when someone is granted the right to maintain wires across a parcel of land belonging to another. (*TS, Oct. 21, 1920*).

Art. 615. Easements may be continuous or discontinuous, apparent or non-apparent.

Continuous easements are those the use of which is or may be incessant, without the intervention of any act of man.

Discontinuous easements are those which are used at intervals and depend upon the acts of man.

Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same.

Non-apparent easements are those which show no external indication of their existence.

COMMENT:

Definition of Certain Kinds of Easements

See Comments under the next Article.

Art. 616. Easements are also positive or negative.

A positive easement is one which imposes upon the owner of the servient estate the obligation of allowing something to be done or of doing it himself, and a negative easement, that which prohibits the owner of the servient estate from doing something which he could lawfully do if the easement did not exist.

COMMENT:

(1) Classification of Easements

- (a) *According to Party Given the Benefit (Real or Personal Easements).*
- 1) *real (or predial)* — for the benefit of another immovable belonging to a different owner (*Example: Easement of water where lower estates are obliged to allow water naturally descending from upper estates to flow into them [lower estates]. [See Art. 637]. [Art. 613].*).
 - 2) *personal easement* — for the benefit of one or more persons or of a community (not the owner of the servient estate). (*Example: Easement of right of way for the passage of livestock [See Art. 657] [Art. 614] or right of way for the community. [See North Negros Sugar Co. v. Hidalgo, 63 Phil. 664].*).

(b) *According to the Manner They Are Exercised (Continuous or Discontinuous):*

- 1) *continuous easements* — their use is incessant, or may be incessant, without the intervention of any act of man. (Examples: *The easement of drainage, the right to support a beam on another's wall. [See 4 Manresa 597].*) [NOTE: For an easement to be considered "continuous," its use does not have to be incessant; it is enough that the use MAY BE incessant.]
- 2) *discontinuous easements* — they are used at intervals and depend upon the acts of man. (Example: *Easement of right of way, because it can be exercised only if a man passes or puts his feet over somebody else's land. [See 4 Manresa 597]. [See Haffman v. Shoemaker, 71 SE 198].*)

[NOTE: For legal purposes (as for acquisitive prescription), the easement of aqueduct is considered CONTINUOUS, even though the flow of water may not be continuous, or its use depends upon the needs of the dominant estate, or upon a schedule of alternate days or hours. (Art. 646).]

[NOTE: While both the continuous and discontinuous easements, as easements may be continuous (*permanent*), their EXERCISE may be continuous or discontinuous. (See 4 Manresa 597).]

[NOTE: Query: *Is the easement of light and view a continuous or a discontinuous easement?*

ANS.: While it is true that to construct a window is an act of man, still once constructed, the easement *remains*. Hence, we can say that the easement of light and view is a CONTINUOUS, not a discontinuous easement. For indeed while all easements require human actions for *establishment*, not all require human actions for exercise. (See 4 Manresa 598-599).]

(c) *According to whether or not their Existence is Indicated (Apparent and non-apparent Easements):*

- 1) *apparent easements* — those made known and continually kept in view by external signs that reveal the use and enjoyment of the same. [*Examples: Right of way when there is an alley or a permanent path; dam; window in a party wall visible to both owners. (See 4 Manresa 600).*].

[*NOTE: The mark or sign need not be seen, but should be susceptible of being seen. (4 Manresa 600).*].

[*NOTE: The easement of aqueduct is considered always apparent (Art. 646), whether or not it can be seen. (4 Manresa 599).*].

- 2) *non-apparent easements* — they show no external indication of their existence. [*Examples: In general, negative easements, easement of not building to more than a certain height, easement of lateral and sub-jacent support; easement of intermediate distances. (See 4 Manresa 599-601). Also a right of way if there is no visible path or alley. (See 4 Manresa 600).*].
- (d) *According to the Purpose of the Easement or the Nature of the Limitation (Positive and Negative).*
- 1) *positive easement:* Here the owner of the servient estate is obliged (a) to allow something to be done on his property (*servitus in patendo*) or (b) to do it himself (*servitus in faciendo*). Positive easements are also termed “servitudes of SUFFERANCE or INTRUSION or SERVICE,” because something is being done on the servient estate. [*Examples: Easement of light and view in a party wall (See Art. 668, par. 1; see also TS, Jan. 8, 1908; Cortes v. Yu Tibo, 2 Phil. 24), right of way, duty to cut off tree branches extending over the neighboring estates. (See 4 Manresa 603-605).*].
 - 2) *negative easement:* Here the owner of the servient estate is PROHIBITED to do something which he could lawfully do were it not for the existence of the easement. (Art. 616). (*Example: Easement of light and view when the window or opening is on one’s*

own wall or estate. [*See Cortes v. Yu Tibo, 2 Phil. 24; Art. 668, par. 2.*]. (Negative easements may also be called “servitudes of ABSTENTION or LIMITATION or RESTRICTION”).

- (e) *According to the RIGHT GIVEN:*
- 1) right to *partially* use the servient estate. (*Example: right of way.*)
 - 2) right to get *specific materials or objects* from the servient estate. (*Example: easement of drawing water.*)
 - 3) right to participate in ownership. (*Example: easement of party wall.*)
 - 4) right to impede or prevent the neighboring estate from performing a specific act of ownership. (*Example: easement of intermediate distances as when the servient estate cannot plant trees without observing certain distances.*)
- (f) *According to the Source or Origin and Establishment of the Easement (Voluntary, Legal, Mixed Easements):*
- 1) *voluntary* — constituted by will or agreement of the parties or by a testator. [*NOTE: Even if a voluntary easement — easement by grant — becomes also a legal easement, or an easement by necessity, it is still a property right, which continues even if the necessity has ended. (Benedicto v. Court of Appeals, L-22733, Sept. 25, 1968).*].
 - 2) *mixed* — created partly by agreement and partly by the law.
 - 3) *legal* — those constituted by law for public use or for private interest.
- [Examples of Legal Easement:*
- a) waters. (*Arts. 637-648.*)
 - b) right of way. (*Arts. 649-657.*)
 - c) party wall. (*Arts. 649-657.*)

- d) light and view. (*Arts. 667-673*).
- e) drainage of buildings. (*Arts. 674-676*).
- f) intermediate distances. (*Arts. 677-681*).
- g) against nuisances. (*Arts. 682-683*).
- h) lateral and subjacent support. (*Arts. 684-687*).*J.*

(2) Resume of Classification

- (a) According to party given *benefit*:
 - 1) Real or predial
 - 2) Personal
- (b) According to manner of *exercise*:
 - 1) Continuous
 - 2) Discontinuous
- (c) According to whether or not *existence is indicated*:
 - 1) Apparent
 - 2) Non-apparent
- (d) According to the *purpose* of the *easement* or the *nature* of the *limitation*:
 - 1) Positive (Sufferance or Intrusion)
 - 2) Negative (Abstention or Restriction)
- (e) According to the *right given*:
 - 1) Partial use
 - 2) Getting of specific material
- (f) According to *source* or *origin*:
 - 1) voluntary
 - 2) legal
 - 3) mixed

(3) Some Decided Cases**Relova v. Lavarez
9 Phil. 149**

FACTS: Relova owned a parcel of riceland in Laguna, supplied with water thru a dam in Lavarez's neighboring estate. It was proved that Relova had thus been supplied with water for over 30 years. One day, Lavarez destroyed the dam, preventing the supply of water to Relova's land. Was Lavarez's action proper?

HELD: No.

**North Negros Sugar Co. v. Hidalgo
63 Phil. 664**

FACTS: A hacienda owner constructed on his hacienda a private road and allowed everybody to pass thru it FREE. But one day, the neighboring owner (Luciano Aguirre) of a tuba saloon incurred the displeasure of the hacienda owner because the laborers of the hacienda habitually became drunk in the saloon. In an attempt to force the closing of the saloon, the hacienda owner now wants to prevent by injunction the saloon owner from crossing his private road. Will the injunction prosper?

HELD: No, because this is an easement for the benefit of the community. The hacienda owner can close, if he wants to, but he *cannot, as long as it is open, discriminate* against, one person, and still allow others to cross the private road.

[NOTE: In a correct concurring and dissenting opinion, Justice Jose P. Laurel said that no easement existed, either by law (for no indemnity for the right of way had been given) nor by contract (for no agreement ever existed) nor by prescription (for there was mere tolerance or permission).J.

[NOTE: It should be observed that Justice Laurel made a slight error in that he implied the possibility of acquiring the right of way by prescription, as when there was no permission or tolerance. This is wrong because the easement of right of way is discontinuous, depending as it is on the acts of man for

its exercise (*Art. 615*), and therefore CAN NEVER BE acquired by PRESCRIPTION. (*See Arts. 620 and 622*). (*Ronquillo, et al. v. Roco, et al., L-10619, Feb. 28, 1958, cited under Art. 621, infra.*).

Cortes v. Yu Tibo
2 Phil. 24

An opening or window in one's own wall (which does not extend over another's property) can be the basis of a *negative* easement of light and view (not positive) for here, the neighboring owner may later on be *prevented* from obstructing the light and view by the construction of an overshadowing building on his own land, a thing he can lawfully construct were it not for the existence of the easement.

Abellana, Sr. v. CA
208 SCRA 316
(1992)

The use of a footpath or road may be apparent but it is NOT a continuous easement because its use is at intervals and depends upon the acts of man. A right of way is not acquirable by prescription.

The petitioner's allegation that the footpaths which were converted to subdivision roads have acquired the status of public streets, is not well taken.

Ressureccion Obra v. Sps. Victoriano
& Myrna Badua, et al.
GR 149125, Aug. 9, 2003

FACTS: Records do not reveal any agreement executed by the parties, more particularly, the payment of the proper indemnity. *Issue:* Considering the aforementioned circumstances, is the evidence ample enough to support the conclusion that there was a verbal argument on the right-of-way over the southern portion?

HELD: The evidence is not ample enough. Moreso, since a right-of-way is an interest in the land, any agreement creating

it should be drawn and executed with the same formalities as a deed to a real estate, and ordinarily must be in writing. (25 *Am. Jur. 2d Sec. 20, pp. 431-432*). In the case at bar, no written instrument on this agreement was adduced by respondents.

Art. 617. Easements are inseparable from the estate to which they actively or passively belong.

COMMENT:

(1) ‘Inseparability’ of Easements

Meaning of “inseparable”

The word “inseparable” indicates that independently of the immovable to which they are attached, easements do not exist.

(2) Consequences of Inseparability

- (a) Easements cannot be sold or donated or mortgaged *independently* of the real property to which they may be attached. (See 4 *Manresa 607-608*). This does *not* mean, however, that a person cannot grant an easement of right of way, for example, unless he also sells the land. It merely means that when an easement is granted, such easement refers to a *particular* parcel of land.
- (b) Registration of the dominant estate under the Torrens system without the registration of the voluntary easements in its favor, does *not* extinguish the easements; but registration of the *servient* estate without the registration of the easements burdening it extinguishes said voluntary easements. (*Santos v. Reyes, 46 O.G. No. 15, p. 3140 [CA]*). Actual knowledge of third persons is equivalent to registration in that if they have actual knowledge of the existence of the easement, they are bound by the same, *even though no registration* has been made. (See *Mendoza v. Rosel, 74 Phil. 87*).

[NOTE: A right of way may be either a *legal easement* or a *voluntary easement*. If, for example, there is no adequate outlet to the highway except thru the neighbor’s

land, the neighbor is obliged by law to grant a compulsory (*legal*) easement of right of way, upon payment of the proper indemnity. On the other hand, even if there is already an adequate outlet, a person may *still desire* to cross his neighbor's land. This right of way must be stipulated upon, in which case we term the easement a *voluntary one*.]

(3) Provision of the Land Registration Law

“Easements shall continue to subsist and shall be held to pass with the title of ownership until *rescinded* or *extinguished* BY VIRTUE OF THE REGISTRATION OF THE SERVIENT ESTATE (*without* the registration or annotation of the easements), or in any other manner.” (*Sec. 39, Land Registration Act – Act 496 regarding the Torrens System*). (*See also Cid v. Javier, et al., L-14116, June 30, 1961*).

[NOTE: Although as a rule, the registration of the servient estate without the registration of the voluntary easement presumably extinguishes the easement, there is *NO* extinguishment of said easement if:

- (a) the grantee or transferee of the servient estate actually knew of the existence of the unrecorded easement. (*Mendoza v. Rosel, 74 Phil. 87*). In the case of right of way, for example, the purchaser of the servient estate has no right to claim indemnity if he knew at the time of purchase that the easement existed, even if not *registered* (*Mendoza v. Rosel, supra*); or
- (b) there is an understanding or *stipulation* that the easement would continue to exist. (*Santos v. Reyes, [CA] 40 O.G. No. 15, p. 3140.*)]

Emilio Purugganan v. Felisa Paredes and Tranquilino Barreras L-23818, Jan. 21, 1976

FACTS: The lot of Emilio Purugganan was registered with a Torrens Title in 1951 with no mention of any existing easement of light and view in favor of the adjoining estate owned by Felisa Paredes. Later, Paredes claimed she is entitled to such easement because she had

been, by opening three windows facing Purugganan's lot, availing herself of the same since "time immemorial" and therefore may be considered to have acquired the same by prescription. Assuming that such use is true, does the easement still exist?

HELD: No more, because of the registration of the alleged "servient estate" (the lot of Purugganan) without the registration of such easement. In fact, since the supposed easement of light and view is not annotated on the title, it becomes immaterial whether or not such easement existed since time immemorial. (*See Sec. 39, Land Registration Act. See also Cid v. Javier, 108 Phil. 850, 853*). What Felisa Paredes should have done was to intervene in the registration of Purugganan's lot so that the easement in favor of her lot could be registered on the title of Purugganan. Unfortunately for Paredes, she did not do this.

Art. 618. Easements are indivisible. If the servient estate is divided between two or more persons, the easement is not modified, and each of them must bear it on the part which corresponds to him.

If it is the dominant estate that is divided between two or more persons, each of them may use the easement in its entirety, without changing the place of its use, or making it more burdensome in any other way.

COMMENT:

(1) 'Indivisibility' of Easements

Partition or division of an estate does not divide the easement, which continues to be *complete* in that *each* of the *dominant estates* can exercise the whole easement over *each of the servient estates*, but ONLY on the PART corresponding to each of them.

(2) Example

Estate A, the dominant estate, is divided into three, with owners, X, Y, Z having determinate parts thereof. Each of the

three may use the easement of right of way for example, provided that the *burden is not increased*.

[NOTE: The mere increase in the number of owners is not what the law means when it says that the easement *should* not be made more burdensome. (See 4 Manresa 620).].

Art. 619. Easements are established either by law or by the will of the owners. The former are called legal and the latter voluntary easements.

COMMENT:

(1) Legal and Voluntary Easements

This article distinguishes between legal and voluntary easements.

(2) Judicial Declaration That An Easement Exists

When the court says that an easement exists, it is *not* creating one (hence, there are no judicial easements); it merely *declares the existence* of an easement created either by law or by the parties or testator. (See 4 Manresa 621). (See *La Vista Association, Inc. v. CA, 86 SCAD 551 [1997]*).

Section 2

MODES OF ACQUIRING EASEMENTS

Art. 620. Continuous and apparent easements are acquired either by virtue of a title or by prescription of ten years.

COMMENT:

(1) How Easements Are Acquired

(a) If *continuous and apparent* (i.e., if they are continuous and at *the same time apparent*), they may be acquired:

- 1) BY TITLE
- 2) BY PRESCRIPTION (ten years).

- (b) If *discontinuous and apparent* (only by TITLE). (Art. 622).
- (c) If *continuous and non-apparent* (only by TITLE). (Art. 622).
- (d) If *discontinuous and non-apparent* (only by TITLE). (Art. 622).

(2) Meaning of Title

- (a) Title here does not necessarily mean document.
- (b) It means a juridical act or law sufficient to create the encumbrance.
- (c) *Examples*: law, donation, testamentary succession, contract.

[NOTE:

- 1) *Intestate succession* does *not* create an easement, for no act is involved. Hence, instead of creating an easement, it *transmits* merely an easement already existing.
- 2) Prescription is a mode of acquisition, and is generally and *ordinarily a title*, but is *not* considered as such under Art. 620 which expressly makes it **DISTINCT** from title. (*See 4 Manresa 623-625*).]

Fe P. Velasco v. Hon. Vicente N. Cusi **L-33507, July 20, 1981**

If a street or highway already exists when a Torrens Title is issued to the adjacent owner, and said street or highway is included inside the boundaries mentioned in the title, the street or highway may be regarded as an encumbrance or easement over the lot just as effectively as when said easement is recorded in the title. The action to quiet title (to have the street or highway declared petitioner's property) must necessarily fail.

(3) Acquisition by Prescription

Note that prescription under Art. 620 requires 10 years *irrespective* of the good or bad faith, the presence or absence of just title on the part of the possessor. The general rules on prescription are *not* applicable in cases of prescription provided for by *special or particular provisions*. (See Art. 1115; see also 4 Manresa 627).

(4) Acquisition by Expropriation

**Republic of the Philippines v. Phil. Long Distance
Telephone Co.
L-18841, Jan. 27, 1969**

The Court ruled that:

- (a) the Government may not compel the Phil. Long Distance Telephone Company to enter into a contract with it (re-interconnection of the government telephone system with the PLDT) — for freedom of stipulation is of the essence of our contractual system;
- (b) BUT, the Republic may in the exercise of the sovereign power of *eminent domain*, *require* the PLDT to permit interconnection between the government telephone system and that of the PLDT, as the needs of the government service may require, subject to the *payment of just compensation* to be determined by the Court. Normally, ownership of the expropriated property would result, but there is no reason why eminent domain cannot be used to merely impose a *burden or encumbrance* upon the condemned property. It is unquestionable that real property may thru expropriation, be *subjected to the easement of right of way*. The use of the PLDT's lines and services to allow interservice connection between both telephone systems is *not much different*. In either case, private property is subjected to a burden for public use and benefit.

Art. 621. In order to acquire by prescription the easements referred to in the preceding article, the time of possession shall be computed thus: in positive easement, from

the day on which the owner of the dominant estate, or the person who may have made use of the easement, commenced to exercise it upon the servient estate; and in negative easements, from the day on which the owner of the dominant estate forbade, by an instrument acknowledged before a notary public, the owner of the servient estate, from executing an act which would be lawful without the easement.

COMMENT:

(1) Applicability of Article of Easements Acquirable by Prescription

This applies only to easements that may be acquired by prescription.

[NOTE: Continuous and apparent easements may be either positive or negative depending upon whether or not a “sufferance” or an “abstention” is to be made.]

(2) Rules

- (a) If the easement is POSITIVE, begin counting the period from the day the dominant estate began to exercise it. (Thus, regarding a window in a party wall, from the day the opening or window was built). (See Art. 668, par. 1).
- (b) If the easement is NEGATIVE, begin counting from the time NOTARIAL PROHIBITION was made on the SERVIENT ESTATE (which must of course be notified of the notarial prohibition). (Code Commission Memorandum). Even under the old Civil Code, a “formal act” was required and therefore, an oral *prohibition* was NOT sufficient; *neither* was a mere *private* writing. The law requires solemn formalities because easements are in the nature of an encumbrance on the servient estate, constituting as they do, a limitation on the dominical right of the owner of the subjected property. (*Laureana A. Cid v. Irene P. Javier, et al.*, L-14116, June 30, 1960). The notarial prohibition in the acquisition of a negative easement is equivalent to the act of *direct invasion* in the case of positive easement. (*Ibid.*).

- (c) Who makes the notarial prohibition or who should commence the exercise of the easement?

ANS.: The dominant estate, thru its owner or usufructuary or possessor or legal representative; in other words, any one who desires to establish the easement. (See *4 Manresa 631*).

(3) Examples

- (a) A and B are neighbors, and they own a party wall. If A makes an opening or window in the party wall, in 2002, B can close it at anytime before 2012. Because, if by that time the window is still open, A has already acquired the easement of light and view by prescription of 10 years, counted from the opening of the window since this is POSITIVE easement. (See *Art. 668, par. 1*). A window on a party wall is something *allowed* by a co-owner to be done on his own property (owned in common) and may therefore give rise to a positive easement or easement of sufferance.
- (b) A and B are neighbors. On his building's wall, A opened a window beneath the ceiling joists to admit light in 2002. Even after 10 years (2012), B may still *obstruct* the light by constructing on his own lot a building *higher* than A's unless A makes a NOTARIAL PROHIBITION prohibiting B from making the obstruction. If in 2002, A makes the prohibition, may B still make the obstruction in 2009?

ANS.: Yes, because it is only in 2012 (ten years after the notarial prohibition) when A may be said to have acquired this NEGATIVE easement of light and view. After 2012, B may no longer obstruct. [*See Cortez v. Yu Tibo, 2 Phil. 24*, which held that a window opened on one's own wall and which *does not* extend over the neighbor's land may give rise to a NEGATIVE easement, since the neighbor may be *prohibited* to do an act (building on his own lot) which would be lawful to do if the easement did not exist. (See also *Art. 616*).].

[NOTE: Is the easement of light and view positive or negative? (BAR EXAM QUESTION)]

ANS.: It depends:

- 1) if made on one's own wall and the wall does not extend over the neighbor's land, the easement is NEGATIVE (because he only does *an act of ownership*, and to create an easement, a prohibition is required. (*Cortez v. Yu Tibo*, 2 Phil. 24; Art. 668).
- 2) if made on one's own wall which *extends* over the neighboring land (invading its atmospheric area); or if made on a PARTY WALL, the easement is created because of an act of SUFFERANCE or ALLOWANCE, thus the easement is POSITIVE. (See *Cortez v. Yu Tibo*, 2 Phil. 24, see also Art. 668).J.

(4) May the Easement of Right of Way be Acquired by Prescription? (BAR EXAM QUESTION)

ANS.: No, because it is discontinuous or intermittent. The limitation on the servient owner's rights of ownership exists only when the dominant owner actually crosses or passes over the servient estate. Since the dominant owner cannot be continually crossing the servient estate, but can do so only at intervals, the easement is necessarily of a discontinuous nature. (*Ronquillo, et al. v. Roco, et al.*, L-10619, Feb. 28, 1958).

**Ronquillo, et al. v. Roco, et al.
L-10619, Feb. 28, 1958**

FACTS: Ronquillo and a few others alleged that they had been in the continuous use of a passage way traversing the land of Roco in going to a street and the market place of Naga City from their residential land and back for more than 20 years. In 1953, however, Roco started constructing a Chapel in the middle of said passageway. Moreover, Roco also fenced the way with barbed wire, thus closing it. *Issue:* Could the easement be acquired by prescription?

HELD: No, because the use of the easement is discontinuous, since the passage way could be used only at intervals. *CONCURRING OPINION OF JUSTICE J.B.L. REYES:* No, because of the discontinuous nature of the easement. The essence

of the *servidumbre de paso* lies in the power of the dominant owner to cross the servient tenement without being prevented or disturbed by its owner. As a servitude, it is a limitation on the servient owner's rights of ownership because it restricts his right to exclude others from the property. But such limitation exists only when the dominant owner actually crosses or passes over the servient estate; because when he does not, the servient owner's right of exclusion is perfect and undisturbed. Since the dominant owner cannot be continually and uninterruptedly crossing the servient estate, but can do so only at intervals, the easement is necessarily of a discontinuous nature. Because possession of a right consists in the enjoyment of that right (Art. 423), and to enjoy a right is to exercise it, it follows that the possession (enjoyment or exercise) of a right of way is intermittent and discontinuous, and it can not be acquired by acquisitive prescription because prescription requires that the possession be continuous or uninterrupted. The case of *Mun. of Dumagas v. Bishop of Jaro* (34 Phil. 541) does not constitute authority to hold that the easement of right of way is acquirable by prescription because the *ratio decidendi* in said case lies in the application of Art. 567 of the Code of 1889, pursuant to which "when an estate is acquired by purchase, exchange, or partition is enclosed by other estates of the vendor, exchanger, or co-owner, the latter shall be obliged to grant a right of way without indemnity, in the absence of an agreement to the contrary" and the word "prescription" used in the said decision was used *not* in the sense of adverse possession for 10 or 30 years, but in the sense of "immemorial usage" that under the law anterior to the Code of 1889 was one of the ways in which the servitude of right of way could be acquired.

(5) Why Negative Easements Can Be Acquired by Prescription Despite the Fact that they are Non-Apparent

While in *general*, *negative easements* cannot be acquired by prescription since they are *non-apparent*, still the very existence of Art. 621 (insofar as it relates to negative easements), proves that in certain cases, and for *purposes of prescription*, there are negative easements that may indeed be considered "apparent," not because there are visible signs of their exist-

ence but because of the making of a notarial prohibition. (*See 2 Castan 288*). The notarial prohibition makes *apparent* what really is *non-apparent*.

Art. 622. Continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of a title.

COMMENT:

(1) Easements That May Be Acquired Only By Title

The following may be acquired only by TITLE (not prescription):

- (a) *continuous non-apparent easements* (because they are NOT PUBLIC). (*See Art. 1118*).
- (b) *discontinuous apparent easements* (because the possession is NOT UNINTERRUPTED). (*See Art. 1118*).
- (c) *discontinuous non-apparent easements* (because the possession is *neither public nor* uninterrupted). (*See Art. 1118*).

(2) Requisites of Prescription

Art. 1118 says “possession (for purposes of prescription) has to be in the concept of owner, PUBLIC, peaceful and UNINTERRUPTED.” It should also be remembered that acts of possessory character executed by virtue of a *license* or by mere *tolerance* (permission) of the owner shall NOT be available for purposes of prescription. (*Art. 1114*).

(3) Easement of Aqueduct

The easement of aqueduct is considered *continuous* and *apparent* (though not really continuous or visible), and may therefore be acquired by prescription. (*Art. 646*). The reason is that the best interest of *agriculture* demands that this easement be available thru acquisitive prescription.

Art. 623. The absence of a document or proof showing the origin of an easement which cannot be acquired by prescription may be cured by a deed of recognition by the owner of the servient estate or by a final judgment.

COMMENT:

(1) Applicability of Article

This article refers only to the following easements:

- (a) continuous non-apparent
- (b) discontinuous easements (whether apparent or not). (*Art. 622*).

(2) How Proof May Be Given of the Existence of the Easements

Proof of said easements may be:

- (a) by deed of recognition by the SERVIENT owner
- (b) final judgment (here, the court does not create the easement, but merely *declares its existence*).

[NOTE: Before final judgment is made, it is essential of course that evidence of the existence of the easement, as by oral contract, be shown to the court. (See 4 Manresa 642).]

[NOTE: As long as the existence of a voluntary easement can be proved in court, it is immaterial that there is no document evidencing the existence of the easement. (Duran, et al. v. Ramirez, et al., CA-G.R. No. 1824-R, June 27, 1949).]

Art. 624. The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons.

COMMENT:**(1) Apparent Signs of an Easement that Apparently Exists**

- (a) *Originally* (before alienation) *no* true easement exists here because there is only one owner. (*Art. 613*).
- (b) The article speaks of *apparent* visible easements. (*See 4 Manresa 637-638*).
- (c) Sign of the easement does not mean a placard or sign post, but an *outward indication* that the easement exists. (*Example: a road, showing a right of way, or the existence of windows showing a right to light and view, and a right not to have others construct taller structures that would obstruct said light and view. [Amor v. Florentino, 74 Phil. 404].*).
- (d) It is *not* essential that there be an *apparent* sign between the two estates; it is important that there is an apparent sign that the *easement exists* between the two estates (although as already stated the easement is NOT a true one). (*See 3 Sanchez Roman 650*).

Valisno v. Adriano
GR 37409, May 23, 1988

FACTS: Nicolas owns a parcel of land. He bought the land from Felipe's sister, Honorata on June 6, 1959. The land which is planted with watermelon and other vegetables adjoins that of Felipe on the bank of the Pampanga River. Both parcels of land had been inherited by Honorata and her brother Felipe, from their father. When Honorata sold the land to Nicolas, the land was irrigated by water from Pampanga River through a canal about 70 meters long, traversing Felipe's land. On Dec. 16, 1959, Felipe levelled a portion of the irrigation canal so that Nicolas was deprived of the irrigation water and prevented from cultivating his land. Nicolas filed with the Bureau of Public Works and Communications a complaint for deprivation of water rights. The Bureau rendered a decision ordering Felipe to reconstruct the irrigation canal. Felipe did not restore the canal. Instead, he asked for a

reinvestigation. Meanwhile Nicolas rebuilt the irrigation canal at his own expense.

On June 20, 1960, he sued Felipe for damages in the Court of First Instance (now Regional Trial Court) for damages. Meanwhile on Oct. 25, 1961, the Secretary of Public Works reversed the Bureau's decision by dismissing Nicolas' complaint, saying that Eladio's (Felipe's Father) water rights had ceased when his irrigation canal collapsed. His non-use extinguished the grant by operation of law. Hence, Nicolas as vendee did not acquire any water rights with the land purchased. The trial court, in its decision, held that Nicolas had no right to pass through Felipe's land to draw water from the Pampanga River. It pointed out that under Section 4 of the Irrigation Law, controversies between persons claiming a right to water from a stream are within the jurisdiction of the Public Works Secretary. His decision on the matter is final, the Court may not pass upon the validity of the Secretary's decision collaterally.

HELD: The Supreme Court reversed the trial court and ruled that the existence of the irrigation canal on defendant's land for the passage of water from the Pampanga River to Honorata's land prior to and at the time of the sale of Honorata's land to Nicolas was equivalent to a title for the vendee of the land to continue using it, as provided in Article 624 of the Civil Code. Said Article provides that "the existence of an apparent sign of easement between the two estates, established or maintained by the owner of both shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons." This provision was lifted from Article 122 of the Spanish Law of Waters. No enlightened concept of ownership can shut out the idea of restrictions thereon,

such as easements. Absolute and unlimited dominion is unthinkable, inasmuch as the proper enjoyment of property requires mutual services and forbearance among adjoining estates. The deed of sale in favor of Nicolas included the “conveyance and transfer of the water rights and improvements” appurtenant to Honorata’s property. By the terms of the deed of absolute sale, the vendor Honorata sold to Nicolas “all rights, title interest and participations over the parcel of land and the water rights and such other improvements appertaining to the property subject of the sale.” As an easement of waters in favor of Nicolas has been established, he is entitled to enjoy it free from obstruction, or disturbance such as Felipe’s act of levelling the irrigation canal to deprive him of the use of water from the Pampanga River.

(2) Rules

- (a) *Before the alienation, there is no true easement.*
- (b) *After alienation*
 - 1) There arises an easement IF the sign continues to remain there UNLESS there is a contrary agreement. (The continuance of the sign is the TITLE.) (Though the law says “continues,” in reality, the easement *arises for the first time*, because before the alienation, no true easement existed.) (*See Amor v. Florentino, 74 Phil. 404; Juan Gargantos v. Tan Yanon, et al., L-14652, June 30, 1960.*)
 - 2) There is NO easement if the sign is REMOVED or if there is an agreement to this effect.

(3) Example

A owns Estate 1 and Estate 2 and there exists a road or passageway allowing passage from Estate 1 thru Estate 2. If Estate 1 is sold to B, and Estate 2 is sold to C, the easement exists if the road still exists, unless the contrary has been provided in the deed of conveyance of either of them. (*See Santos v. Reyes, [CA] 40 O.G. No. 15, p. 3140.*)

[NOTE: If the deed be silent, the easement exists unless the sign be removed.]

NOTA BENE: The word “*passage*” does not “clearly and unmistakably” convey a meaning that includes a right to install water pipes on the access road since the ordinary meaning of the word is that it is “the act or action of passing: movement or transference from one place or point to another,” and its legal meaning is not different, which is the “act of passing transit; transition.” (*Prosperity Credit Resources, Inc. v. Court of Appeals, 102 SCAD 30, 301 SCRA 52 [1999]*).

(4) Cases

Amor v. Florentino 74 Phil. 404

FACTS: Maria Florentino, owner of a house and a warehouse gave in her will the house (and its lot) to Gabriel Florentino, and the warehouse and (its lot) to Encarnacion Florentino. The house had 4 windows, receiving light from the land on which the warehouse was situated. When Maria died, nothing was done about the windows, and Encarnacion did not make any objection. In 1911, Encarnacion sold her warehouse and lot to Severino Amor, who then destroyed the warehouse, and built a two-storey house. Since the construction obstructed the view, Gabriel Florentino objected. *Issue:* Did Gabriel’s house acquire the easement of light and view?

HELD: Yes, because upon Maria’s death, Encarnacion did not object to the continued existence of the windows. The existence of this apparent sign under Art. 624 is equivalent to title, that is, it is as if there is an implied contract between the two new owners that the easement should be constituted, since no objection had been made to the continued existence of the windows. The easement of light and view and with it, that of *altius non tollendi* (non-building of a higher structure) was constituted at the time of the death of the original owner of both properties.

Juan Gargantos v. Tan Yanon
L-14652, June 30, 1960

FACTS: Francisco Sanz owned a parcel of land with some buildings. He subdivided the property into 3 portions each of which was sold to a different person. One of the portions had a house with door and windows overlooking another portion. In 1955, the buyer of the latter portion, Gargantos, applied for a permit to construct a building on his lot. The buyer of the first portion opposed approval of the application unless Gargantos would respect the easement of light and view, and would observe the 3-meter requirement under Art. 673 of the new Civil Code. Gargantos alleged however, that no easement had ever been acquired in view of the lack of a notarial prohibition.

HELD: Gargantos should NOT construct, unless he observes the 3-meter rule. No notarial prohibition was required, for the proper Article to apply is Art. 624 regarding the existence of the apparent sign of an easement, namely, the existing doors and windows.

(5) Applicability of the Article

- (a) whether only one or both estates are alienated (*3 Sanchez Roman 650*); or
- (b) even if there be only one estate but there are two portions thereof, as long as later on there is a division of the ownership of the said portion (*4 Manresa 638-639*); or
- (c) even in the case of *division* of common property, though this is not an alienation. (*Art. 624*).

(6) When Article Does Not Apply

The article does not apply in case *both estates* or both portions are alienated to the SAME owner, for then there would be no true easement unless there is a further alienation, this time, to DIFFERENT owners.

Art. 625. Upon the establishment of an easement, all the rights necessary for its use are considered granted.

COMMENT:**(1) Grant of Necessary Rights For the Use of the Easement**

- (a) Unless the necessary rights are also granted, the right to the easement itself is rendered *nugatory*.
- (b) Necessary rights *include* repair, maintenance, accessory easements such as the right of way if the easement is for the drawing of water. (*See TS, Mar. 27, 1896*).
- (c) Termination of the principal easement necessarily ends all the secondary or accessory easements. (*See 4 Manresa 644*).

(2) Requisite To Affect or Prejudice Third Persons

To prejudice third persons, *voluntary* easements must be registered. (*Arts. 2 and 23, Spanish Mortgage Law*). Registration is of course not generally essential for legal easements since this exists as a matter of law and necessity.

Art. 626. The owner of the dominant estate cannot use the easement except for the benefit of the immovable originally contemplated. Neither can he exercise the easement in any other manner than that previously established.

COMMENT:**(1) Use of the Easement for Benefit of the Immovable Originally Contemplated**

Example: If Estate A has right of way over Estate B, it does not *necessarily* follow that Estate C (even if also owned by owner of Estate A) has right of way over Estate B.

(2) Different Exercise of the Easement

If Estate A has right of way over Estate B, owner of Estate A, it was formerly ruled, may also allow his friends to cross Estate B, unless same has been the subject of a contrary stipulation, for this does not necessarily mean that the easement has become more burdensome. Of course, if it is **ONLY** the owner of Estate A who is allowed to cross, it follows that

allowing his friends would be to increase the burden. (*See Valderrama v. North Negros Central*, 48 Phil. 482). If the right of way refers to the passage of a certain number of vehicles, can the dominant estate increase the number of said vehicles? In the *Valderrama case*, the Court ruled that this could be done. The Code Commission believes the ruling to be wrong, hence, this Article was made precisely to *PREVENT an increase in the burden or a different form of exercising the easement.*

(3) Easements Appurtenant and Easements in Gross

Art. 626 presupposes the existence of course of a *dominant estate*, otherwise the Article cannot apply. Easements with a dominant estate are called *easement appurtenant*, without the dominant estate, they are purely personal, and may thus be referred to as *easements in gross* (here, there is merely a *personal interest* in another's land). (*See Balestra v. Button*, 54 CA 2d 192, 128 Pad 816). Note, however, that a personal easement or an easement in gross, precisely because it is an easement, is still real property, not personal property. (*See CAL Jur. 2nd V. 17, p. 92*).

Section 3

RIGHTS AND OBLIGATIONS OF THE OWNERS OF THE DOMINANT AND SERVIENT ESTATES

Art. 627. The owner of the dominant estate may make, at his own expense, on the servient estate any works necessary for the use and preservation of the servitude, but without altering it or rendering it more burdensome.

For this purpose he shall notify the owner of the servient estate, and shall choose the most convenient time and manner so as to cause the least inconvenience to the owner of the servient estate.

COMMENT:

Making of Necessary Works to Use and Preserve the Easement

See Comments under Art. 630.

Art. 628. Should there be several dominant estates, the owners of all of them shall be obliged to contribute to the expenses referred to in the preceding article, in proportion to the benefits which each may derive from the work. Any one who does not wish to contribute may exempt himself by renouncing the easement for the benefit of the others.

If the owner of the servient estate should make use of the easement in any manner whatsoever, he shall also be obliged to contribute to the expenses in the proportion stated, saving an agreement to the contrary.

COMMENT:

Proportionate Contribution by the Dominant Estates

See Comments under Art. 630.

Art. 629. The owner of the servient estate cannot impair, in any manner whatsoever the use of the servitude.

Nevertheless, if by reason of the place originally assigned, or of the manner established for the use of the easement, the same should become very inconvenient to the owner of the servient estate, or should prevent him from making any important works, repairs or improvements thereon, it may be changed at his expense, provided he offers another place or manner equally convenient and in such a way that no injury is caused thereby to the owner of the dominant estate or to those who may have a right to the use of the easement.

COMMENT:

When the Place of the Easement May Be Changed by the Servient Estate

See Comments under Art. 630.

Art. 630. The owner of the servient estate retains the ownership of the portion on which the easement is established, and may use the same in such a manner as not to affect the exercise of the easement.

COMMENT:**(1) Rights of the DOMINANT ESTATE**

- (a) to exercise the easement and all necessary rights for its use including accessory easement. (*See Art. 625*).
- (b) to make on the servient estate all works necessary for the use and *preservation* of the servitude, BUT —
 - 1) this must be at his own expense
 - 2) he must NOTIFY the servient owner
 - 3) select convenient time and manner
 - 4) he must NOT alter the easement NOR render it MORE BURDENSOME. (*Art. 6271*).
- (c) to ask for a MANDATORY INJUNCTION to prevent impairment or obstruction in the exercise of the easement as when the owner of the servient estate obstructs the right of way by building a wall or fence. (*See Resolme v. Lazo, 27 Phil. 416*).
- (d) to RENOUNCE *totally* (for an easement is *indivisible*) the easement if he desires exemption from contribution to expenses. (*Art. 628*).

(2) Obligations of the DOMINANT ESTATE

- (a) He *cannot alter* the easement. (*Art. 627*).
- (b) He *cannot* make it more burdensome. (*Art. 627*).
 - 1) Thus he *cannot* use the easement except for movable originally contemplated. (*Art. 626*).
 - 2) In the easement of right of way, he cannot increase the agreed width of the path, nor deposit soil or materials outside of the boundaries agreed upon (for these acts would be increasing the burden), BUT he may allow OTHERS to use the path (this really does NOT increase the burden) except if the contrary has been stipulated. (*Valderrama v. North Negros Sugar Co., 48 Phil. 492*).

- (c) If there be several dominant estates, each must contribute to necessary repairs and expenses in proportion to the BENEFITS received by each estate (and not in proportion to the VALUE of each estate). (In the absence of proof, we should *presume* the benefits to be equal). (*4 Manresa 650-651*).
- (d) Regarding the making of repairs, see limitations in letter (b) of number 1.

(3) Rights of the SERVIENT ESTATE

- (a) to retain *ownership* and *possession* of the portion of his land affected by the easement (*Art. 630*) *even* if indemnity for the right is given (as in the case of the easement of right of way) (*Art. 649*), unless the contrary has been stipulated.
- (b) to make USE of the easement, unless deprived by stipulation (*2 Valverde 356*) provided that the exercise of the easement is not *adversely affected* (*Art. 630*) and provided further that he contributes to the expenses in proportion to BENEFITS received, unless there is a contrary stipulation. (*Art. 628, par. 2*).
- (c) to *change the location of a very inconvenient easement* provided that an equally convenient substitute is made, *without injury* to the dominant estate. (*Art. 629, par. 2*).

(4) Obligations of the SERVIENT ESTATE

- (a) He cannot impair the use of the easement. (*Art. 629, par. 1*).
- (b) He must contribute to the expenses in case he uses the easement, unless there is a contrary stipulation. (*Art. 628, par. 2*).
- (c) In case of impairment, to restore conditions to the *status quo* at his expense plus damages. (*See 3 Sanchez Roman 609*). (In case of obstruction, as when he fences the original right of way, and offers an inconvenient substitute way, which is farther and requires turning at a sharp

angle, he may be restrained by injunction). (*Resolme v. Lazo, 27 Phil. 416*).

- (d) To pay for the expenses incurred for the change of location or form of the easement (in the proper case). (*Art. 629, par. 2*).

Section 4

MODES OF EXTINGUISHMENT OF EASEMENTS

Art. 631. Easements are extinguished:

(1) By merger in the same person of the ownership of the dominant and servient estates;

(2) By non-user for ten years; with respect to discontinuous easements, this period shall be computed from the day on which they ceased to be used; and, with respect to continuous easements from the day on which an act contrary to the same took place;

(3) When either or both of the estates fall into such condition that the easement cannot be used; but it shall revive if the subsequent condition of the estates or either of them should again permit its use, unless when the use becomes possible, sufficient time for prescription has elapsed, in accordance with the provisions of the preceding number;

(4) By the expiration of the term or the fulfillment of the condition, if the easement is temporary or conditional;

(5) By the renunciation of the owner of the dominant estate;

(6) By the redemption agreed upon between the owners of the dominant and servient estates.

COMMENT:

(1) How Easements Are Extinguished — Par. 1 — MERGER

- (a) The merger must be *absolute, complete, not temporary*. (*4 Manresa 567*). Thus, if the owner of the servient estate

buys the whole portion affected, the merger is complete, and the easement is extinguished. (See 4 *Manresa* 657). But if the portion *bought* is not the portion affected, the easement naturally remains. (See 3 *Sanchez Roman* 651). (See also *Cabacungan v. Corrales*, L-6629, Sept. 30, 1954, which held that if the dominant estate acquires only a *part interest* in the servient estate, there is deemed to be *no merger*).

- (b) A, the dominant owner, sold *a retro* his estate to B, the servient owner. Is the easement extinguished?

ANS.: No, it is only *suspended* for the merger is merely temporary. It revives when the property is re-deemed. (See 3 *Sanchez Roman* 651).

- (c) The dominant estate was donated to the servient estate, but it was stipulated that if the servient owner later marries X, the property reverts to the dominant owner. Pending the resolutive condition, the merger can be considered temporary, and the easement is merely suspended. When the servient owner marries X, the easement is *revived*. If no marriage takes place (as when X *dies*), the easement really is extinguished. (See 4 *Manresa* 658).
- (d) The dominant estate was sold *unconditionally* (no right of redemption) to the servient owner. Later, the dominant owner bought his former estate. Still later, the dominant estate was sold to another person X. Is the easement revived?

ANS.: The absolute sale of the dominant estate to the servient estate merged completely and definitely the ownership of both estates in one person. Therefore, the easement was not merely *suspended*; it was totally *extinguished*. When the former dominant owner bought back his estate, it was *not* because of the exercise of the right of conventional redemption. It was a new sale. No easement was created by virtue of the sale. Therefore, there was no easement that could be revived upon the sale of the property to X.

[NOTE: The example above presupposes that the easement was a VOLUNTARY one not a legal easement.]

(2) Par. 2. — NON-USER for 10 years

- (a) Non-user refers to an easement that has once been used because one *cannot discontinue* using what one has never used. (*Francisco v. Paez, 54 Phil. 239*).

[NOTE: The right to claim or exercise some legal easements never prescribe, since they are founded on necessity, although the *manner or form of using* the legal easement may indeed prescribe, such as using a particular path. (*See 4 Manresa 662-663; Francisco v. Paez, supra*). But the legal easement of natural drainage (*Art. 637*) may be extinguished by prescription and non-user for 10 years. (*Ongsiako, et al. v. Ongsiako, et al., L-7510, Mar. 30, 1957*).]

- (b) Use by at least one co-owner of the dominant estate of the easement *prevents* prescription as to the others inasmuch as an easement is indivisible. Thus, if one co-owner has *continued* the use, the others who may not have used for more than 10 years may still use. (*See Art. 633*).
- (c) *From what time to compute*
- 1) if a *discontinuous* easement (like the right of way) — from the time *it ceased to be used*. (*Art. 631[2]*).
 - 2) if a *continuous* easement (like aqueduct) — from the day on which *an act contrary to the same took place*. (*Art. 631[2]*).
- (d) *Proof of non-user*

The proof of non-user must be indubitable and this is particularly true if the easement of right of way was annotated in the Torrens Title. (*Benedicto v. Court of Appeals, L-22733, Sep. 25, 1968*).

(3) Par. 3 — Bad Condition of the Tenement (as When Flooded) — or Impossibility of Use

This merely *suspends* (unless extinguishment is caused by the necessary period for non-user) since *possibility of use revives* the easement. (*Art. 631[3]*).

(4) Par. 4 — Expiration of the Term or Fulfillment of the Condition

Example: An easement was agreed upon to last till the owner of the dominant easement becomes a lawyer. When the condition is fulfilled, the easement ceases.

(5) Par. 5 — Renunciation (Waiver) by the Owner of the Dominant Estate

- (a) Renunciation must be express, clear, *specific* (otherwise it might be confused with *non-user*). (*See Fuentes v. Rivera, [CA] 40 O.G. [12th sup.], p. 106*). This is particularly true for discontinuous easements. (*Francisco v. Paez, 54 Phil. 239*).
- (b) While it is true that a legal easement for the benefit of private individuals may be *waived*, still the mere fact that it has not been used at all *cannot* give rise to the conclusion that there has been a waiver. (*Francisco v. Paez, supra*).

**City of Manila v. Entote
L-24776, June 28, 1974**

FACTS: Marzan owned 3 lots contiguous to each other. When she sold Lots 1 and 2, she imposed on Lot 3 a voluntary easement of right of way in favor of Lots 1 and 2. Later, the owners of Lots 1 and 2 renounced the easement since they were given a better outlet. What happens to the easement on Lot 3?

HELD: The voluntary easement has been extinguished by the voluntary renunciation of the owners of the dominant estate.

Subsidiary Issue: When the voluntary easement was created, the same was in favor of the owners of Lots 1 and 2, their heirs, assigns, their servants and “any and all other persons whomsoever.” Does the last phrase refer to everybody else, such that their renunciation would be required before the easement can be extinguished?

HELD: No, the phrase does not refer to the entire world but only to those in privy with the owners of Lots 1 and 2. This is because of the rule of “*ejusdem generis*” in legal hermeneutics.

(6) Par. 6 – Redemption Agreed Upon

- (a) This is *voluntary* redemption, existing because of an express stipulation.
- (b) The stipulation may provide conditions under which the easement would be extinguished.

(7) Other Causes for Extinguishment of Easement (Though Not Expressly Mentioned in the Code)

- (a) Expropriation of the servient estate;
- (b) Permanent impossibility to make use of the easement;
- (c) Annulment, rescission, or cancellation of the title that constituted the easement;
- (d) Abandonment of the servient estate;
- (e) Resolution of the right of the grantor to create the easement (as when there is redemption of the property sold *a retro* because of the exercise of the right of conventional redemption) (*See Art. 1618*);
- (f) Registration of the servient estate as FREE, that is, although the servient estate was registered under the Torrens system, the easement thereon was not registered (*Sec. 39, Act 496*), unless there is a *stipulation* or *actual knowledge* of the existence of the easement on the part of the transferee (*Mendoza v. Rosel, 74 Phil. 87; Santos v. Reyes, [CA] 40 No. 15, p. 3140; Laureana A. Cid v. Irene P. Javier, et al., L-14116, June 30, 1960*);
- (g) In the case of the legal easement of right of way, the *opening of an adequate outlet to the highway* extinguishes the easement, if the servient owner makes a demand for such extinguishment. (*See Manresa; Art. 655*).

[NOTE: This method of extinguishment, a special one, is expressly mentioned in the Code, insofar as the legal easement of right of way is concerned.]

Art. 632. The form or manner of using the easement may prescribe as the easement itself, and in the same way.

COMMENT:

(1) Prescription Re VOLUNTARY Easements

- (a) The easement may *itself* prescribe.
- (b) The *form or manner of using* (like number of windows, location of pathway, width of road) may also prescribe in the same manner as the easement itself. (*See TS, Mar. 3, 1942*).

(2) Prescription Re LEGAL Easements

- (a) Some legal easements do not prescribe (*Francisco v. Paez, 54 Phil. 239*), moreover, the right to exercise them cannot also prescribe. But the *manner* and *form* of using them may prescribe, as in the case of the easement of right of way. (*Francisco v. Paez, 54 Phil. 239, citing Manresa*).
- (b) But some legal easements *do prescribe*, as in the case of the servitude of *natural drainage*. (*Art. 637; Ongsiako, et al. v. Ongsiako, et al., L-7510, Mar. 30, 1957*).

**Ongsiako, et al. v. Ongsiako, et al.
L-7510, Mar. 30, 1957**

FACTS: From time immemorial before the partition of the Hacienda Esperanza, the water coming from the portion of the estate assigned to plaintiffs had been flowing regularly and without artificial obstruction towards the other areas of that same hacienda subsequently assigned to the defendants, as a result of the partition in 1929. However, the defendants, violating this legal easement in favor of the plaintiffs, constructed in 1937 dikes that obstructed the natural flow of excess water from plaintiff's higher tenement. Plaintiff sued for the destruction of the dikes. The action was filed in 1951. *Issue:* May the dikes be demolished?

HELD: No more, because the legal easement sought to be enforced had already been extinguished by non-user, and the action is therefore barred by prescription.

Art. 633. If the dominant estate belongs to several persons in common, the use of the easement by any one of them prevents prescription with respect to the others. (548)

COMMENT:

(1) Effect on Prescription of Use by One Co-Owner of the Dominant Estate

The use benefits the other co-owners, hence, there will be *no prescription* even with respect to their own shares.

Chapter 2

LEGAL EASEMENTS

Section 1

GENERAL PROVISIONS

Art. 634. Easements imposed by law have for their object either public use or the interest of private persons.

COMMENT:

(1) Legal Easements Defined

They are the easements imposed by the law, and which have for their object — either:

- (a) public *use*
- (b) or the interest of private persons

(2) Kinds of Legal Easements According to Use or Purpose

- (a) *those for public use*
- (b) *those for private interest*

(3) The Different Legal Easements

- (a) the easements relating to waters
- (b) right of way
- (c) party wall
- (d) light and view
- (e) drainage

- (f) intermediate distances
- (g) easement against nuisance
- (h) lateral and subjacent support

Art. 635. All matters concerning easements established for public or communal use shall be governed by the special laws and regulations relating thereto, and, in the absence thereof, by the provisions of this Title.

COMMENT:

How Public or Communal Easements Are Governed

- (a) special laws and regulations
- (b) the Civil Code (suppletory effect)

Art. 636. Easements established by law in the interest of private persons or for private use shall be governed by the provisions of this Title, without prejudice to the provisions of general or local laws and ordinances for the general welfare.

These easements may be modified by agreement of the interested parties, whenever the law does not prohibit it or no injury is suffered by a third person.

COMMENT:

How Legal Easements for Private Interests Are Governed

- (a) Agreement of interested parties provided not prohibited by law nor prejudicial to a third person.
- (b) in default of (a), general or local laws and *ordinances* for the general welfare.
- (c) in default of (b), the Civil Code.

[NOTE: The Civil Code (Arts. 637-648) and the Law of Waters of 1866 govern the use of waters.]

Section 2

EASEMENTS RELATING TO WATERS

Art. 637. Lower estates are obliged to receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stones or earth which they carry with them.

The owner of the lower estate cannot construct works which will impede this easement; neither can the owner of the higher estate make works which will increase the burden.

COMMENT:

(1) Enumeration of Legal Easement Relating to Waters

The following are the legal *easements relating to waters*:

- (a) natural drainage of lands. (*Art. 637*).
- (b) natural drainage of buildings. (*Art. 674*).
- (c) easement on riparian banks for *navigation, floatage, fishing, salvage*. (*Art. 638*).
- (d) easement of a dam. (*Arts. 639, 647*).
- (e) easement for *drawing water or for watering animals*. (*Arts. 640-641*).
- (f) easement of aqueduct. (*Arts. 643-646*).
- (g) easement for the construction of a *stop lock* or sluice gate. (*Art. 647*).

(2) The Specific Legal Easement of Natural Drainage of Lands

Art. 637 speaks of the legal easement — *natural drainage of lands*. This prescribes by non-user for 10 years. (*Ongsiako, et al. v. Ongsiako, et al., L-7510, Mar. 30, 1957*).

(3) What Lower Estates Are Obligated to Receive

- (a) *water* which *naturally* and *without* the *intervention* of *man* descends from the higher estates (not those collected

artificially in reservoirs, etc.). (*Art. 637, par. 1, 2 Valverde 369*).

- (b) the *stones* and *earth* carried by the waters.

(4) Duties of Servient Estate

The owner cannot construct works that would impede the easement (*Art. 637*) such as a blocking *dam*, which would divert the flow, and burden another tenement (*Osmeña v. Camara, 38 O.G. 2773*), nor can he enclose his land by ditches or fences which would impede the flow (*Lunod v. Meneses, 11 Phil. 128*) but he may *regulate or control* the descent of the water. (*Art. 113, Law of Waters*). However, should he really cause an obstruction, as when he builds a dike, the easement may be extinguished, by non-user and barred by prescription if the action to destroy the dike is brought only after more than 10 years. (*Ongsiako, et al. v. Ongsiako, et al., L-7510, Mar. 30, 1957*).

(5) Duties of the Dominant Estate

- (a) he cannot make works which will increase the burden. (*Art. 637*). (Thus, he cannot collect water, nor increase the velocity of the descent by making the ground more impervious or less absorbent.) (*See 3 Sanchez Roman 614*).
- (b) but he may construct works preventing erosion. (*Art. 114, Law of Waters*).
- (c) if the descending waters are the result of artificial development or proceed from *industrial establishments* recently set up, or are the overflow from irrigation dams, the owner of the lower estate shall be entitled to compensation for his loss or damage. (*Spanish Law of Waters cited in Lunod v. Meneses, supra*).

(6) A Contract May Extinguish a Legal Easement

Thru a contract, onerous or otherwise, a legal easement may be extinguished provided no injury is suffered by a third

person, *e.g.*, the burden of lower estates should not be increased. (*Art. 636, par. 2; see 3 Sanchez Roman 614*).

(7) No Need of Indemnity

Art. 637 does *not speak* of any indemnity. It follows that no indemnity is required as long as the conditions laid down in the article are complied with.

(8) Case

Remman Enterprises, Inc. v. CA
GR 125018, Apr. 6, 2000
124 SCAD 669

Art. 637 of the Civil Code and Art. 50 of the Water Code impose a natural easement upon the lower estate to receive the waters which naturally and without the intervention of man descend from higher states.

However, where the waters which flow from a higher state are those which are artificially collected in man-made lagoons, any damage occasioned thereby entitles the owner of the lower or servient estate to compensation.

Art. 638. The banks of rivers and streams, even in case they are of private ownership, are subject throughout their entire length and within a zone of three meters along their margins, to the easement of public use in the general interest of navigation, floatage, fishing and salvage.

Estates adjoining the banks of navigable or floatable rivers are furthermore, subject to the easement of tow path for the exclusive service of river navigation and floatage.

If it be necessary for such purpose to occupy lands of private ownership, the proper indemnity shall first be paid.

COMMENT:

(1) Easement Along Riparian Banks

This is an easement on riparian property, banks of rivers and streams.

(2) 'River Bank' Defined

A bank is a lateral strip of shore washed by the water during high tides but which cannot be said to be flooded or inundated. (See Art. 73, *Spanish Law of Waters*).

In *Hilario v. City of Manila, L-19570, Apr. 27, 1967*, the Supreme Court ruled that under the Siete Partidas, the banks of rivers belonged to the riparian owners, following the doctrine in Roman Law. But under the Law of Waters and the old Civil Code, all river banks are of public ownership, except river banks which had already become of private ownership under the Siete Partidas.

(3) The Easements Allowed

(a) on banks of rivers (whether the bank be private or public; whether the river be navigable or not), a public easement for:

- 1) navigation. (See Arts. 160, 161, *Law of Waters*).
- 2) floatage. (Art. 162, *Law of Waters*).
- 3) fishing. (Art. 163, *Law of Waters*).
- 4) salvage. (Art. 163, *Law of Waters*).

(There is no burden if for other purposes.)

(*Roxas v. City, 9 Phil. 215*).

(b) on banks of navigable or floatable rivers; also the easement of TOW PATH — for the exclusive service of river navigation and floatage. (This is easement of SIRGA.)

(4) Payment of Indemnity

- (a) if the land be of public ownership — no indemnity.
- (b) if the land be of private ownership — indemnity.

(5) Width of Zone Burdened

- (a) 3 meters along the river margins, for navigation, floatage, fishing, salvage. (Art. 638).

- (b) *tow path* —
 - 1) 2 meters — if for animals
 - 2) 1 meter — if for pedestrians. (*Art. 152, Law of Waters*).

(6) Effect If a Municipal Ordinance Makes the Easement Impossible

In the case of *Unson v. Lacson and Genato Com. Corp.*, L-7909, Jan. 12, 1957, the Supreme Court held that “the withdrawal by the City of Manila of a public alley, and the city’s subsequent leasing of the same to a private party, thus rendering it impossible for the public to use the zone of three meters along the estero, for purposes of navigation, floatage, fishing, and salvage, is contrary to Art. 638 of the new Civil Code. The authority of local governments to enact municipal ordinances is subject to the general limitation that the same shall not be repugnant to law.”

Art. 639. Whenever for the diversion or taking of water from a river or brook, or for the use of any other continuous or discontinuous stream, it should be necessary to build a dam, and the person who is to construct it is not the owner of the banks, or lands which must support it, he may establish the easement of abutment of a dam, after payment of the proper indemnity.

COMMENT:

(1) Easement Concerning a Dam

This Article speaks of the easement for the construction, abutment, or buttress of a dam (*estribo de presa*).

(2) Problem

A wants to get water from a river, but to do so, he has to construct a dam on B’s land. A must first ask B’s permission or else request for an administrative investigation to find out whether the building of the dam is essential or not. If neither

permission nor investigation is present, and a dam is constructed, what would be the consequences of *A*'s action?

HELD:

- (a) It is as if *A* had taken the law into his own hands, for in the absence of *B*'s permission, the government should have first investigated.
- (b) Since *A*'s action amounted to the taking of property *without due process* of law, the dam or construction can be considered a private nuisance, and *B* cannot be restrained if he desires to demolish same. (*Solis v. Pujeda*, 42 *Phil.* 687).

(3) Indemnity Required

Payment of indemnity is required. (*Art.* 639).

(4) Cross-Reference to a Special Law

See Commonwealth Act 383 regarding Obstruction of River Beds.

Art. 640. Compulsory easements for drawing water or for watering animals can be imposed only for reasons of public use in favor of a town or village, after payment of the proper indemnity.

COMMENT:

Easements for Drawing Water or for Watering Animals

- (a) They can be imposed only for reasons of PUBLIC USE.
- (b) They must be in favor of a TOWN or VILLAGE.
- (c) Proper indemnity must be paid.

[NOTE: See also comments under Art. 641.].

Art. 641. Easements for drawing water and for watering animals carry with them the obligation of the owners of the servient estates to allow passage to persons and animals to the place where such easements are to be used, and the indemnity shall include this service.

COMMENT:**(1) Easements Covered**

The principal easements covered by Arts. 640 and 641 are the easements for *drawing water* and *watering animals* (like cattle), but there is also an accessory easement here combined with the first, namely, the easement of right of way. (*TS, Mar. 27, 1896*).

(2) Requirements For Such an Easement to Exist

- (a) It must be for *public use*.
- (b) It must be in favor of a *town or village* (“*caserios*”), (the purpose being to facilitate the establishment of rural towns by making conveniently possible the supply of water). (*See 4 Manresa 722-723*).
- (c) The right must be sought not by one individual, but by the town or village, thru its legal representation. (*4 Manresa 722-723*).
- (d) There must be payment of the proper indemnity. (*Arts. 640-641*).
- (e) The right of way should have a maximum width of 10 meters, which cannot be altered by the owners of the servient estates although the direction of the path may indeed be changed, provided that the use of the easement is not prejudiced. (*See 4 Manresa 722-723*).

Art. 642. Any person who may wish to use upon his own estate any water of which he can dispose shall have the right to make it flow through the intervening estates, with the obligation to indemnify their owners, as well as the owners of the lower estates upon which the waters may filter or descend.

COMMENT:**Right to Acquire the Easement of Aqueduct**

See Comments under Art. 646.

Art. 643. One desiring to make use of the right granted in the preceding article is obliged:

(1) To prove that he can dispose of the water and that it is sufficient for the use for which it is intended;

(2) To show that the proposed right of way is the most convenient and the least onerous to third persons;

(3) To indemnify the owner of the servient estate in the manner determined by the laws and regulations.

COMMENT:

Four Requisites for the Legal Easement of Aqueduct

See Comments under Art. 646.

Art. 644. The easement of aqueduct for private interest cannot be imposed on buildings, courtyards, annexes, or out-houses, or on orchards or gardens already existing.

COMMENT:

On What Properties the Easement of Aqueduct Cannot Be Imposed

See Comments under Art. 646.

Art. 645. The easement of aqueduct does not prevent the owner of the servient estate from closing or fencing it, or from building over the aqueduct in such manner as not to cause the latter any damage, or render necessary repairs and cleanings impossible.

COMMENT:

Right of Owner of Servient Estate to Close or Fence the Aqueduct

See Comments under Art. 646.

Art. 646. For legal purposes, the easement for aqueduct shall be considered as continuous and apparent, even though the flow of the water may not be continuous, or its use depends upon the needs of the dominant estate, or upon a schedule of alternate days or hours.

COMMENT:

(1) 'Easement of Aqueduct' Discussed

Arts. 642 to 646 deal with the legal (compulsory) easement of *aqueduct*, the right to make water flow thru intervening estates in order that one may make use of said waters. Note that the existence of the easement of RIGHT OF WAY does not necessarily include the easement of aqueduct. Hence, in *San Rafael Ranch Co. v. Rogers (Ralph) Co.*, 154 C 76, P 1092 — it was held that the right to *dig trenches* and to *lay pipelines* for the conducting of water is *not* included in a contract granting a right of way (the rights given being merely those of INGRESS or EGRESS to and from the lot involved).

(2) Requisites to Acquire the Easement

- (a) *Indemnity* must be paid (to owners of *intervening* estates and to the owners of *lower* estates upon which the waters may filter or descend). (*Art. 642*). The amount usually depends on *duration* and inconvenience caused. (*See 2 Castan 272*).
- (b) If for *private interests*, the easement cannot be imposed on EXISTING buildings, courtyards, annexes, out-houses, orchards, or gardens (but can be on other things, like *road*, provided *no* injury is caused to said properties). (*See Art. 644*).
- (c) There must be *proof*:
 - 1) that he can dispose (*i.e.*, he has the *right to dispose*) of the water. (The right is given thru *prescription* or administrative concession.) (*See Arts. 504, 643; see also Gonzales v. Banson, 51 Phil. 15*). Whoever believes that he has the right to object, may set up an objection based on the fact that the person seek-

- ing the easement has no right to the legal use of the waters. (*See Art. 125, Law of Waters*).
- 2) that the water is SUFFICIENT for the use for which it is intended. (The use must be indicated, otherwise, it is hard to determine sufficiency.) (*4 Manresa 727*). But the use may be any kind as long as it is lawful, and may be, for example, for *irrigation*, or for a fish pond. (*See Cipriano Gonzales v. Purificacion de Dios, et al., L-3099, May 21, 1951*). [*Sufficiency, however, is a relative term, and must not be construed very literally. (See 4 Manresa 728). (Art. 643).*].
 - 3) that the proposed course is the *most convenient* and the *least onerous* to third persons and the servient estate. (*Art. 643*). The shortest distance is not necessarily that contemplated by the law. (*4 Manresa 728-729; Art. 643*).
 - 4) that proper administrative permission be obtained (that of the municipal council when municipal streets are crossed; that of the provincial board when *public roads* and *waterways* are crossed; that of the *National Government* when *navigating* canals, OR navigable or floatable rivers are crossed). (*See Revised Administrative Code*).

Gonzales v. De Dios
L-3099, May 21, 1951

FACTS: Plaintiff has a fishpond, which derives its water source from a river. But in view of another fishpond set up between the first and the river, the source of the water has been cut. Plaintiff incidentally has the necessary permit to make use of the water from the river, but the owner of the intervening fishpond refuses to grant a convenient passageway. *Issue:* Is plaintiff entitled to construct the necessary canal across the intervening fishpond, so that water may be obtained from the river?

HELD: Yes, for after all, she has the necessary permit to make use of the water and is willing to pay the

proper indemnity. Moreover, a fishpond comes within the classification of agricultural land, and is an important source of governmental revenue.

(3) Possible Ways of Making Effective the Easement

- (a) construction of an open canal (not dangerous nor very deep).
- (b) construction of a *covered or closed canal* (if so required by the legal authorities to minimize *danger*).
- (c) construction of tubes or pipes. (*See Art. 123, Law of Waters*).

(4) Obligations of the Dominant Owner

- (a) to keep the aqueduct in proper use or care. (*Art. 130, Law of Waters*).
- (b) to keep on hand necessary materials for its use. (*Art. 132, Law of Waters*).

(5) Preservation of Right of Servient Estate to Fence

The servient owner may still enclose or fence the servient estate, or even build *over* the aqueduct, so long as:

- (a) no damage is caused;
- (b) or repairs and cleanings become impossible. (*Art. 645*).

(6) Particular Characteristics of the Easement

For legal purposes (and to make the easement susceptible of *acquisitive prescription* for the benefit of agriculture, the easement is considered CONTINUOUS and APPARENT though in reality, it may not be so). (*See Art. 646*). The aqueduct may be used only at times, or may be covered or in tubes. (*See 4 Manresa 732-733*).

Art. 647. One who for the purpose of irrigating or improving his estate, has to construct a stop lock or sluice

gate in the bed of the stream from which the water is to be taken, may demand that the owners of the banks permit its construction, after payment of damages, including those caused by the new easement to such owners and to the other irrigators.

COMMENT:

Construction of a Stop Lock or Sluice Gate

Requisites:

- (a) *purpose* must be for irrigation or improvement;
- (b) the construction must be on the estate of *another*;
- (c) *damages* must be paid;
- (d) third persons should not be prejudiced. (*See 4 Manresa 734-735*).

Art. 648. The establishment, extent, form and conditions of the servitudes of waters, to which this section refers, shall be governed by the special laws relating thereto insofar as no provision therefor is made in this Code.

COMMENT:

(1) Civil Code Provisions on Easements of Waters Prevail Over Special Laws

In case of conflict between the special laws and the new Civil Code, the latter prevails.

(2) The Special Laws Referred To

The special laws referred to include:

- (a) The Spanish Law of Waters of Aug. 3, 1866 (which was extended to the Philippines by Royal Decree of Aug. 8, 1866; and published with the decree compiled by the government on Sept. 21, 1871, in the Gazette of the 24th of the same month). (*Osmeña v. Camara [CA 38 O.G. 2773]*). (*See Arts. 111-165 of said Laws*).

- (b) The Irrigation Law as amended.

[NOTE: The Spanish Law of Waters of June 13, 1879 was NEVER extended to the Philippines.]

Section 3

EASEMENT OF RIGHT OF WAY

Art. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts.

COMMENT:

(1) 'Easement of Right of Way' Defined

This is the easement or privilege by which one person or a particular class of persons is *allowed to pass over another's land*, usually thru one particular path or line. (See *Ballard v. Titus*, 157 C 673). The term "*right of way*," upon the other hand, may refer either to the *easement itself*, or simply, to the strip of land over which passage can be done. (*Anderson v. Wilson*, 48 CA 289, 191 P 1016).

(2) Requisites for the Easement

- (a) The property is surrounded by estates of *others*. (*Vda. de Baltazar v. CA*, 245 SCRA 333 [1995].).
- (b) There is no *adequate* outlet to a public highway. If outlet is thru the water, like a river or sea, under Spanish law, the easement cannot be demanded for there exists an adequate outlet (*TS, Mar. 8, 1922*); it is believed that in the Philippines, a distinction must be made, depending on *danger, convenience, and cost*.
- (c) There must be *payment* of the *proper indemnity* (but later on, the amount may be refunded when the easement ends). (*Art. 655*). (Use before indemnity is not allowed.)

**Mascariña, et al. v. Eastern
Quezon College, et al.
L-48974, Nov. 29, 1988**

Although the easement is for a laudable purpose, there is a need for the determination of the proper compensation for the servient estate. Because the parties did not agree on this matter and neither was a hearing conducted thereon, verily, the lower court may not arrogate upon itself the right to fix said compensation as well as the amount of damages for the crops and other improvements that may have to be destroyed to give effect to the easement.

- (d) It must be established at the point least prejudicial to the servient estate. (This is generally but not *necessarily*, the shortest distance). (*See Art. 650*).
- (e) The isolation must *not* be due to the proprietor's own acts (as when he has built enclosing walls). (*See Art. 649*). (*See Bacolod-Murcia Milling Co., Inc. v. Capitol Subdivision, Inc. and the Court of Appeals, L-25887, July 26, 1966*, where the Court, held that if the aforementioned requisites are not present, there is no compulsory easement of right of way.).
- (f) Demandable only by the owner or one with a real right like a usufructuary. (The lessee should ask the lessor

to demand the easement from the adjoining estates). (4 *Manresa* 739).

Jartol v. Court of Appeals
L-57641, Oct. 23, 1982

FACTS: In an extrajudicial partition of land, a *legal* easement of right of way was annotated in the deed of partition (the lot in whose favor the easement was granted had no convenient access to the highway). It was alleged that two signatures on the deed were forged, and that several signatures (of the other co-owners) had not been obtained. Can the annotation be ordered cancelled?

HELD: No, inasmuch as the easement is a legal or compulsory one (there being no access to the highway), not a mere voluntary easement. Its existence does not depend on the consent of the co-owners.

Jose Ma. Locsin, et al. v. Rafael C. Climaco
L-27319, Jan. 31, 1969

FACTS: The Hawaiian-Philippine Company, a sugar central, after the *expiration* of a contract granting the central a right of way (voluntary) thru the Hacienda San Vicente, claimed that it had a legal easement of right of way and could thus continue passing thru the Hacienda. However, the central was *not* able to satisfy all the requisites needed for such legal easement. *Issue:* Is the Central entitled to the *legal* easement of right of way?

HELD: No, for failure to meet the requirements of the law. The owner of an estate may claim a compulsory (legal) right of way only after he has established the existence of 4 requisites namely:

- (a) the estate is surrounded by other immovables, and is without adequate outlet to a public highway;
- (b) payment of the proper indemnity;
- (c) the isolation should not be due to the proprietor's own acts;

- (d) the right of way claimed is at a point least prejudicial to the servient estate and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

The *onus* or burden of proof is upon the owner of the dominant estate to show by specific averments in his complaints the existence of the requisites or pre-conditions enumerated. Incidentally, the Sugar Limitation Law (*Act 4166*) as amended, does not grant the Central the right to establish a right of way on the lands of adherent planters. It would appear from its title and declaration of policy that Act 4166 was enacted solely for the purpose of limiting and allocating the production of sugar in the Philippines, as well as regulating the processing and marketing thereof.

Ramos v. Gatchalian Realty, Inc.
GR 75905, Oct. 12, 1987

FACTS: Ramos owns a lot which he bought from Sobrina Subdivision. The subdivision provided a right of way in its subdivision plan for the buyers of its lots. The road lot, however, is still undeveloped and causes inconvenience to Ramos when he uses it to reach the public highways. Ramos filed a complaint for an easement of a right of way against Gatchalian Realty.

HELD: Ramos should have first demanded from Sobrina Subdivision the improvement and maintenance of the road lot as his right of way because it was from said subdivision that he acquired his lot and not from Gatchalian Realty. To allow Ramos access to the main road through the Gatchalian Avenue in spite of a road right of way provided by Sobrina Subdivision for its buyers simply because Gatchalian Avenue allows Ramos greater ease in going to and coming from the main thoroughfare, ignores what jurisprudence has long established that "mere inconvenience for the dominant estate is not enough to serve as basis for an easement of right of way." There must be real, not a fictitious or artificial necessity for it.

Floro v. Llenado
61 SCAD 665
(1995)

The burden of proving the existence of the prerequisites to validly claim a compulsory right of way lies on the owner of the dominant estate.

(3) The Proper Indemnity

- (a) If the passage is permanent, pay the value of land occupied by the path plus damages. (Upon extinction of the easement, the indemnity is returned without interest, for the interest is considered *rent*.) (*See Art. 655*).
- (b) If temporary, pay for the damages caused. [It is temporary when, for example, the estate is not being cultivated the whole year round, and when harvesting is only once in a while (*3rd par., Art. 649*), or when the carrying of materials is needed to improve a building. (*Art. 656*).].

(4) Classification of Right of Way

The right of way may be:

- (a) *private* (such as the right given in this Art. 649).
- (b) or *public* (one available to the *general public* — but then in such a case, the land involved would no longer be private land but a “highway” or a “public road.”] (*See Kripp v. Curtis, 71 C 62*).

(5) Easement in Favor of the Government

The only servitude which a private property owner is required to recognize in favor of the Government is the easement of a “public highway, way, private way established by law, or any government canal or lateral thereof” (*Sec. 39, Land Registration Act*), where the certificate of title does not state that the boundaries thereof have been determined. But even in this case, it is necessary that the easement should have been previously established by law, which implies that the same should have been *pre-existing* at the time of the registration of the land in order that the registered owner may be compelled to

respect it. Where the easement is *not pre-existing* and is sought to be imposed only after the land has been registered under the Land Registration Act, proper expropriation proceedings, should be had, and just compensation paid to the registered owner thereof. For, it is elementary that public use may *not* be imposed on private property without expropriation proceedings and payment of just compensation made to the owner. (*Heirs of Justo Malfore v. Director of Forestry, L-13686, Sep. 30, 1960*).

Art. 650. The easement of right of way shall be established at the point least prejudicial to the servient estate, and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest.

COMMENT:

Where the Path Should Be Established

The Article explains itself.

Art. 651. The width of the easement of right of way shall be that which is sufficient for the needs of the dominant estate, and may accordingly be changed from time to time.

COMMENT:

Width of the Path

- (a) The width may be modified from time to time depending upon the reasonable needs of the dominant estate. (*4 Manresa 746*).
- (b) Nowadays, the use of automobiles is a vital necessity, hence, the pathway should be sufficient for this. (*Larracos v. Del Rosario, [CA] 37 O.G. 287*).

Art. 652. Whenever a piece of land acquired by sale, exchange or partition, is surrounded by other estates of the vendor, exchanger, or co-owner, he shall be obliged to grant a right of way without indemnity.

In case of a simple donation, the donor shall be indemnified by the donee for the establishment of the right of way.

COMMENT:

Rule if Land of Vendor (or Exchanger or Co-Owner or Donor) is Isolated From the Highway

See Comments under Art. 653.

Art. 653. In the case of the preceding article, if it is the land of the grantor that becomes isolated, he may demand a right of way after paying an indemnity. However, the donor shall not be liable for indemnity. (n)

COMMENT:

(1) Rules if Grantor's or Grantee's Land is Enclosed

- (a) If the ENCLOSING estate is that of the grantor (seller, barterer, or co-owner but NOT donor), the grantee does *not* pay indemnity for the easement.
- (b) If the ENCLOSED estate is that of the grantor (seller, barterer, or co-owner but NOT donor), the *grantor must pay indemnity*.

(2) Nature of the Easement

The easement in Arts. 652 and 653 is in a sense a *voluntary easement* (created implicitly by the will of the parties in view of the contract or agreement entered into). It is of course compulsory in the sense that it *has* to be granted, generally without payment of any indemnity.

(3) Special Problems

- (a) A sold to B a parcel of land surrounded by other estates owned by A (Estate 1, Estate 2, Estate 3). A gave B an outlet thru Estate 1 *without* indemnity since the purchase price presumably already included the right to the easement. (*Art. 652*). Later, the outlet thru Estate 1 became useless because the highway to which it led was closed.

If *B* demands *another outlet*, is he allowed to get one? If so, must he pay indemnity?

ANS.: Yes, he can demand another outlet under Art. 649 (and must therefore PAY). He cannot take advantage of Art. 652 because after all, the outlet had already been granted once, that is, *when the sale was made*. This time, the necessity arises not because of the sale, but because of necessity itself.

- (b) *A* owns 2 estates. He sold the first (having access to the highway) to *B*. Later, he sold the second (without access) to *C*. So that *C* can gain access, he must pass thru *B*'s land. Does *C* have to pay indemnity to *B*?

ANS.: It is submitted that the answer is YES, because after all, *B* did *not sell* the land to *C*, and clearly Art. 652 cannot apply despite a decision to the contrary by the Spanish Supreme Court, which ruled *A* should take care of the indemnity. (*See TS, June 10, 1904*).

Art. 654. If the right of way is permanent, the necessary repairs shall be made by the owner of the dominant estate. A proportionate share of the taxes shall be reimbursed by said owner to the proprietor of the servient estate.

COMMENT:

Ownership of, and Repairs and Taxes on, the Path

- (a) Even though *permanent*, the path belongs to the servient estate, and he pays ALL the taxes.
- (b) BUT the dominant estate:
- 1) should pay for *repairs*
 - 2) should pay proportionate share of taxes to the servient estate (“proportionate” means the WHOLE tax for the whole estate).

Art. 655. If the right of way granted to a surrounded estate ceases to be necessary because its owner has joined it to another abutting on a public road, the owner of the servi-

ent estate may demand that the easement be extinguished, returning what he may have received by way of indemnity. The interest on the indemnity shall be deemed to be in payment of rent for the use of the easement.

The same rule shall be applied in case a new road is opened giving access to the isolated estate.

In both cases, the public highway must substantially meet the needs of the dominant estate in order that the easement may be extinguished.

COMMENT:

(1) Causes for Extinguishment of the Easement of Right of Way

- (a) opening of a new road. (*Art. 655, par. 2*).
- (b) joining the dominant estate to another (that is the latter becomes also the property of the dominant owner) which abuts, and therefore has access to the public highway. (*Art. 655, par. 1*). But the new access must be adequate and convenient. (*TS, Dec. 16, 1904*).

(2) Extinguishment Not Automatic

The extinguishment is not automatic, because the law says that the servient owner “may demand.” It follows that if he chooses not to demand, the easement remains and he has no duty to refund the indemnity. (*4 Manresa 751*).

(3) Non-Applicability of the Article to a Voluntary Easement

This article applies only to the legal or compulsory easement of right of way, NOT to a voluntary one. (*Duran and Villaroman v. Ramirez and Escolar, [CA] G.R. No. 1824-R, June 27, 1949; 47 O.G. 4247*).

(4) No Return of Indemnity in Case of Temporary Easement

If the easement is temporary, the indemnity does not have to be returned since the damage had already been caused.

Art. 656. If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him.

COMMENT:

Temporary Easement of Right of Way

- (a) The easement here is necessarily only TEMPORARY, nonetheless proper indemnity must be given.
- (b) "Indispensable" is not to be construed literally. The causing of great inconvenience is sufficient.
- (c) The owner (or the usufructuary) can make use of Art. 656. (*4 Manresa 753*).

Art. 657. Easements of the right of way for the passage of livestock known as animal path, animal trail or any other, and those for watering places, resting places and animal folds, shall be governed by the ordinances and regulations relating thereto, and, in the absence thereof, by the usages and customs of the place.

Without prejudice to rights legally acquired, the animal path shall not exceed in any case the width of 75 meters, and the animal trail that of 37 meters and 50 centimeters.

Whenever it is necessary to establish a compulsory easement of the right of way or for a watering place for animals, the provisions of this Section and those of Articles 640 and 641 shall be observed. In this case the width shall not exceed 10 meters.

COMMENT:

(1) Easement of Right of Way for the Passage of Livestock

This Article deals with *servidumbres pecuarias*.

(2) Width (Maximum)

- (a) animal path — 75 meters
- (b) animal trail — 37 meters and 50 centimeters
- (c) cattle — 10 meters (unless prior to the old Civil Code, vested rights had been acquired to a greater width).

(3) Cross-References

Arts. 640 and 641 relate to:

- (a) indemnity payment
- (b) the fact that the easement for drawing water or for watering animals can be imposed only for reasons of public use in favor of a town or village.

Section 4**EASEMENT OF PARTY WALL**

Art. 658. The easement of party wall shall be governed by the provisions of this Title, by the local ordinances and customs insofar as they do not conflict with the same, and by the rules of co-ownership.

COMMENT:**(1) Easement of Party Wall**

The easement of party wall is also called *servidumbre de medianera*.

(2) Party Wall Defined

This is a wall at the dividing line of estates. Co-ownership governs the wall, hence the party wall is necessarily a common wall. However, not all common walls are party walls. For example, a handball wall owned by two brothers, on their common lot is a common wall, but is not a party wall.

(3) Is the Easement of Party Wall Really an Easement or is it a Case of Co-Ownership?

While it is called an easement by the law, the law in some articles refers to it as a case of co-ownership or part-ownership. (See Arts. 662, 665, 666). The truth is that, it is a compulsory kind of co-ownership (FORGED INDIVISION) where the shares of each owner *cannot be separated physically* (otherwise the wall would be destroyed), although said shares may in a sense be materially pointed out. (Thus, each co-owner owns the half nearest to him.).

Art. 659. The existence of an easement of party wall is presumed, unless there is a title, or exterior sign, or proof to the contrary:

- (1) In dividing walls of adjoining buildings up to the point of common elevation;**
- (2) In dividing walls of gardens or yards situated in cities, towns, or in rural communities;**
- (3) In fences, walls and live hedges dividing rural lands.**

COMMENT:

(1) How Presumption that a Wall is a Party Wall May be Rebutted

The *presumption* (of being a party wall) is *rebutted* by:

- (a) title to the contrary
- (b) exterior signs to the contrary
- (c) proof to the contrary. (See *Case v. Heirs of Tuason*, 14 Phil. 521 and *Valenzuela v. Unson*, 32 Phil. 19).

(2) Conflict Between a Title and an Exterior Sign

A title conferring (expressly) ownership in one owner prevails over a mere exterior sign (from which, there is merely an inference).

Art. 660. It is understood that there is an exterior sign, contrary to the easement of party wall:

(1) Whenever in the dividing wall of buildings there is a window or opening;

(2) Whenever the dividing wall is, on one side, straight and plumb on all its facement, and on the other, it has similar conditions on the upper part, but the lower part slants or projects outward;

(3) Whenever the entire wall is built within the boundaries of one of the estates;

(4) Whenever the dividing wall bears the burden of the binding beams, floors and roof frame of one of the buildings, but not those of the others;

(5) Whenever the dividing wall between courtyards, gardens, and tenements is constructed in such a way that the coping sheds the water upon only one of the estates;

(6) Whenever the dividing wall, being built of masonry, has stepping stones, which at certain intervals project from the surface on one side only, but not on the other;

(7) Whenever lands inclosed by fences or live hedges adjoin others which are not inclosed.

In all these cases, the ownership of the walls, fences or hedges shall be deemed to belong exclusively to the owner of the property or tenement which has in its favor the presumption based on any one of these signs.

COMMENT:

(1) Exterior Signs Negating the Existence of a Party Wall

The article enumerates, by way of *illustration*, exterior signs *rebutting* the presumption of there being an easement of party wall (thus, instead of a party wall, we have a wall exclusively owned by a single owner). (*See Lao and De los Santos v. Heirs of Alburo, 3 Phil. 48*).

(2) Conflicting Exterior Signs

If one owner has signs in his favor, and some against him, they generally cancel each other, unless it can be shown from

the purpose of the wall that it had been made for the exclusive benefit of one. (*See 2 Valverde 383*).

Art. 661. Ditches or drains opened between two estates are also presumed as common to both, if there is no title or sign showing the contrary.

There is a sign contrary to the part-ownership whenever the earth or dirt removed to open the ditch or to clean it is only on one side thereof, in which case the ownership of the ditch shall belong exclusively to the owner of the land having this exterior sign in its favor.

COMMENT:

(1) Party Ditches or Drains

The presumption of party wall (party ditch, party drain) applies to ditches and drains opened between 2 estates.

(2) Rebuttable Presumption

The presumption is also rebuttable (*juris tantum*). Thus, if a deposit of dirt is on one side alone, the owner of that side is considered the owner of the ditch.

[*NOTE*: Some scrupulous persons however deposit dirt voluntarily not on their side, but on the opposite side of the ditch.].

Art. 662. The cost of repairs and construction of party walls and the maintenance of fences, live hedges, ditches, and drains owned in common, shall be borne by all the owners of the lands or tenements having the party wall in their favor, in proportion to the right of each.

Nevertheless, any owner may exempt himself from contributing to this charge by renouncing his part-ownership, except when the party wall supports a building belonging to him.

COMMENT:**(1) Repairs on and Construction of the Party Wall**

This article speaks of *proportionate* contribution to repairs and construction (similar to co-ownership).

(2) When Renunciation Can Be Made

Renunciation of the share of one owner in the party wall may be made, in order to free himself from the above-mentioned contribution UNLESS —

- (a) the repair *had already been* contracted for and made (for here, he would still be liable to the repairer).
- (b) he still uses the wall (as when it supports his building). (*Art. 662*). [If the building is demolished renunciation can be made. (*Art. 663*).].

(3) Requisites for the Renunciation of the Share

- (a) must be total or complete (not partial). Thus, if a person owns 1/2 of the wall, he must renounce ALL his share. He *cannot* insist on paying 1/2 of *his share* for expenses by renouncing 1/2 of his share in the wall (that is 1/2 of 1/2 or a renunciation of 1/4). (*See 4 Manresa 783; Contra; 3 Sanchez Roman 626*).

[*NOTE*: The rule is different in ordinary co-ownership, even in the case of a wall owned in common (but not a party wall). (*Example*: 2 brothers own an estate with walls. The walls are owned in common but not party walls. In ordinary co-ownership, partial renunciation is allowed. (*See Art. 488*).].

- (b) must be made *voluntarily* and with *full knowledge* of the facts.
- (c) must be made *before* the expenses are incurred.
- (d) is made with the *implied condition* that the other owner should make or pay for the repairs. (Thus, if repairs are *not* made, it is as if *no* renunciation had been done, and the co-ownership remains. Thus also, if neglect to make

the repairs makes the wall fall, co-ownership remains with the felled or destroyed wall, each owner being entitled to his share of the materials). (*See 3 Sanchez Roman 626-627*).

- (e) must be of both the share in the *wall* and the share in the *land*, for the wall cannot be used without the land. (*If, however, the wall is to be removed to some other place, there need not be a renunciation of the land originally used*).

Art. 663. If the owner of a building supported by a party wall desires to demolish the building, he may also renounce his part-ownership of the wall, but the cost of all repairs and work necessary to prevent any damage which the demolition may cause to the party wall, on this occasion only, shall be borne by him.

COMMENT:

(1) Demolition of a Building Supported by the Party Wall

See discussion under Art. 662, No. (2).

(2) Indemnity

Indemnification must be made for damages (the *simultaneous* damages or those incurred immediately *after and because of*, the demolition, not those which may occur later on). (*See 3 Sanchez Roman 627*).

Art. 664. Every owner may increase the height of the party wall, doing so at his own expense and paying for any damage which may be caused by the work, even though such damage be temporary.

The expenses of maintaining the wall in the part newly raised or deepened at its foundation shall also be paid for by him; and, in addition, the indemnity for the increased expenses which may be necessary for the preservation of the

party wall by reason of greater height or depth which has been given it.

If the party wall cannot bear the increased height, the owner desiring to raise it shall be obliged to reconstruct it at his own expense; and, if for this purpose it be necessary to make it thicker, he shall give the space required from his own land.

COMMENT:

(1) Increasing the Height of the Party Wall

This deals with the right to *increase* the height of the party wall. He who desires this:

- (a) must do so at his own expense.
- (b) must pay the necessary damages caused, even if the damage be temporary.
- (c) must bear the costs of maintenance of the portion ADDED.
- (d) must pay for the increased cost of preservation.
- (e) must reconstruct if original wall *cannot* bear the increased height.
- (f) must give the additional space (land) necessary, if wall is to be *thickened*.

(2) Exclusive Ownership of the Additions

He will however be the EXCLUSIVE owner of the ADDITIONS unless Art. 665 is availed of.

Art. 665. The other owners who have not contributed in giving increased height, depth or thickness to the wall may, nevertheless, acquire the right of part-ownership therein, by paying proportionally the value of the work at the time of the acquisition and of the land used for its increased thickness.

COMMENT:**How the Other Owners May Acquire Part-Ownership in the Additions**

The value of the additions at the time of *acquisition* by the others (*not* that at the time of construction) should be paid.

Art. 666. Every part-owner of a party wall may use it in proportion to the right he may have in the co-ownership, without interfering with the common and respective uses by the other co-owners.

COMMENT:**Use by the Co-Owners of the Wall**

The Article explains itself.

Section 5**EASEMENT OF LIGHT AND VIEW****Preliminary Considerations**

This section deals with two kinds of easements:

- (a) the easement of LIGHT — *jus luminum* (as in the case of small windows, not more than 30 cm. square, at the height of the ceiling joist, the purpose of which is to admit light, and a little air, but *not* VIEW).
- (b) the easement of VIEW — “*servidumbre prospectus*” (as in the case of full or regular windows overlooking the adjoining estate) (*Incidentally, although the principal purpose here is VIEW, the easement of light is necessarily included, as well as the easement of *altius non tollendi* [not to build higher for the purpose of obstruction].*).

Art. 667. No part-owner may, without the consent of the others, open through the party wall any window or aperture of any kind.

COMMENT:**(1) Prohibition to Make an Opening thru the Party Wall**

Example: A and B are co-owners of a party wall. A can not make an opening on the wall without the permission of B. If A were allowed to do this (without B's consent), there is a distinct possibility that A will later claim the whole wall as his in view of the *exterior sign*. (Art. 660, par. 1). Moreover, it is as if A were allowed to use the *WHOLE thickness of the wall*.

(2) Query

Suppose in the preceding example, A makes the opening without B's consent, what will be B's right?

ANS.: B can order that the opening be closed unless of course a sufficient time for prescription has elapsed — 10 years from the opening of the window. (See Art. 668, par. 1).

Art. 668. The period of prescription for the acquisition of an easement of light and view shall be counted:

(1) From the time of the opening of the window, if it is through a party wall; or

(2) From the time of the formal prohibition upon the proprietor of the adjoining land or tenement, if the window is through a wall on the dominant estate.

COMMENT:**(1) When Easement of Light and View is Positive and When Negative**

The easement of light and view is either *positive* or *negative*:

- (a) *Positive* — if the window is thru a party wall. (Art. 668, par. 1; *TS, Jan. 8, 1908*). Therefore, the period of prescription commences from the time the window is opened.

[*NOTE:* The mere opening of the window does not create the easement; it is only when after a sufficient lapse of time the window *still* remains open, that the easement of light and view is created. (Art. 668, par. 1).]

[NOTE: Even if the window is on one's own wall, still the easement would be positive if the window is on a balcony or projection extending over into the adjoining land. (*TS, Jan. 8, 1908; Fabie v. Lichauco, 11 Phil. 14*).]

- (b) *Negative* — if the window is thru one's own wall, that is, thru a wall of the *dominant estate*. (*Art. 668, par. 2*). Therefore, the time for the period of prescription should begin from the time of *notarial* prohibition upon the adjoining owner. (*Cortez v. Yu Tibo, 2 Phil. 24*). "Formal prohibition" or "formal act" (under the old Civil Code, *Art. 538*) means *not merely any writing, but one executed in due form and/or with solemnity — a public instrument*. (*Laureana A. Cid v. Irene P. Javier, et al., L-14116, June 30, 1960*).

(2) Illustrative Problems

- (a) *A* and *B* own a party wall. *A*, without *B*'s consent, made an opening in the party wall on Dec. 9, 2002. In 2003, may *B* still close the opening?

ANS.: Yes, for no easement has yet been acquired by *A*. (*See Art. 668, par. 1*).

- (b) In the preceding example, can *B* close the window on Dec. 10, 2012?

ANS.: No more, for more than 10 years have elapsed; and *A* has already acquired the easement. (*Art. 668, par. 1; Art. 620*).

- (c) *A* and *B* are adjoining owners. In 2002, *A* made an opening in his own wall. In 2007, *A* makes a formal notarial demand on *B*, prohibiting him to obstruct the view. In 2013, may *B* still set up an obstruction?

ANS.: Yes, because although more than 10 years had elapsed since the opening of the window, still *less* than 10 years have elapsed since the notarial prohibition. Remember that what *A* is trying to obtain is a *negative* easement. (*See Cortez v. Yu Tibo, supra*). Indeed no true easement has yet been acquired. *No existe verdadera servidumbre nuestra exista el derecho de impedir su uso*

– there is no true servitude or easement so long as the right to prevent its use exists.

Art. 669. When the distances in Article 670 are not observed, the owner of a wall which is not a party wall, adjoining a tenement or piece of land belonging to another, can make in it openings to admit light at the height of the ceiling joists or immediately under the ceiling, and of the size of thirty centimeters square, and, in every case, with an iron grating imbedded in the wall and with a wire screen.

Nevertheless, the owner of the tenement or property adjoining the wall in which the openings are made can close them should he acquire part-ownership thereof, if there be no stipulation to the contrary.

He can also obstruct them by constructing a building on his land or by raising a wall thereon contiguous to that having such openings, unless an easement of light has been acquired.

COMMENT:

(1) Restricted Windows

The openings or windows referred to in this article are *for light, not VIEW*, hence, the conditions or restrictions set for them. (We shall refer to them as the RESTRICTED WINDOWS.)

(2) The Restrictions Themselves

- (a) *Maximum size* – 30 cm. square (that is, not more than 30 cm. length or width).
- (b) There must be an *iron grating* imbedded in the wall.
- (c) There must be a *wire screen*.
- (d) The opening must be at the height of the ceiling joists (beams) or immediately under the ceiling (*techo*).

[NOTE: There may be several openings provided, the restrictions are complied with for every opening.

Moreover, there can be several openings in EVERY floor or story, for each floor or story has a ceiling. (*Choco v. Santamaria, 21 Phil. 132*).J.

[NOTE: Unless the easement of light has been acquired, the light of such restricted windows may still be obstructed.]

(3) Rule When Proper Distances Are Observed

When the distances are as given in Art. 670 (e.g., 2 meters from the boundary for windows with *direct views*), bigger or regular windows may be opened without the restrictions given above.

(4) Sanctions in Case of Violations

A has made *restricted windows* on his own wall for *light*. What can the adjoining or abutting owner do?

ANS.:

- (a) He can *obstruct* the light
 - 1) by constructing a higher building on his own land.
 - 2) or by raising a blocking wall (in *both cases* he *cannot* make the obstruction if the easement of light has been acquired — 10 years after notarial prohibition).
- (b) If the wall becomes a PARTY WALL, he can close the window, unless there is a stipulation to the contrary. (*See Art. 669*).

Art. 670. No windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property.

Neither can side or oblique views upon or towards such conterminous property be had, unless there be a distance of sixty centimeters.

The non-observance of these distances does not give rise to prescription.

COMMENT:**Rule on Regular or Full Windows**

See Comments under the next Article.

Art. 671. The distances referred to in the preceding article shall be measured in cases of direct views from the outer line of the wall when the openings do not project, from the outer line of the latter when they do, and in cases of oblique views from the dividing line between the two properties.

COMMENT:**(1) Rules for Regular Windows**

- (a) Arts. 670 and 671 deal with regular, full windows (as distinguished from the restricted windows referred to in Art. 669).
- (b) Regular windows can be opened provided that the *proper distances* are followed.

(2) The Proper Distances

- (a) for windows having direct (face to face) views, observe at least 2 meters distance between the wall having the windows and the boundary line.
- (b) for windows having *side* or *oblique views* (that is, one must turn his head to the right or to the left to view the adjoining land), observe a distance of at least 60 cms. between the boundary line and *nearest edge* of the window. (Art. 670). (See *Santos v. Rufino*, 70 Phil. 99).

[NOTE: The distance is shorter for oblique or side views because of the difficulty of overlooking.]

(3) Building Right on the Boundary Line

It is permissible to build even up to the boundary line provided that **NO regular windows are opened** (restricted windows are allowed). (Art. 669).

(4) Problems

- (a) On his wall, *one meter* away from the boundary line, A opened REGULAR windows with direct views. May A be ordered to close them, at any time?

ANS.: A may be ordered to close them, provided that the adjoining owner makes the demand for the closure *within* the period of 10 years from the *opening* of the window, otherwise his right of CLOSURE will be deemed prescribed. (*See Soriano v. Sternberg, 41 Phil. 212*).

[NOTE: Although the right of closure *prescribes at the end of 10 years*, the cause of action accruing from the date of the opening of the window. Still even after the lapse of said 10 years, the adjoining owner may legally *obstruct* the VIEW (and light) by constructing a building on his land or by raising a wall thereon contiguous to that having the window, under Art. 669, par. 3, BECAUSE A has NOT yet acquired the easement of view, there having been no notarial prohibition. (*See Art. 668, par. 2*).]

- (b) What is meant by the “non-observance of these distances does *not* give rise to prescription”?

ANS.: This merely means that “the MERE non-observance of these distances does *not* give rise to prescription” because this being a NEGATIVE easement, a *notarial (formal)* prohibition is still required before the period of prescription will commence to run. (*See Art. 668, par. 2*). Does the clause mean that the right to demand the closure of violating windows can never prescribe? Certainly not, although the contrary view has been expressed by a member of the Code Commission, who has opined that the ruling in *Soriano v. Sternberg, supra*, is *wrong* and precisely to reverse said rule is the purpose of the sentence, “The non-observance of these distances does not give rise to prescription” in Art. 670.

(5) Rule as to Terraces

Art. 670 applies also to terraces, if there are railings (since the railings afford protection to the viewer), but NOT if there

are *no railings* (since the lack of protection makes difficult their use as windows). (See 4 *Manresa* 803; *TS*, Dec. 15, 1916).

(6) When Article Does Not Apply

Art. 670 does not apply to the case provided for in Art. 672. (See *Masongsong v. Flores*, 57 *Phil.* 243).

Art. 672. The provisions of Article 670 are applicable to buildings separated by a public way or alley, which is not less than three meters wide, subject to special regulations and local ordinances.

COMMENT:

Rule When the Buildings Are Separated By a Public Way or Alley

The Article explains itself. Note the minimum distance of *three meters*.

Art. 673. Whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, the owner of the servient estate cannot build thereon at less than a distance of three meters to be measured in the manner provided in Article 671. Any stipulation permitting distances less than those prescribed in Article 670 is void.

COMMENT:

(1) Rule When a Right Has Been Acquired to Have Direct Views

Art. 673 speaks of a TRUE servitude (servitude of restraint or abstention) unlike Arts. 669 and 670 which do *not* really refer to easements since BOTH owners are prohibited.

(2) 'Title' Defined

"*Title*" refers to agreement, will, donation, or prescription.

(3) Examples

A and B are adjoining owners. By virtue of a contract, B agreed to give A an easement of view over his (B's) land. In the absence of any stipulation about DISTANCE, B (the servient owner) cannot construct a building on his own land at less than a distance of three meters from the boundary line (*computed according to Art. 671*). However, the distance may be increased or decreased provided that the MINIMUM distances (*2 meters; 60 centimeters*) prescribed in Art. 670 are observed. The same may be said of an easement of view acquired by prescription. (*See 4 Manresa 807-810*).

(4) Applicability of Article 673 to Easements Obtained Under Art. 624

Art. 673 applies even when the easement has been acquired under Art. 624. Thus, if an estate has easement of light and view under Art. 624, the neighbor cannot construct on his (the neighbor's) lot unless he observes the 3-meter rule. (*Juan Gargantos v. Tan Yanon, et al., L-14652, June 30, 1960; see comments under Art. 624*).

Section 6**DRAINAGE OF BUILDINGS**

Art. 674. The owner of a building shall be obliged to construct its roof or covering in such manner that the rain water shall fall on his own land or on a street or public place, and not on the land of his neighbor, even though the adjacent land may belong to two or more persons, one of whom is the owner of the roof. Even if it should fall on his own land, the owner shall be obliged to collect the water in such a way as not to cause damage to the adjacent land or tenement.

COMMENT:**(1) Restrictions With Respect to the Easement of Drainage of Buildings**

- (a) A person should let rain water FALL on his own land, and not on the adjacent land, even if he be a co-owner of

the latter. (*See Cabacungan v. Corrales, L-6629, Sept. 30, 1954*).

- (b) Rain water must be COLLECTED (*Art. 674*), instead of just being allowed to drift to the adjacent or lower land. (*See Art. 637*).

**Emilio Purugganan v. Felisa Paredes
and Tranquilino Barreras
L-23818, Jan. 21, 1976**

FACTS: When the lot of Emilio Purugganan was registered under the Torrens system, there was an express recognition in the Decree of Registration that Purugganan's lot was subject to an easement of *drainage* over a portion of said lot, 8 1/2 meters long, and one meter wide so that the rain water coming from the roof of a building to be constructed on the adjoining lot would fall into the land of Purugganan. The easement was thus in favor of the adjoining lot belonging to Felisa Paredes. Later, Paredes constructed a building with a roof protruding over the lot of Purugganan. This was over the objection of Purugganan. *Issue:* Did Paredes have a right to construct a building with a roof *protruding* over Purugganan's lot in the dimensions mentioned in the Decree of Registration?

HELD: No, Paredes had no such right to construct a protruding roof. The encumbrance is not the roof itself (hence the roof of Paredes should not protrude over the adjoining lot) but the falling of the rain water inside Purugganan's land. The distances prescribed in the Decree therefore did not refer to the protrusion of the width and length of the roof, but to the distance of the rain water falling on the adjacent lot. The roof of Paredes must therefore be reconstructed.

(2) Not Really an Easement

Art. 674 does not really create an easement, for it merely regulates the use of a person's property insofar as rain water is concerned. (*See 4 Manresa 810*).

Art. 675. The owner of a tenement or a piece of land, subject to the easement of receiving water falling from roofs, may build in such manner as to receive the water upon his own roof or give it another outlet in accordance with local ordinances or customs, and in such a way as not to cause any nuisance or damage whatever to the dominant estate.

COMMENT:

(1) Rule When a Tenement or Land is Subject to the Easement of Receiving Water Falling from Roofs

The easement (compulsory upon payment of indemnity) referred to in *Art. 676* may be complied with by following *Art. 675*.

(2) Applicability of Article to Voluntary Easements

Art. 675 may also apply to voluntary easements.

Art. 676. Whenever the yard or court of a house is surrounded by other houses, and it is not possible to give an outlet through the house itself to the rain water collected thereon, the establishment of an easement of drainage can be demanded, giving an outlet to the water at the point of the contiguous lands or tenements where its egress may be easiest, and establishing a conduit for the drainage in such manner as to cause the least damage to the servient estate, after payment of the proper indemnity.

COMMENT:

(1) Outlet of Rain Water Through Surrounding Houses

This is similar to the compulsory easement of right of way.

(2) Conditions

- (a) because of *enclosure*, there is no adequate outlet for the rain water (or similar things).
- (b) the outlet must be at the point of easiest egress (going out).

- (c) least possible damage.
- (d) payment of proper indemnity.

Section 7

INTERMEDIATE DISTANCES AND WORKS FOR CERTAIN CONSTRUCTIONS AND PLANTINGS

Art. 677. No constructions can be built or plantings made near fortified places or fortresses without compliance with the conditions required in special laws, ordinances, and regulations relating thereto.

COMMENT:

Constructions and Plantings Near Fortified Places

Public security and safety demand that Art. 677 be complied with.

Art. 678. No person shall build any aqueduct, well, sewer, furnace, forge, chimney, stable, depository of corrosive substances, machinery, or factory which by reason of its nature or products is dangerous or noxious, without observing the distances prescribed by the regulations and customs of the place, and without making the necessary protective works, subject, in regard to the manner thereof, to the conditions prescribed by such regulations. These prohibitions cannot be altered or renounced by stipulation on the part of the adjoining proprietors.

In the absence of regulations, such precautions shall be taken as may be considered necessary, in order to avoid any damage to the neighboring lands or tenements.

COMMENT:

(1) Construction of Aqueduct, Wells, Sewers, Etc.

Follow the distances prescribed by the *regulations* (ordinances) AND *customs*, if there be any, otherwise take *precautions*.

(2) No Waiver

No waiver or alteration by stipulation is allowed.

Reason: public safety.

(3) Liability for Damages

A violator is liable for DAMAGES. (*See Art. 2191.*)

Art. 679. No trees shall be planted near a tenement or piece of land belonging to another except at the distance authorized by the ordinances or customs of the place, and, in the absence thereof, at a distance of at least two meters from the dividing line of the estates if tall trees are planted and at a distance of at least fifty centimeters if shrubs or small trees are planted.

Every landowner shall have the right to demand that trees hereafter planted at a shorter distance from his land or tenement be uprooted.

The provisions of this article also apply to trees which have grown spontaneously.

COMMENT:**(1) Rules With Respect to the Planting of Trees**

Regarding *distances*, follow *ordinances* (if there be any) then customs. If neither ordinances nor customs are present on this point, the following distances must be observed (*minimum*):

- (a) *tall trees* — 2 meters from boundary line to center of the tree. (*Manresa*).
- (b) *small trees or shrubs* — 50 cm. from boundary line to center of tree or shrub.

(*Expected natural height* is the criterion.
Purpose: To prevent intrusion into neighboring estates.)

(2) Remedy for Violation

Demand uprooting of the tree or shrub. (*Art. 679*).

[*NOTE: Art. 679 applies even if the trees have grown spontaneously.*].

Art. 680. If the branches of any tree should extend over a neighboring estate, tenement, garden or yard, the owner of the latter shall have the right to demand that they be cut off insofar as they may spread over his property, and, if it be the roots of a neighboring tree which should penetrate into the land of another, the latter may cut them off himself within his property.

COMMENT:**(1) Rules Regarding Intrusions or Extensions of Branches and Roots**

- (a) *Branches* — adjacent owner has the right to DEMAND that they be cut off (insofar as they spread over his property).
- (b) *Roots* — he may CUT them off himself (because by ACCESSION or INCORPORATION he has acquired ownership over them). (*2 Castan 285*).

(2) Prescription

- (a) of the right to *demand* the cutting off of the branches — this does not prescribe if tolerated by invaded owner; if demand is made, prescription runs from the date of said demand.
- (b) of the right to cut off the roots — this is imprescriptible (*4 Manresa 830*) unless a notarial prohibition is made.

[*NOTE: A notarial prohibition can be made even if the intruding roots are already owned by the invaded owner, precisely because an easement (in this case, an easement of RESTRAINT) is made on somebody else or his property. (See definition of a negative easement under Art. 616).*].

(3) Right of the Owner of the Tree

The owner of the tree even if the branches and roots have invaded the adjacent land can cut down the tree himself, for he *owns* the tree. (*Crudo v. Mancilla, et al., 37 O.G. No. 104, p. 2089*).

Art. 681. Fruits naturally falling upon adjacent land belong to the owner of said land.

COMMENT:**(1) Rules as to Fruits**

- (a) If the fruits *still hang* on to the tree, they are still owned by the tree owner.
- (b) It is only after they have NATURALLY fallen (*not* taken down by poles or shaken) that they belong to the owner of the invaded land.

(2) Reason for the Article

The rule is based not on accession for they were not grown or produced by the land nor added to it (naturally or artificially); *nor* on occupation (for they are not *res nullius*); but to avoid disputes and arguments between the neighbors. The mode of acquisition may be said to be the LAW.

(3) BAR

X is the owner of a grove of mango trees, some of the branches of which extend over the land of *B*.

- (a) Does *B* have the right to gather the mango fruits on the branches that extend into his land? Give reasons.
- (b) In the same case, because of a quarrel between *A* and *B*, unrelated to the trees, *B* cuts off the branches insofar as they extend into his land, with the result that *A*'s trees stopped bearing fruits for a season. Does *A* have a right of action against *B*? Explain.
- (c) Would your answer be different if, instead of cutting off the protruding branches, *B* had cut off the roots of the

trees which penetrated into his land, with the same result that the tree stopped bearing fruits? Explain.

ANS:

- (a) No, *B* has no right for the fruits have NOT yet naturally fallen on his land. (*Art. 681*).
- (b) *B* is liable for cutting off the branches. What he should have done was to make a *demand* and not just take the law into his own hands. (*See Art. 680*).
- (c) In the case of the roots, *B* had the right to cut them since they were on his own land. (*See Art. 680*).

Section 8

EASEMENT AGAINST NUISANCE

Art. 682. Every building or piece of land is subject to the easement which prohibits the proprietor or possessor from committing nuisance through noise, jarring, offensive odor, smoke, heat, dust, water, glare and other causes.

COMMENT

(1) Reason for Prohibiting a Nuisance

A nuisance is that which, among others, annoys or offends the senses (*Art. 694, par. 2*), and it should therefore be prohibited.

(2) Bar Questions (Servient and Dominant Estates in the Easement Against Nuisance)

- (a) Who is servient in an easement against nuisance?

ANS.: The proprietor or possessor of the building or piece of land, who commits the nuisance thru noise, jarring, offensive odor, etc. is *servient* in an easement against nuisance; in another sense, the building or the land itself is the *servient estate*, since the easement is inherent in every building or land. (*See Report of the Code Commission, p. 51*).

- (b) Who is *dominant* in an easement against nuisance?

ANS.: The general public, or anybody injured by the nuisance.

- (c) What are the rights of the dominant estate?

ANS.:

- 1) If the nuisance is a public nuisance, the remedies are:
 - a) a prosecution under the Penal Code or any local ordinance; or
 - b) a civil action; or
 - c) abatement, without judicial proceedings. (*Art. 699*).
- 2) If the nuisance is a *private nuisance*, the remedies are:
 - a) a civil action; or
 - b) abatement without judicial proceedings. (*Art. 705*).

(3) Perhaps, Not a True Easement

While a true easement (*negative*) prohibits the owner from that which he could lawfully do were it not for the existence of the easement, a nuisance is something that is done or allowed unlawfully, whether or not a person has made a notarial prohibition. Therefore, it is doubtful whether Arts. 682 and 683 really treat of a true easement. Moreover, an easement is a limitation upon the servient owner beyond the NORMAL and USUAL restrictions imposed by law on each and every owner (*De Diego*). There is no question however that they speak of restrictions on ownership, and in the words of the Code Commission, this section is a “manifestation of the principle that every person should so use his property so as not to cause damage or injury to others.” (*Report of the Code Commission, p. 51*).

Art. 683. Subject to zoning, health, police and other laws and regulations, factories and shops may be maintained provided the least possible annoyance is caused to the neighborhood.

COMMENT:**Maintenance of Factories and Shops**

The Article explains itself.

Section 9**LATERAL AND SUBJACENT SUPPORT**

Art. 684. No proprietor shall make such excavations upon his land as to deprive any adjacent land or building of sufficient lateral or subjacent support.

COMMENT:**(1) The Easement of Lateral and Subjacent Support Is Not a True Easement**

It is again doubtful whether the easement for lateral or subjacent support are true easements for, while they are restrictions on ownership, *still even without a prohibition* by the dominant estate, the elimination of such support would be unlawful. (Under Anglo-American law, however, they are considered as easement). (*Tideman, Real Property, Sec. 618; Memorandum of the Code Commission, Feb. 17, 1951, pp. 26-28*).

(2) Remedies for Infraction

Injunction, damages. (*See Prete v. Gray, Apr. 25, 1918, 141 Atl. 609*).

(3) Example

- (a) Of *lateral* support: While a person may excavate on his own land, he cannot do so if by such action, adjacent buildings would collapse or adjacent lands crumble. (However, if he offers sufficient *artificial* support to said buildings or lands, this should be allowed). (*See Block v. Hasseltine, 29 N.E. 937*).
- (b) Of *subjacent* support (this is support from “under” or “underneath”): A owns a parcel of land with a house, but

underneath, the soil is being used by *B* in connection with a tunnel (for example). *B* must *not* undermine the support of the house by building the tunnel very close underneath the house.

(4) ‘Lateral’ Distinguished from ‘Subjacent’

The support is *lateral* when both the land being supported and the supporting land are on the SAME PLANE; when the supported land is *ABOVE* the supporting land, the support is subjacent. (*See American Law Inst. Torts, p. 84*).

Art. 685. Any stipulation or testamentary provision allowing excavations that cause danger to an adjacent land or building shall be void.

COMMENT:

Rule on Dangerous Excavations

Reason for the Article: In this article, a person is protected even against his own folly, in the interest of public safety.

Art. 686. The legal easement of lateral and subjacent support is not only for buildings standing at the time the excavations are made but also for constructions that may be erected.

COMMENT:

Applicability to Future Constructions

One is expected under this article to be prophetic (since support must also be for future constructions).

Art. 687. Any proprietor intending to make any excavation contemplated in the three preceding articles shall notify all owners of adjacent lands.

COMMENT:

Notification Re Intended Excavations

- (a) Notice is not required, if there is actual knowledge of the excavation. Otherwise, notice is mandatory.
- (b) Even if there be notice, the excavation should not deprive the other owners of lateral or subjacent support. This is true even if the others consent (*Art. 685*), or even if the excavation is carried out skillfully. (*See Fooley v. Wyeth, Supreme Court of Massachusetts, 79 Am. Dec. 771*).
- (c) Notice is required to enable adjoining owners to take proper precautions. (1 Am. Jur. 523).

Chapter 3

VOLUNTARY EASEMENTS

Art. 688. Every owner of a tenement or piece of land may establish thereon the easements which he may deem suitable, and in the manner and form which he may deem best, provided he does not contravene the laws, public policy or public order.

COMMENT:

(1) Kinds of Voluntary Easements That May Be Established

The easements established may be *predial* (for the benefit of an estate) or *personal*.

(2) Right Appertains to Owner

Only the owner or someone else, in the name of and with the authority of the owner, may establish a voluntary predial servitude on his estate, for this is an act of ownership. (However so as not to prejudice the usufructuary, the usufructuary's consent is needed to create a "perpetual, voluntary easement." (Art. 690; see also 2 Falcon 257).

(3) Who Acts for the Dominant Estate

The person to act for the dominant estate must be the OWNER or somebody else, in the name and with the authority of the OWNER. (*See Resolution of "Direction General de Ultramar," Feb. 18, 1893.*)

[NOTE: In case of personal easement, any person with legal capacity to accept may acquire the easement in his favor.]

(4) Owner With a Resolatory or Annullable Title

If a person is an owner with a *resolatory title* or an *annullable* one, he can create an easement over the property, BUT it is deemed extinguished upon resolution or annulment of the right. (*4 Manresa 836*). The same may be said of an easement created in good faith by the will merely of the usufructuary or possessor in good faith. Such easement naturally ends, when the usufruct or possession terminates. (*2 Falcon 257*). From one viewpoint, what had been granted was not really an easement but merely a personal right. (*4 Manresa 837-838*).

(5) Unilateral Voluntary Easements

In a sense, a voluntary easement is not contractual in nature because it may be imposed unilaterally. Of course, if he demands a fee for its use, that is his privilege. Once the fee is imposed, anybody can make use of the easement upon payment of said fee. In this sense, and only in this, may the easement be said to partake of the nature of a contract. (*See North Negros Sugar Co. v. Hidalgo, 63 Phil. 664*).

(6) Restrictions Imposed by a Subdivision

An owner of a subdivision can properly impose on its contracts selling the lots to private owners that the buyers cannot build factories thereon. In a sense this is an easement, and makes evident the intent to make the subdivision a residential zone. This is a valid contractual provision which, while it restricts the free use of the land by the owner is nonetheless NOT contrary to public policy. (*Trias v. Araneta, L-20786, Oct. 30, 1965*).

Art. 689. The owner of a tenement or piece of land, the usufruct of which belongs to another, may impose thereon, without the consent of the usufructuary, any servitudes which will not injure the right of usufruct.

COMMENT:**Right of Naked Owner to Impose Easements**

The naked owner must respect the rights of the usufructuary. Hence, while he may impose the easement of "*altius non*

tollendi" (obligation not to build higher) without the usufructuary's approval (*Art. 689*) still, insofar as the easement of right of way is concerned, he should try to obtain the usufructuary's consent, for here the latter's rights may be interfered with. (*See 4 Manresa 837-838*). If he does not get the usufructuary's consent, he may be held liable for damages.

Art. 690. Whenever the naked ownership of a tenement or piece of land belongs to one person and the beneficial ownership to another, no perpetual voluntary easement may be established thereon without the consent of both owners.

COMMENT:

Rules When a Usufruct Exists

- (a) The *beneficial* owner (as distinguished from the naked owner) may by himself create a temporary easement compatible with the extent of his beneficial dominion. (*4 Manresa 838*).
- (b) If the easement is perpetual (like the permanent easement of right of way) both the naked and the beneficial owners must consent.

Art. 691. In order to impose an easement of an undivided tenement, or piece of land, the consent of all the co-owners shall be required.

The consent given by some only, must be held in abeyance until the last one of all the co-owners shall have expressed his conformity.

But the consent given by one of the co-owners separately from the others shall bind the grantor and his successors not to prevent the exercise of the right granted.

COMMENT:

(1) Creation of an Easement by the Co-Owners in a Co-Ownership

Reason for requiring unanimous consent on the part of all the co-owners: The creation of the voluntary easement is

an act of ownership (the alienation not of any aliquot part but of a *qualitative* part of the enjoyment of the whole premises). (See 4 *Manresa* 838).

(2) When Consent Should Be Given

The consent however need not be given simultaneously; they can be given successively. (4 *Manresa* 838-839).

(3) No Revocation of Consent

Once a co-owner gives his consent, he cannot later on revoke his consent (except when the consent had been vitiated). As a matter of fact, his own *successors cannot* ordinarily revoke the consent he had given. (*Art. 691, par. 3; see also 3 Sanchez Roman* 640).

Art. 692. The title and, in a proper case, the possession of an easement acquired by prescription shall determine the rights of the dominant estate and the obligations of the servient estate. In default thereof, the easement shall be governed by such provisions of this Title as are applicable thereto.

COMMENT:

Governing Rules for Voluntary Easements

- (a) If created by title (contract, will, etc.), the title governs. The Civil Code is suppletory.
- (b) If created by prescription, the form and manner in which it had been acquired. (*See Art. 626*). The Civil Code is suppletory.
- (c) If created by prescription in a proper case (that is, may have been a contract *initially*, but the form and manner *may have been* extended or decreased by prescription), the way the easement has been possessed, that is, the manner and form of possession. The Civil Code is suppletory. (*See 3 Sanchez Roman* 648).

Art. 693. If the owner of the servient estate should have bound himself, upon the establishment of the easement, to bear the cost of the work required for the use and preservation thereof, he may free himself from this obligation by renouncing his property to the owner of the dominant estate.

COMMENT:

(1) Rule to Apply When Servient Estate Has Bound Itself to Pay for the Maintenance of the Easement

In the contract or title, the servient owner *may have or may not have* bound himself to pay for the maintenance (use and preservation) of the easement. The article applies only when he has so *bound* himself.

(2) Nature of the Renunciation

If renunciation or abandonment is made, should it be on the whole of the property?

ANS.:

- (a) According to *Castan* and *De Buen*, the answer is YES, for the obligation to maintain is a *personal* obligation, without prejudice to alienation of a part of the estate to others PRIOR to such abandonment.
- (b) The better opinion however is that a distinction must be made —
 - (1) If the servitude is upon the *whole* estate (like easement of waters flowing down from upper estates), the whole property must be renounced. (*2 Navarro Amandi 343-344*).
 - (2) If the servitude affects only a part of the estate (like a passage in a right of way), then only that part affected by the easement — the passageway should be renounced. (Note that the article does not say “whole property” but merely “property,” meaning, naturally, that which is affected by

the easement. [*4 Manresa 843; 3 Sanchez Roman 643*]). This is true even if it is well-known that the easement is *indivisible*. The lawmaking body could not have intended otherwise. (*See 10 Scaevola 603-604*).

(3) How Renunciation is Made

The abandoner must comply with the proper juridical form for the transmission of the ownership of real property. Hence implied or tacit abandonment cannot be allowed. (*4 Manresa 843*).

Title VIII. — NUISANCE

Art. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

- (1) Injures or endangers the health or safety of others;**
or
- (2) Annoys or offends the senses; or**
- (3) Shocks, defies or disregards decency or morality;**
or
- (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or**
- (5) Hinders or impairs the use of property.**

COMMENT:

(1) Comment of the Code Commission on Why a Nuisance Can Be Abated

A nuisance is one of the most serious hindrances to the enjoyment of life and property. (Report of the Code Commission, p. 51).

(2) Etymology of the Word ‘Nuisance’

The word nuisance is derived from the Latin *nocumentum* or the French *nuire* (to harm or hurt or injure). (*Thorton v. Dow*, 32 LRA [NS] 968). Blackstone says: “anything that worketh hurt, inconvenience, or damage is a nuisance.” (3 *Blackstone’s Commentaries* 5).

(3) Aspects of a Nuisance

At present, nuisance may be used to refer either to the *harm caused* or *that which causes the harm* (indecent human conduct, physical condition of a thing), or *both*.

(4) ‘Nuisance’ Distinguished from ‘Negligence’ and from ‘Trespass’

- (a) *From Negligence* — Negligence is penalized because of lack of proper care; but a nuisance is wrong, not because of the presence or absence of care, but because of the injury caused. (*39 Am. Jur. 282*).
- (b) *From Trespass* — In trespass, there is entry into another’s property; this is not necessarily so in nuisance. In trespass, the injury is direct and immediate; in nuisance, it is only consequential. (*46 C.J. 651*).

(5) Examples of Nuisances as Enumerated by the Civil Code

- (a) “Injures or endangers the health or safety of others” — a house in danger of falling; fireworks or explosives factory (but not a combined brewery and ice plants in San Miguel, Manila, a semi-industrial locality, particularly if the brewery will be operated with a minimum of offense to nearby residences, and if modern machinery will be installed). (*Ayala v. Barretto, 33 Phil. 538*). Houses and similar constructions without building permits and without provisions for the disposal of waste matter, particularly if constructed near the main water pipelines. (*Homeowners’ Association of El Deposito v. Lood, L-31864, Sep. 29, 1972*).
- (b) “Annoys or offends the senses” — too much horn blowing; a leather factory; garbage cans; a pumping station with a high chimney, located 3.8 meters from a house which would thus be rendered practically uninhabitable because of the smoke, noise, etc. (*Bengzon v. Prov. of Pangasinan, 62 Phil. 816*).
- (c) “Shocks, defies, or disregards decency or morality” — burlesque performance (whether or not there is a complete strip tease, since the “tease” remains, provoking lust); public exhibition of a naked woman (*Weiss v. San Diego Country, 159 Pac. 464*); as when a movie artist strips nude in the lobby of a moviehouse for the sake of publicizing a particular movie; a naked female’s picture shown for

purposes of commercial gain, particularly when erotic positions are present (but not when same picture is for a *truly* artistic or scientific purpose); a house of prostitution.

- (d) “Obstructs or interferes with the free *passage* of any public highway or street or any body of water” — houses constructed on public streets (*See Sitchon v. Aquino, 52 O.G. 1399*); market stalls and residences constructed on a public plaza. (*Espiritu, et al. v. Mun. Council, et al., L-11014, Jan. 21, 1958*).
- (e) “Hinders or impairs the use of property” — illegal constructions on another’s land.

[NOTE: If the hindrance or impairment is just, authorized, and necessary, it is NOT a nuisance.]

(6) Case

AC Enterprises, Inc. v. Frabelle Properties Corp. 506 SCRA 625 (2006)

FACTS: A noise emanated from a blower of the air-conditioning unit of a building. *Issue:* (1) Is it a nuisance as to be resolved only by the courts in the due course of proceedings or a nuisance *per se*?; (2) Is an action for abatement of a private nuisance, more specifically noise generated by the blower of an air-conditioning system, even if the plaintiff prays for damages, one incapable of pecuniary estimation?; and (3) What is the determining factor when noise alone is the cause of complaint?

HELD: (1) It is a nuisance to be resolved only by the courts in the due course of proceedings; the noise is not a nuisance *per se*. Noise becomes actionable only when it passes the limits of reasonable adjustment to the conditions of the locality and of the needs of the maker to the needs of the listener. Injury to a particular person in a peculiar position or of especially sensitive characteristics will not render the house an actionable nuisance — in the conditions, of present living, noise seems inseparable from the conduct of many necessary occupations.

(2) Yes, the action is one incapable of pecuniary estimation because the basic issue is something other than the right to recover a sum of money.

(3) The determining factor is not its intensity or volume; it is that the noise is of such character as to produce actual physical discomfort and annoyance to a person of ordinary sensibilities rendering adjacent property less comfortable and valuable.

Art. 695. Nuisance is either public or private. A public nuisance affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal. A private nuisance is one that is not included in the foregoing definition.

COMMENT:

(1) Classification of Nuisances

- (a) old classification (*per se, per accidens*).
- 1) nuisance *per se* — always a nuisance (*Example: a house of prostitution*).
 - 2) nuisance *per accidens* — a nuisance only because of the location or other circumstances. (*Example: a noisy factory in a residential district. [See 39 Am. Jur. p. 889].*)

[NOTE: The above classification is no longer useful, since there are *very few nuisances per se.*]

- (b) new classification
- (1) *according to relief* (whether given or not).
 - a) actionable.
 - b) non-actionable. (*46 C.J. 646*).
 - 2) *according to manner of relief*.
 - a) those abatable by criminal *and* civil actions
 - b) those abatable only by civil actions
 - c) those abatable *judicially*
 - d) those abatable *extrajudicially*

- 3) *according to the Civil Code.*
 - a) PUBLIC (common) — affects a community or neighborhood or any *considerable* number of persons (although the extent of annoyance, danger, or damage be unequal). (*Art. 695*). (Here, criminal proceedings may be used for abatement.)
 - b) PRIVATE — that which is NOT public. (*Art. 695*). (Here, criminal proceedings are *not* a remedy). (*Art. 705*).

(2) Examples

- (a) public nuisance — a noisy or dangerous factory in a residential district.
- (b) private nuisance — an illegally constructed dam partially resting on another's estate. (*See Solis v. Pujeda, 42 Phil. 669*).

City of Manila v. Gerardo Garcia, et al. **L-26053, Feb. 21, 1967**

FACTS: The City of Manila is the owner of parcels of land forming one compact area in Malate, Manila. Shortly after liberation, several persons entered upon these premises without the City's knowledge and consent, built houses of second class materials, and continued to live there till action was instituted against them. In 1947, the presence of the squatters having been discovered, they were given by then Mayor Valeriano Fugoso, written permits each labelled a "lease contract." For their occupancy, they were charged nominal rentals. In 1961, the premises were needed by the City to expand the Epifanio de los Santos Elementary School. When after due notice the squatters refused to vacate, this suit was instituted to recover possession. Defense was that they were "tenants."

HELD: They are squatters, not tenants. The mayor cannot legalize forcible entry into public property by the simple expedient of giving permits, or for that matter, executing leases. Squatting is unlawful and the grant of the permits

fosters moral decadence. The houses are public nuisance *per se* and they can be summarily abated, even without the aid of the courts. The squatters can, therefore, be ousted.

(3) The Attractive Nuisance Doctrine

- (a) An attractive nuisance is a dangerous instrumentality or appliance which is **LIKELY TO ATTRACT CHILDREN AT PLAY**. (65 C.J.S. 455).
- (b) *Doctrine*: One who maintains on his estate or premises an attractive nuisance (as above-defined) *without* exercising due care to prevent children from playing therewith or resorting thereto, is **LIABLE** to a child of tender years who is injured thereby, *even if* the child is technically a trespasser in the premises. (46 C.J.S., p. 455). (*Jarco Marketing Corp. v. CA*, 117 SCAD 818, 321 SCRA 375 [1999]).
- (c) *Basis for Liability*. The attractiveness is an invitation to children. (65 C.J.S., p. 458). Safeguards to prevent danger must therefore be set up.
- (d) A swimming pool or water tank is not an attractive nuisance, for while it is attractive, it *cannot* be a nuisance, being merely an imitation of the work of nature. Hence, if small children are drowned in an attractive water tank of another, the owner is not *liable* even if there be no guards on the premises. (*See Hidalgo Enterprises, Inc. v. Balandan, et al.*, 15 L.J. 471; 48 O.G. 2641; L-3422, June 13, 1952).

Art. 696. Every successive owner or possessor of property who fails or refuses to abate a nuisance in that property started by a former owner or possessor is liable therefor in the same manner as the one who created it.

COMMENT:

(1) When Successor to the Property May Be Held Liable

The successor, to be held liable, must knowingly fail or refuse to abate the nuisance. (*Lamb v. Roberts*, 196 Ala. 679; *See also 46 C.J. 741-742*).

(Note that the law says successive “owner OR possessor.”).

(2) Liability of Two or More Persons Responsible for a Nuisance

If there was common design or interest, the liability is solidary (not merely joint). (*Miller v. Highland Ditch Co., Pac. 550*).

(3) Rule if Lessor Created or Continues the Nuisance

If a person sets up a nuisance on his land, then *leases* the property to another, he cannot escape liability. Moreover, continuation of the nuisance after the lease becomes effective likewise makes the lessor *liable*. The *lessee* will be liable only when he *knowingly allows* its existence. The same is true with a purchaser. (*See 46 C.J. 745-746*).

Art. 697. The abatement of a nuisance does not preclude the right of any person injured to recover damages for its past existence.

COMMENT:

Abatement and Damages May Both Be Sought

The remedies of *abatement* and *damages* are *cumulative*, that is, both may be demanded. (*Art. 697*).

Art. 698. Lapse of time cannot legalize any nuisance, whether public or private.

COMMENT:

(1) Effect of Lapse of Time

The action to abate a *public* or *private* nuisance is not extinguished by prescription. (*Art. 1143[2], Civil Code*).

(2) Exception

Arts. 698 and 1143(2) do *not* apply to easements which are extinguished by obstruction and non-user for ten years. (*See Art. 631*). The special rule in Art. 631, which is limited to easement, must be regarded as an exception to the general rule in Art. 698. (*Ongsiako, et al. v. Ongsiako, et al., L-7510, Mar. 30, 1957*).

**Ongsiako, et al. v. Ongsiako, et al.
L-7510, Mar. 30, 1957**

FACTS: Plaintiffs had an easement of natural drainage over defendant's land, but the defendants obstructed the easement by constructing a dam in 1938. The action to destroy the dam was filed in 1951, on the theory, among other things, that the dam was a *nuisance* and therefore could never be legalized. (*Art. 698*), and that the action could not prescribe. (*Art. 1143[2]*). *Issue:* Has the action prescribed?

HELD: Yes, because of Art. 631 which is an exception to Art. 698. Moreover, granting that the dam was originally a nuisance, it must have been due to its interference with the plaintiff's right of drainage; but since that same right of drainage had become extinct by non-user for 10 years (1938-1948), after that period, the dam could no longer interfere with the terminated rights, and *was no longer a nuisance* when this action was instituted in 1951. Moreover, under the *law of nuisances in 1938*, while no right to maintain a *public* nuisance could be acquired by prescription, the right to maintain a *private* nuisance could be acquired by prescription. Since the defendant's prescriptive rights were acquired under said law, any contradictory rule in the new Code should *not* be allowed to operate retroactively to their prejudice.

Art. 699. The remedies against a public nuisance are:

- (1) A prosecution under the Penal Code or any local ordinance; or**
- (2) A civil action; or**
- (3) Abatement, without judicial proceedings.**

COMMENT:**Remedies Against a Public Nuisance**

The Article explains itself. In a criminal action, the plaintiffs are, of course, “People of the Philippines.”

Tamin v. CA
208 SCRA 862
(1992)

The Supreme Court agrees with the petitioners that the complaint alleges factual circumstances of a complaint for abatement of a public nuisance. For example, a public plaza is outside the commerce of man and constructions thereon can be abated summarily by the municipality.

Art. 700. The district health officer shall take care that one or all of the remedies against a public nuisance are availed of.

COMMENT:**(1) The District Health Officers’ Responsibility; Exception in the Case of Manila**

Though the Civil Code says “district health officer” still under the Revised Charter for Manila (which controls, because it is a special law), the proper official *insofar as illegal constructions or houses on public streets are concerned*, is the City Engineer. (*Sitchon v. Aquino*, 52 O.G. 1399).

(2) Effect if the District Health Officer is Not Consulted Prior to the Abatement

If the district health officer (or the city engineer as the case may be) is not consulted beforehand in the case of the extrajudicial abatement of a nuisance, the person doing the abating are not necessarily liable. They would be liable for damages only if as stated under Art. 707 the abatement is carried out with unnecessary injury, or if the alleged nuisance is later declared by the courts to be not a real nuisance.

Art. 701. If a civil action is brought by reason of the maintenance of a public nuisance, such action shall be commenced by the city or municipal mayor.

COMMENT:

Civil Action to be Commenced By the Mayor

The Article explains itself.

Art. 702. The district health officer shall determine whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance.

COMMENT:

(1) Who Determines Which Remedy is Best

In the City of Manila, the City Engineer is the official concerned regarding illegal construction (*Sitchon v. Aquino, supra*); in other places, it is the District (City) Health Officer.

(2) See Comment No. 2, Art. 700

Art. 703. A private person may file an action on account of a public nuisance, if it is specially injurious to himself.

COMMENT:

(1) When a Private Person May Sue on Account of a Public Nuisance

- (a) Ordinarily, it is the mayor who must bring the civil action to abate a public nuisance.
- (b) But a private individual can also do so, if the public nuisance is **SPECIALLY INJURIOUS** to himself.

(2) Nature of the Action

The action may be for *injunction*, *abatement* or for *dam-*

ages. (In both of course, he must show special damage to himself). (*39 Am. Jur. 378-381*).

Art. 704. Any private person may abate a public nuisance which is specially injurious to him by removing, or if necessary, by destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

- (1) That demand be first made upon the owner or possessor of the property to abate the nuisance;
- (2) That such demand has been rejected;
- (3) That the abatement be approved by the district health officer and executed with the assistance of the local police; and
- (4) That the value of the destruction does not exceed three thousand pesos.

COMMENT:

Requisites for Extrajudicial Abatement of a Public Nuisance

The requisites have been set down (though *not* ordinarily required in American Law) because of the [relatively] *newness* of the remedy in the Philippines. (*Report of the Code Commission, p. 52*). Note that there are four requisites.

Art. 705. The remedies against a private nuisance are:

- (1) A civil action; or
- (2) Abatement, without judicial proceedings.

COMMENT:

(1) Remedies Against a Private Nuisance

Observe that criminal prosecution is *not mentioned*. However, if indeed a crime has been committed, as defined by the Revised Penal Code, criminal prosecution can proceed.

(2) Defenses

- (a) estoppel, public necessity,
- (b) the non-existence of the nuisance,
- (c) impossibility of abatement.

Art. 706. Any person injured by a private nuisance may abate it by removing, or if necessary by destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury. However, it is indispensable that the procedure for extrajudicial abatement of a public nuisance by a private person be followed.

COMMENT:**Extrajudicial Abatement of a Private Nuisance**

The Article explains itself.

Art. 707. A private person or a public official extrajudicially abating a nuisance shall be liable for damages:

- (1) **If he causes unnecessary injury; or**
- (2) **If an alleged nuisance is later declared by the courts to be not a real nuisance.**

COMMENT:**Damages in Case of Extrajudicial Abatement**

Note that the person liable for damages may be:

- (a) a private person, or
- (b) a public official.

Title IX. — REGISTRY OF PROPERTY

Art. 708. The Registry of Property has for its object the inscription or annotation of acts and contracts relating to the ownership and other rights over immovable property.

COMMENT:

(1) 'Register' Defined

It may refer to:

- (a) the act of recording or annotating
- (b) the *book* of registry
- (c) the *office* concerned
- (d) the *official* concerned

(2) Three Systems of Registration in the Philippines

- (a) Registration under the Land Registration Act (Torrens System).

Bernales v. IAC GR 71490-91, June 28, 1988

A homestead patent granted in accordance with the Public Land Act is registered under the Torrens System, the certificate of title issued in virtue of said patent has the force and effect of a Torrens Title under the Land Registration Act. Corollary thereto, the Director of Lands, being a public officer, has in his favor the presumption of regularity in issuing the homestead patent.

Cacho v. CA
80 SCAD 141
(1997)

A land registration proceeding is *in rem* and, therefore, the decree of registration is binding upon and conclusive against all persons including the Government and its branches, irrespective of whether or not they were personally notified of the filing of the application for registration or have appeared and filed an answer to said application, because all persons are considered as notified by the publication required by law.

- (b) Registration under the Spanish Mortgage Law.
- (c) Registration under Sec. 194 of the Revised Administrative Code, as amended by Act 3344.

[NOTE: The main purpose of the Torrens System is to avoid possible conflicts of title in and to real estate and to facilitate transactions relative thereto by giving the public the right to rely upon the face of a Torrens Title, and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that should impel a reasonably cautious man to make such further inquiry. (*Revilla v. Galindez*, L-13971, Feb. 27, 1961; *Capitol Subdivision, Inc. v. Province of Negros Occidental*, L-16257, Jan. 31, 1963).]

Benin v. Tuason
L-26127, June 28, 1974

Issues:

- (1) If an application for land registration under the Torrens System is desired to be amended, is a new publication of the application necessary?
- (2) If the technical description of property covered by a Torrens Certificate is discovered to be erroneous, may the errors be corrected without the need of cancelling the decree of registration?

- (3) May an action for reconveyance of the land be allowed as against an innocent third party for value?

HELD:

- (1) It depends:
- (a) If the amendment seeks to include an area or lot not previously included in the original application (*additional coverage*), a new publication is required.
 - (b) If the amendment consists in the exclusion of a portion of land covered in the original application (*decreased coverage*), a new publication is not required.
- (2) Yes, the errors can be corrected without cancelling the decree. After all, it is the land, not the plan, which is registered.
- (3) No such action for reconveyance is allowed. The innocent third party is allowed to rely on the certificate of title as recorded in the Registry.

(3) Particular Purpose of the Three Systems

Acts (sales, donations, etc.) concerning lands covered by a Torrens Title are registered under the first (*See No. 2[a]*); those concerning lands covered by the Spanish Mortgage Law are registered under the second (*See No. 2[b]*); those concerning lands NOT covered by a Torrens Title nor registered under the Spanish Mortgage Law should be *registered* under the third. (*See No. 2[c]*).

(4) Purposes of Registration and Publicity

- (a) to give true notice of the true status of real property and real rights thereto;
- (b) to prejudice third persons (unless they have *actual knowledge* of the transaction concerned) (*Art. 709; Tuason v. Reyes, 48 Phil. 844*);

- (c) to record acts or contracts (transmissions and modifications of ownership and other real rights over real properties) (*Art. 708*);
- (d) to prevent the commission of frauds, thus insuring the effectivity of real rights over real property. (*De Diego*).

[NOTE: Registration is NOT a mode of acquiring ownership, for it is not one of those enumerated under Art. 712. It is simply a means of NOTIFICATION. (*See Bautista v. Dy Bun Chin, 49 O.G. 179*). However, if a parcel of land registered under the Torrens System is SOLD, but the deed of sale is itself *not registered*, the deed does NOT constitute a conveyance which would bind or affect the land, because the registration of a voluntary sale of land is the operative act that transmits or transfers title. (*Candida Villaluz, et al. v. Juan Neme, et al., L-14676, Jan. 31, 1963; Tuason v. Raymundo, 28 Phil. 635*).]

Vda. de Cabrera v. CA
78 SCAD 705
(1997)

It must be remembered that registration does not vest title; it is merely evidence of such title over a particular property. The defense of indefeasibility of the Torrens Title does not extend to a transferee who takes the certificate of title with notice of a flaw in his title. The principle of indefeasibility of title is unavailing where there was fraud that attended the issuance of the free patents and titles.

In the case of *Agricultural Credit Cooperative Association of Hinigaran v. Yusal, L-13313, Apr. 28, 1960*, it was held that the registration is a *ministerial* act by which a deed, contract, or instrument is sought to be inscribed in the records of the Office of the Register of Deeds, and annotated at the back of the certificate of title covering the land subject of the deed, contract, or instrument. It is not a declaration by the State that such an instrument is a valid and subsisting interest in the land. The mere fact that a lease or mortgage was registered does not stop any party to it from setting up that it now has

no force or effect. Indeed in *Seton, et al. v. Rodriguez, L-16285, Dec. 29, 1960*, the Court said that the purpose of registration is to give notice of the instrument to all persons, and does not declare that the recorded instrument is a valid and subsisting interests in the land. This is because the effect or validity of the instrument can only be determined in an ordinary case before the courts, not before a court acting merely as a registration court, which has no jurisdiction over the same. If the purpose of registration is merely to give notice, then question regarding the effects or invalidity of the instrument are to be expected to be decided *after, not before* registration. It follows as a necessary consequence that registration must first be allowed, and validity or effect litigated afterwards.

Reyes v. De Leon
L-22331, June 6, 1967

FACTS: To secure an obligation, a house owner sold it *a retro* to X (the evident purpose was to create an equitable mortgage): This sale *a retro* was *unrecorded*. Later, the owner mortgaged the same property to Y. This time the mortgage was registered. Which mortgagee is preferred?

HELD: The second mortgagee is preferred because the mortgage in his favor was registered. It would have been different had the equitable mortgage (in the guise of the *pacto de retro* sale) been registered.

Jesus Gigante v. Republic Savings Bank
and Rolando Mallari
L-29696, Nov. 29, 1968

FACTS: A parcel of land located in Caloocan City was registered in the name of Rolando Mallari, but a house thereon was in the name of his father, Dominador Mallari (in the tax assessment rolls of Caloocan City). However the son, Rolando, declared the house to be in his name; he presented the tax declaration in his name, and had the declaration by his father cancelled. On Apr. 23, 1959 Rolando borrowed P18,000 from the Republic Savings Bank, with the *land and the house* as

security in the form of a mortgage: the mortgage was duly registered on Apr. 24, 1959, Rolando failed to pay the loan; the Bank foreclosed on the mortgaged; the Bank then bought on June 28, 1960 the land and the house, and a Torrens Transfer Certificate of Title was issued to it on July 5, 1961. In the meantime, the father, Dominador, had borrowed from one Jesus Gigante P1,570. And on *May 6, 1956*, for failure to pay, Dominador was ordered to give Jesus the sum borrowed with interest and attorney's fees. Pursuant to a writ of execution, the Sheriff levied, on May 29, 1961, the house in question. Jesus bought the house at public auction on June 23, 1961; and asked for a writ of possession. Neither judgment nor levy nor sale was recorded on the Torrens Title. The Bank blocked this writ of possession on the ground that it was already the owner of the land and the house. Jesus alleging ownership to the house, now sues the Bank and Rolando on the ground that the transfer from Dominador to Rolando was fictitious and void, but Dominador was *not* made a party to the suit.

Issue: Who should be considered the owner of the house?

HELD:

- (a) The Republic Savings Bank should be considered the owner of the house (and of the land). The judgment, levy, and sale in Jesus' favor was *not recorded* on the Torrens Title. Upon the other hand, the Bank's right is based on a real estate mortgage duly recorded on Apr. 24, 1959. The Bank's registered mortgage is thus *superior* to both said judgment and levy and sale. By virtue of the foreclosure sale, the land and the house cannot now be taken by Jesus. Note that the Bank never acted in bad faith.
- (b) The transfer of the house — alleged to be fictitious and fraudulent from Dominador, the father, to Rolando, the son, cannot prosper — for Dominador, an *indispensable* party, is *not* a party to the present case. Dominador is entitled to be heard to defend the validity of the transfer to his son, Rolando.

Tiongco v. de la Merced
L-24426, July 25, 1974

Even if a decree in a cadastral proceeding is infected with nullity because of a clear denial of procedural due process, still an innocent purchaser for value of the land involved, relying as he does on a Torrens title issued for the property, is protected by the law.

Heirs of Felicidad Canque v. Court of Appeals
84 SCAD 763
(1997)

If the land is mortgaged to a rural bank under RA 720, as amended, the mortgagor may redeem the property within 2 years from the date of foreclosure or from the registration of the sheriff's certificate of sale at such foreclosure if the property is not covered or is covered, respectively by a Torrens title. If the mortgagor fails to exercise such right, he or his heirs may still repurchase the property within 5 years from the expiration of the 2-year redemption period pursuant to Sec. 119 of the Public Land Act. (*Commonwealth Act 141*).

If the land is mortgaged to parties other than rural banks, the mortgagor may redeem the property within 1 year from the registration of the certificate of sale pursuant to Act 3135. If he fails to do so, he or his heirs may repurchase the property within 5 years from the expiration of the redemption period also pursuant to Sec. 119 of the Public Land Act.

CMS Stock Brokerage, Inc. v. CA
84 SCAD 807
(1997)

Real property sold on execution may be redeemed by the judgment debtor or his successors-in-interest, in the whole or any part of the property. Exercise of this right of redemption by the judgment debtor is not conditioned upon ownership of the property sold on execution but by virtue of a writ of execution directed against such judgment debtor.

Art. 709. The titles of ownership, or other rights over immovable property, which are not duly inscribed or annotated in the Registry of Property shall not prejudice third persons.

COMMENT:

(1) Meaning of ‘Third Persons’

Those who did not participate in the act, contract, or deed registered (*See Guido v. Borja, 12 Phil. 718*); those who not having participated in said act, contract, or deed, base their right on the title that has been registered (*Sison v. Ramos, 13 Phil. 54; See also Art. 1126*); those who have no actual knowledge of the act, contract or deed, for the purpose of registration is served when there is actual knowledge or notice. (*Tuason v. Reyes, 48 Phil. 844*).

**Antonio, et al. v. Estrella
GR 73319, Dec. 1, 1987**

While under the Torrens System, registration is the operative act that binds the land, and in the absence of record, there is only a contract that binds the parties thereto, without affecting the rights of strangers to such contract, actual knowledge thereof by third persons is equivalent to registration.

**National Grains Authority v. IAC
GR 68742, Jan. 28, 1988**

A bank is not required before accepting a mortgage, to make an investigation of the title of the property being given as security. And where innocent third persons, like mortgagees, relying on the certificate of title acquire rights over the property, their rights cannot be disregarded.

**De la Cruz, etc. v. IAC, etc.
L-72981, Jan. 29, 1988**

Where the buyers bought the property with notices of the claim of third persons aside from a claim or right of the reg-

istered owners, they are purchasers in bad faith. In the same vein, a purchaser of a property cannot close his eyes to facts which should put a reasonable man upon his guard and claim that he acted in good faith under the belief that there was no defect in the vendor's title.

Ortigas & Co., Ltd. Partnership v. Velasco
85 SCAD 742
(1997)

Lands already covered by existing titles "cannot be the subject of the petitions for reconstitution of allegedly lost or destroyed titles by third parties without first securing by final judgment the cancellation of such existing titles," and that "courts simply have no jurisdiction over petitions by such third parties for reconstitution of allegedly lost or destroyed titles over lands that are already covered by duly issued subsisting titles in the names of their duly registered owners."

Republic v. CA
102 SCAD 305, 301 SCRA 366
(1999)

Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate.

Verily, all persons dealing with registered land may safely rely on the correctness of the certificate of title issued therefor, and the law or the courts do not oblige them to go behind the certificate in order to investigate again the true condition of the property.

(2) Effect of Non-Registration on the Immediate Parties to a Transaction

The purpose of registration is merely to notify and protect the interests of strangers to a given transaction, who may be ignorant thereof, and the non-registration of the deed evidencing said transaction does *not relieve the parties* thereto of their obligations thereunder. Therefore, as between the parties to a

sale, registration is *not necessary* to make it valid and effective, for such notice is equivalent to registration. To hold otherwise would make the Torrens System a shield for the commission of fraud by the vendor or his heirs who would then be able to reconvey the property to other persons. (*Sapto, et al. v. Fabiana, L-11285, May 16, 1958; Galanza v. Nuesa, 50 O.G. 4213*). Indeed, registration is intended to protect the buyer against claims of third persons arising from subsequent alienations by the vendor, and is certainly not necessary to give effect as between the parties to the contract. (*Manuel v. PNB, L-9664, July 31, 1957; Monge v. Angeles, L-9558, May 24, 1957; Galanza v. Nuesa, 50 O.G. 4213*).

Maria Bautista Vda. de Reyes v. Martin de Leon
L-22331, June 6, 1967

ISSUE: Between an unrecorded sale of prior date of real property by virtue of a public instrument and a recorded mortgage thereof at a later date, which is preferred?

HELD: The former (the unrecorded sale) is preferred for the reason that if the original owner had parted with his ownership of the thing sold, he no longer had the ownership and free disposal of that thing so as to be able to mortgage it. Thus, registration of the mortgage under Act No. 3344 would, in such case, be of no moment, since it is understood to be without prejudice to the better right of third parties. Nor would it avail the mortgagee to assert that he is in actual possession of the property for the execution of the conveyance in a public instrument earlier was equivalent to the delivery of the thing sold to the vendee.

[*NOTE:* It would seem that this ruling is not accurate because the mortgagor should really still be considered the owner insofar as innocent third parties are concerned, the sale not having been registered. This comment however holds true only if somehow the land — even if not registered under the Torrens System was in the name of the mortgagor — as when for instance he had previously registered his purchase of it from someone.]

(3) When Registration is Useless

Registration is useless (confers no real right) when what is registered is insufficient to grant such a right as in the case of a fictitious or simulated sale (*Cruzado v. Bustos*, 34 Phil. 17); or if what was registered was a forged deed (*See Dupilas v. Cabacungan*, 36 Phil. 254); or as in the case of a sheriff's sale that has been made without the necessary legal formalities and notices. (*Borja v. Addison*, 44 Phil. 895).

In the case of *Constancio Joaquin v. Abundio Madrid, et al.* (L-13551, Jan. 30, 1960), it was held that when the instrument (such as a mortgage deed) presented for registration is FORGED, the registered owner does NOT thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property. This is true even when the forged deed is accompanied by the owner's duplicate certificate of title. The innocent purchaser for value protected by law is one who purchases a titled land by virtue of a deed executed by the registered owner himself, not by an impostor. The victim here was negligent as he did not take enough care to see to it that the persons who executed the deed of mortgage are the real registered owners of the property. He should suffer for this negligence.

(4) BAR

Juan, the registered owner of a parcel of land entrusted his certificate of title to his good friend Pedro. The good friend Pedro, representing himself to be the owner Juan as appearing on the Certificate of Title, went to Pablo, and sold the land to Pablo by forging the signature of Juan on the Deed of Sale. Pablo, in good faith, bought the land, paying the agreed price therefor and subsequently obtained a Certificate of Title in his name. After Pablo had obtained a Certificate of Title in his name, Juan discovered the transaction, and filed an action against Pablo to annul the sale, and to cancel the latter's certificate of title. Will the action of Juan prosper? Explain.

ANS.: Yes, Juan's action will prosper because the deed of sale was forged. Pablo cannot really be innocent for his failure to ascertain the identity of the seller. (*See Joaquin v. Madrid, L-13551, Jan. 30, 1960*).

Republic v. CA
GR 40402, Mar. 16, 1987

The basic elements for the allowance of the reopening of review of a decree, are: (1) the petitioner has real or dominical right; (2) that he has been deprived thereof through fraud; (3) that the petition is filed within one year from the issuance of the decree; and (4) that the property has not yet been transferred to an innocent purchaser. However, the action to annul a judgment, upon the ground of fraud would be unavailing unless the fraud be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered. Review of the decree demands a showing of actual (not constructive) fraud, *i.e.*, actual malice. A certificate of title is void, when it covers property of public domain classified as forest or timber and mineral lands. Any title issued on non-disposable lots even in the hands of an alleged innocent purchaser for value, shall be cancelled.

National Grains Authority v. IAC
GR 68741, Jan. 28, 1988

A petition for review of the decree of registration will not prosper even if filed within one year from the entry of the decree if the title has passed into the hands of an innocent purchaser for value. The setting aside of the decree of registration issued in land registration proceedings is operative only between the parties to the fraud and the parties defrauded and their privies, but not against acquirers in good faith and for value and the successors-in-interest of the latter. As to them, the decree shall remain in full force and effect forever.

Hence, even if there was fraud committed by the sellers against the buyers, a mortgagee who was no privy therein cannot be made to suffer the consequences thereof.

Gabriel v. CA
GR 26348, Mar. 30, 1988

The Land Registration Act as well as the Cadastral Act protects only the holders of a title in good faith and does not

permit its provisions to be used as a shield for the commission of fraud, or that one should enrich himself at the expense of another.

Said laws do not give anybody, who resorts to the provisions thereof, a better title than he really and lawfully has. If he happened to obtain it by mistake or to secure, to the prejudice of his neighbor, more land than he really owns, with or without bad faith on his part, the certificate of title, which may have been issued to him under the circumstances, may and should be cancelled or corrected. This is permitted by Section 112 of Act No. 496, which is applicable to Cadastral Act as expressly so provided in Section 11 of the latter Act. It cannot be otherwise because errors in the plans of lands sought to be registered in the registry and reproduced in the certificate of title issued later do not annul the decree of registration on the ground that it is not the plan but the land itself which is registered in the registry.

Dino v. CA
213 SCRA 422
(1992)

Where the certificate of title was already in the name of the forger when the land was sold to an innocent purchaser, the vendee had the right to rely on what appeared in the certificate and, in the absence of anything to excite suspicion, was under no obligation to look beyond the certificate and investigate the title of the vendor appearing on the face of said certificate.

Edaño v. CA
213 SCRA 585
(1992)

Any person who seeks, the registration of land in his name under the Torrens System has the burden of proving his title.

Balangcad v. Justices of the Court of Appeals
206 SCRA 169
(1992)

The Torrens System is intended to guarantee the integrity and conclusiveness of the certificate of registration but it cannot

be used for the perpetration of fraud against the real owner of the registered land.

Director of Lands v. IAC
214 SCRA 604
(1992)

The requirement for the submission of the original tracing cloth plan of the land applied for cannot be waived either expressly or impliedly. Said submission is a statutory requirement of a mandatory character.

Llenares v. CA
41 SCAD 219
(1993)

Payment of real estate taxes by another benefits the registered owners themselves and their successors-in-interest.

Jacob v. CA
43 SCAD 1
(1993)

Title to registered land is not lost by ignorance.

Dela Peña v. CA
49 SCAD 796
(1994)

Persons who have not obtained title to public lands could not question the titles legally issued by the State.

Sandoval v. CA
73 SCAD 37
GR 106657, Aug. 1, 1996

A fraudulent or forged document of sale may give rise to a valid title.

Sajonas v. CA
71 SCAD 542
GR 102377, July 5, 1996

The cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property.

Heirs of Manuel A. Roxas
v. Court of Appeals
81 SCAD 17
(1997)

Adjudication of land in a registration (or cadastral) case does not become final and incontrovertible until the expiration of one year after the entry of the final decree.

Before such time, the decision remains under the control and sound discretion of the court rendering the decree, which court after hearing, may set aside the decision or decree and adjudicate the land to another party.

Rural Bank of Compostela v. CA
81 SCAD 468
(1997)

The issuance of a free patent effectively segregates or removes the land from the public domain.

Islamic Directorate of the Phils. v. CA
82 SCAD 618
(1997)

Under the Torrens System of Registration, the minimum requirement for one to be a good faith buyer for value is that the vendee at least, sees the owner's duplicate copy of the title and relies upon the same.

Esquivias v. CA
82 SCAD 927
(1997)

While the certificates of title in the names of Jose G. Domalaon and Elena G. Domalaon are indefeasible, unas-

sailable and binding against the whole world, including the government itself, they do not create or vest title; they merely confirm or record title already existing and vested.

They (certificates) cannot be used to protect a usurper from the true owner, nor can they be used as a shield for the commission of fraud, neither do they permit one to enrich himself at the expense of others. The registered property is deemed to be held in trust for the real owners by the person in whose name it has been registered.

Tagaytay-Taal Tourist Development Corp. v. CA
83 SCAD 155
(1997)

Upon the expiration of time allowed by law for redemption of a registered land sold on execution, the purchaser at such sale may petition for the issuance of a new Certificate of Title to him, subject to the condition that “before entry of a new Certificate of Title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.”

Carvajal v. CA
87 SCAD 828
(1997)

The law does not require resorting to a survey plan to prove the true boundaries of a land covered by a valid certificate of title; the title itself is the conclusive proof of the realty's metes and bounds.

Heirs of Marciano Nagaño v. CA
89 SCAD 80
(1997)

A Free Patent issued over private land is null and void, and produces no legal effects whatsoever.

Estate of the late Mercedes Jacob v. CA
89 SCAD 962
(1997)

An original owner of registered land may seek the annulment of the transfer thereof on the ground of fraud and

the proper remedy is reconveyance. However, such remedy is without prejudice to the rights of an innocent purchaser for value holding a Certificate of Title.

(5) Registration of Land in the Name of the Husband Alone

**Associated Insurance Surety Co., Inc.
v. Antonio Banzon and Rosa Balmaceda
L-23971, Nov. 29, 1968**

FACTS: Two parcels of land were registered under the Torrens System in the name of the husband, Antonio R. Banzon, alone (*Certificates of Title 39685 and 53759*). No proof was presented regarding the acquisition of the property during Banzon's marriage. Are the lands conjugal?

HELD: The lands are *capital*, not conjugal because no proof was given that the lands, registered in the name of the husband alone, were acquired during the existence of the marriage. (*Note: please observe that if proof had been presented of acquisition of the lands during the marriage, the presumption of conjugal character [Art. 160] would have prevailed over the registration of the properties in the sole name of the husband*).

(6) Who Succeeds the Original Application in Case of His Death

**Baguio v. Republic
102 SCAD 352, 301 SCRA 450
(1999)**

In case of his death, the original applicant shall be succeeded in his rights and obligations by his legal heirs with respect to the land applied for or leased.

Art. 710. The books in the Registry of Property shall be public for those who have a known interest in ascertaining the status of the immovables or real rights annotated or inscribed therein.

COMMENT:**(1) 'Public' Nature of the Books**

Public is a comprehensive, all-inclusive term, and properly construed, it may embrace every *person* (even those *without a pecuniary* or financial interest) as long as it is clear that the purpose of the examination is NOT unlawful or arises from sheer, idle curiosity. (*See Subido v. Ozaeta and Villanueva, 45 O.G. 9, Sep. 1949, Sup., p. 11*).

[Thus, an editor of a newspaper may examine the records of the Registry for the purpose of ascertaining the real estates that have been sold to aliens. (*Subido v. Ozaeta and Villanueva, supra*).].

(2) What the Registrar Does Not Have To Do

It is not the duty of the Registrar to see that the records examined are not published. For if it is wrong to publish the contents of the record, it is the *legislature*, and not the officials having custody thereof, which is called upon to devise a remedy. As to the moral or material injury which the publication might inflict on other parties, that is the publisher's responsibility and lookout. (*Subido v. Ozaeta and Villanueva, supra*).

(3) Ministerial Function of Register of Deeds

Toledo-Banaga v. CA
102 SCAD 906, 302 SCRA 331
(1999)

It is a *ministerial function* of the Register of Deeds to comply with the decision of the court to issue a title and register a property in the name of a certain person, especially when the decision had attained finality.

Art. 711. For determining what titles are subject to inscription or annotation, as well as the form, effects, and cancellation of inscriptions and annotations, the manner of keeping the books in the Registry, and the value of the entries contained in said books, the provisions of the Mortgage

Law, the Land Registration Act, and other special laws shall govern.

COMMENT:

(1) Reference to Special Laws

“*Special Laws*” include Sec. 194 of the Revised Administrative Code as amended by Act 3344.

It has been held that a mortgage, whether registered or not is binding between the parties, registration being necessary only to make the same valid against third persons. Registration neither adds to its validity nor convert an invalid mortgage into a valid one. Thus, it is still possible to show that the mortgage is invalid for lack of consideration in an ordinary action, and there ask for the avoidance of the deed and the cancellation of its registration. However, until such action is filed and decided, it would be too dangerous to the rights of the mortgagee to deny registration of the mortgagee, otherwise the rights of said mortgagee may be defeated by a transfer or conveyance of the mortgaged property to an innocent third person. (*Sumanillo v. Cajucum, L-13683, Mar. 28, 1960*). While one who buys from the registered owner does not need to look behind the certificate of title, one who buys from one who is NOT the registered owner is expected to examine not only the certificate of title, but also all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor, or in his capacity to transfer the land. His failure to investigate constitutes lack of good faith. (*Revilla v. Galindez, L-9940, Mar. 30, 1960*).

(2) Who Have Legal Standing in Land Registration or Cadastral Cases?

**Virginia L. de Castro v. Pio Marcos
L-26093, Jan. 27, 1969**

The Court, said (in connection with legal personality in land registration or cadastral cases):

- (a) In *Roxas v. Cuevas, 8 Phil. 469, 475*, an early case, this Court held that mere citizens could have no interest in

public land. At about the same time, this Court also held that to give a party standing in a court of land registration, *he must make some claim to the property*. (*Couto v. Cortez*, 8 Phil. 459, 461).

- (b) Then, in *Archbishop of Manila v. Barrio of Sto. Cristo*, 39 Phil. 17, this Court ruled that although an opponent in a land registration proceeding could *not* show title in himself, he was not incapacitated from opposing the registration sought by another so long as he had some interest over the property — *whether* this interest is in the character of *legal owner* or is of a *purely equitable* nature as where he is the *beneficiary in a trust*.
- (c) Later, this Court described a homesteader, who had not yet been issued his title, but who had fulfilled all the conditions required by law as a person who should be regarded as an *equitable owner* of the land. (*Balboa v. Farrales*, 51 Phil. 498, 501-503). Similarly a purchaser of friar land has an equitable title to the land *before* the issuance of the patent. (*Director of Lands v. Rizal*, 37 Phil. 806; *Alvarez v. Espiritu*, L-18833, Aug. 14, 1965).
- (d) *Pitargue v. Sorilla*, 92 Phil. 515, laid down the principle that a *bona fide* applicant of public land may protect his right of possession, and sue for forcible entry or unlawful detainer or pursue any suitable remedy provided by law. Indeed, an awardee in a sales application is authorized to take possession of the land to enable him to comply with the requirements of the award before title can be issued. (*Visayan Realty, Inc. v. Meer*, 96 Phil. 515, 520).
- (e) In *Diaz v. Macalinao*, 102 Phil. 999, 1002, it was held that a homestead entry *segregates* the homestead from the public domain and divests the Director of Lands of control and possession thereof, *except* if the homestead application is finally disapproved and the entry annulled or revoked.
- (f) In *Heirs of Pelagio Zara v. Director of Lands*, L-19535, July 10, 1967, the Supreme Court declared that persons who claim to be in possession of a tract of public land, and have applied with the Bureau of Lands for its purchase

have the necessary personality to oppose registration. The Court held too that an award under a sales application has “the effect of withdrawing the lands of the public domain that were ‘disposable’ by the Director of Lands.” (Director of Lands v. Court of Appeals, L-17696, May 19, 1966).

- (g) In the instant case, petitioner is an *awardee* in the public bidding held upon her own township sales application. Although the award has not been fully implemented because one condition imposed on her has not yet been complied with, still it is a provisional award, which grants petitioner legal standing in the cadastral proceedings.

(3) BAR

In 1933, an alien bought a piece of land and built his residential house thereon. He, however, has NOT registered the deed of sale in his favor up to the present. May he now register the deed of sale and obtain title over the property in his name? Reason.

ANS.: Yes, for after all the purchase was made in 1933 or prior to the effectivity of the then 1935 Philippine Constitution. His vested right is entitled to be respected.

Villafior v. CA 87 SCAD 778 (1997)

All told, the only disqualification that can be imputed to private respondent is the prohibition in the 1973 Phil. Constitution against the holding of alienable lands of public domain by corporations.

However, this Court earlier settled the matter, ruling that said constitutional prohibition had no retroactive effect and could not prevail over a vested right to the land.

BOOK III

DIFFERENT MODES OF ACQUIRING OWNERSHIP

PRELIMINARY PROVISION

Art. 712. Ownership is acquired by occupation and by intellectual creation.

Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition.

They may also be acquired by means of prescription.

COMMENT:

(1) Modes of Acquiring Ownership

- (a) *Original modes.* (*Acap v. CA, 251 SCRA 30 [1995]*) (independent of any pre-existing or preceding title or right of another):
 - 1) Occupation
 - 2) Creation or work (in the Code, only *intellectual creation* is mentioned).
- (b) *Derivative modes.* (*Acap v. CA, supra*) (somebody else was the owner before):
 - 1) Succession
 - 2) Donation

- 3) Prescription
- 4) Law
- 5) Tradition, as a consequence of *certain contracts* (like the contract of sale, barter, assignment, simple loan or *mutuum*).

[NOTE: A perfected sale does *not* transmit ownership; it is the delivery or tradition which conveys ownership.]

[NOTE: In some contracts, like *Deposit* or *Commodatum*, neither the perfection of the contract nor the delivery transfers ownership.]

[NOTE: Hence we say not “tradition” but “tradition, as a consequence of certain contracts.”]

**Board of Liquidators v.
Exequiel Floro, et al.
L-15155, Dec. 29, 1960**

FACTS: Malabanan entered into a contract with the Board of Liquidators for the salvage of sunken surplus properties. Under the contract, Malabanan was to pay the Government P90 for each long ton of surplus properties recovered. *Issue:* When did Malabanan become the owner of the *salvaged* properties — from the time he was able to salvage them or from the time *he paid* the Government for them?

HELD: Malabanan became the owner of said salvaged goods, not from the time of payment for them, but from the time he recovered or salvaged them from the sea, that is, from the time he gained effective possession of the goods. This is because there is nothing in the agreement that may be deemed a reservation of title or a provision for non-delivery.

[NOTE: Being his private property, and not therefore belonging to the Government, said properties may be attached by his own private creditors.]

Baes v. CA
43 SCAD 384
(1993)

If the riparian owner is entitled to compensation for the damage to or loss of his property due to natural causes, there is all the more reason to compensate him when the change in the course of the river is effected thru artificial means.

The petitioners cannot now claim additional compensation because to allow the former to acquire ownership of the dried-up portion of the creek would be a clear case of double compensation and unjust enrichment at the expense of the State.

Gesmundo v. CA
117 SCAD 919, 321 SCRA 487
(1999)

While tax declarations and receipts are NOT conclusive evidence of ownership, yet, when coupled with proof of actual possession, tax declarations and receipts are STRONG evidence of OWNERSHIP.

(2) ‘Mode’ Distinguished from ‘Title’

(a) *Definitions*

- 1) mode — the process of acquiring or transferring ownership. (*See 3 Sanchez Roman 199-200*).
- 2) title — that which is not ordinarily sufficient to convey ownership, but which gives a *juridical justification* for a mode; *i.e.*, it provides the cause for the acquisition of ownership. (*See 3 Sanchez Roman 200*).

(*Example: If A sells to B a specific car for a specific amount, the sale is the title; by virtue of such title, A should now deliver the property to B. It is the delivery or tradition that makes B the owner; it is tradition that is the mode.*)

(b) *Tabular Distinctions:*

MODE	TITLE
1. proximate cause	1. remote cause
2. the true cause (or process)	2. the justification for the process
3. directly produces a real right	3. serves merely to give an opportunity for the existence of a real right; meantime, only a <i>personal</i> right exists

[NOTE: In some cases, like succession, the mode is at the same time the *title*, namely SUCCESSION. Hence, in succession, the delivery or tradition is NOT NEEDED to transfer ownership.]

(3) **'Real' Distinguished from 'Personal' Right**(a) *Definitions:*

- 1) A *real right (jus in re)* is the power of a person to obtain certain financial or economic advantages over a specific thing, a power enforceable against the whole world (*See 3 Sanchez Roman 6*) whether or not he possesses the thing.
- 2) A *personal right (jus in personam)* is the power belonging to a person to demand from another, as a definite passive subject-debtor, the fulfillment of a prestation to give, to do, or not to do. (*3 Sanchez Roman 6*).

(b) *Examples:*

A bought land from B. A has paid the price. *Prior* to delivery (tradition) of the land, A has only a *personal right* against B, namely, the *right to demand the delivery*. Indeed, prior to delivery, A is not yet the owner. It is

only *after delivery* to *A* that *A* acquires a real right over the land: indeed it is only after delivery as a rule, that *A* becomes owner of the land. (*Ownership is a real right.*)

[NOTE: It is *wrong* to say that “a *real right* is a right over real property” or that “a *personal right* is a right over personal property.” For there can be REAL RIGHTS (like ownership, or possession) over REAL AND PERSONAL property. And there can be PERSONAL RIGHTS (against a person) for the delivery, for example, of REAL or PERSONAL properties.]

[NOTE: The right to compel delivery is a PERSONAL RIGHT (*jus in personam*) and is referred to sometimes as a “*jus ad rem.*”].

(c) *Tabular Distinctions:*

REAL RIGHT	PERSONAL RIGHT
1) has a SPECIFIC object	1) affects all the PRESENT and FUTURE property of the debtor. (<i>See Arts. 1911, 2236</i>)
2) there is one definite ACTIVE subject (like the owner, or usufructuary); the rest of the world is the indefinite PASSIVE subject. (<i>3 Sanchez Roman 6</i>). HENCE, a real right follows its OBJECT in the hands of any POSSESSOR (binding on the whole world) (<i>Castan – RIGHT OF PURSUIT</i>).	2) there is a definite ACTIVE subject (the creditor); and a definite PASSIVE subject (the debtor). (<i>3 Sanchez Roman 6</i>); HENCE, a personal right is enforceable only against the original debtor or a transferee who has NOTICE or KNOWLEDGE (<i>Castan</i>)
3) the right is created directly over a <i>thing</i> (<i>Falcon; see 3 Sanchez Roman 6-7</i>).	3) it is exercised <i>thru</i> another person, against whom an action may be brought (<i>Falcon; see 3 Sanchez Roman 6-7</i>)

4) the right is OVER a thing	4) the right is TO a thing (thru another)
5) limited by the VALUE, USE, or PRODUCTIVITY of the thing	5) not so limited
6) created by both mode and title. (3 Sanchez Roman 6-7)	6) created by title alone (except when the title is at the same time the mode, as in <i>succession</i>). (3 Sanchez Roman 6-7)
7) subject matter is generally CORPOREAL	7) subject matter is intangible or incorporeal (for it is the fulfillment of the duty or prestation)
8) extinguished by LOSS or DESTRUCTION. (3 Sanchez Roman 6-7)	8) not extinguished by LOSS or DESTRUCTION (the personal right survives at least as to the claim for damages). (3 Sanchez Roman 6-7)

(4) Classification of Real Rights in the Civil Code

- (a) Where there is full control and enjoyment (*DOMINIO PLENO*):
- 1) Ownership (included is co-ownership, which is only a form of ownership)
 - 2) Possession (without prejudice to the effects of good faith and bad faith)
- (b) Where there is PARTIAL CONTROL OR ENJOYMENT (*DOMINIO MENOS PLENO OR DOMINIO LIMITADO*):
- 1) Usufruct (Beneficial Ownership)
 - 2) Naked Ownership

- 3) Easements (whether real or personal easements)
- 4) Lease of real property if it exceeds one year, or if it is registered (regardless of period).

[NOTE: This right is really QUASI-REAL.]

- (c) Real Rights of Security or Guaranty:
 - 1) Mortgage
 - 2) Chattel Mortgage
 - 3) Pledge
 - 4) Antichresis
 - 5) Retention (which is similar to a legal pledge, but is not exactly the common law “LIEN,” for retention under the Civil Code requires possession, otherwise the right to retain is lost, although the *lien* itself may still exist).
- (d) Of acquisition
 - 1) Pre-emption
 - 2) Redemption (whether conventional or legal). (*Refer to II Reyes and Puno, An Outline of Philippine Civil Law, p. 18*).

(5) Examples for the Modes of Acquiring Ownership

- (a) *Occupation* — (hunting, fishing, hidden treasure, abandoned movables “*res nullius*” but not “*res communes*”)
- (b) *Intellectual creation* — (book copyrights, patented inventions, trademarks, letters)
- (c) *Law* — (accession, fruits naturally falling on adjacent land)

[NOTE: It is understood that the law is considered in some other modes like succession or tradition, but there are also cases where ownership is given independently of the other mode. It is submitted that it is in this class of cases where the LAW is really the mode of acquisition.]

[NOTE: An example of acquisition by operation of law was given by the Supreme Court in the case of Mesina

v. Pineda Vda. de Senza, et al., L-14722, May 25, 1960, where it held that where a person by himself or thru his predecessors-in-interest, has been in open, continuous, exclusive and notorious possession of agricultural lands of the public domain, under a *bona fide* claim of ownership, for at least 30 years, he is deemed to have already acquired *by operation of law* not only a right to a grant, but a grant of the Government, for it is *not* necessary that a certificate of title be issued in order that said grant may be sanctioned by the courts — an application therefor being sufficient under the provisions of Sec. 47 of Act 2874 (*reproduced as Sec. 50, Commonwealth Act 141*).].

- (d) *Donation* — (as when a parcel of land is given gratuitously and accepted and in a public instrument)
- (e) *Testate and intestate succession* — (inheritance)
- (f) *Tradition* as a consequence of certain contracts — (as when sold sugar has been delivered)
- (g) *Prescription* — (as when ownership of land is acquired by adverse possession for the period of time required under the law, provided the necessary legal conditions or requisites are present).

Republic v. CA
GR 60078, Oct. 30, 1987

Both under the 1973 and the 1987 Constitutions, respectively, a private corporation (even if a domestic one) cannot acquire (and therefore cannot register) lands of the public domain. But if the land involved, at the time it was acquired by the corporation in 1974, was no longer part of the public domain and *long years of exclusive continuous and adverse possession of the same by its predecessors-in-interest* had given ownership thereof *ipso jure* to said predecessors, enabling the latter to convey title to said corporation, the prohibitions referred to in the 1973 and 1987 Constitutions can no longer apply. This is true even if the corporation's acquisition was in 1974, or after the 1973 Constitution was already in effect, because then as of that time, the land was no longer public land.

[NOTE: Lands covered with a Torrens Title *cannot* be acquired by prescription.]

[NOTE: Registration is NOT a mode of acquiring ownership, for it merely confirms the fact of its existence with notice to the world at large. (*Bautista v. Dy Bun Chin*, 49 O.G. 179).]

(6) Another Basis of Classification

In a sense, the modes may also be classified as follows:

- (a) Modes of ACQUISITION only —
 - 1) occupation
 - 2) intellectual creation
 - 3) prescription
- (b) Modes of ACQUISITION and TRANSMISSION *all the rest*. (*See 2 Castan*, p. 161).

(7) Modes of Extinguishing Ownership

- (a) Absolute extinguishment (all persons are affected):
 - 1) Physical loss or destruction
 - 2) Legal loss or destruction (when it goes out of the commerce of man)
- (b) Relative (only for certain persons for others may acquire their ownership):
 - 1) law (like finding of lost personal property)
 - 2) succession (testate or intestate)
 - 3) tradition (as a consequence of certain contracts)
 - 4) donation
 - 5) abandonment
 - 6) destruction of the prior title or right (like expropriation, rescission, annulment, fulfillment of a resolutive condition)

7) prescription

[NOTE: If a registered owner of a vehicle sells the property to another, informs the Motor Vehicles Office of the sale, but the buyer does not register it in his name (buyer's name), the original registered owner has already lost ownership even insofar as innocent third persons are concerned. (Francisco v. De la Serna, L-12245, Aug. 31, 1959).]

Title I. — OCCUPATION

Art. 713. Things appropriable by nature which are without an owner, such as animals that are the object of hunting and fishing, hidden treasure and abandoned movables, are acquired by occupation.

COMMENT:

(1) Occupation Defined

The acquisition of ownership by seizing *corporeal things* that have no owner, made with the intention of acquiring them, and *accomplished according to legal rules*. (See the *Partidas*; see also 3 *Sanchez Roman 210*).

(2) Essential Requisites for Occupation

- (a) There must be a seizure or apprehension (the material holding is not required as long as there is right of disposition). (2 *Castan 140*).
- (b) The property seized must be *corporeal* personal property.
- (c) The property seized must be susceptible of appropriation (either abandoned property — “*res derelicta*,” or unowned property — “*res nullius*”). (NOT *res communes* for these are owned in common or public property.)
- (d) There must be the intent to appropriate.
- (e) The requisites or conditions of the law must be complied with. (See *Villanueva v. Claustro*, 23 *Phil.* 54).

(3) Some Kinds of Property Acquirable by Occupation

- (a) those *without* an owner, like animals that are the object of hunting and fishing (provided that they are seized during

the OPEN, *not closed seasons* [See Act 1798], and provided the catching is not perpetrated thru illegal means like explosives [See CA Nos. 115, 297 – *the Fisheries Acts*], and provided furthermore that they have not been already caught and appropriated by somebody else).

- (b) Hidden treasure (he gets half as finder, by occupation, provided he is not a trespasser; if married, his share goes to the conjugal partnership). (*Art. 154*).
- (c) Abandoned movables (*hallazgo*).

(4) When a Thing is Considered Abandoned

A thing is considered ABANDONED when:

- (a) The “*spes recuperandi*” (expectation to recover) is gone; and
- (b) The “*animo revertendi*” (intention to return or have it returned) has been given up by the owner. (*U.S. v. Rey, 8 Phil. 500*).

(5) Recovery of a Thing that Had Been Lost by Force

A thing lost or taken by force (as by the Japanese army) is not *ipso facto* converted into *res nullius*, and it may thus be recovered from whoever has it later in his possession, unless said possessor can show he has acquired it by any of the modes of acquiring ownership. (*Narciso v. Ortiz, [CA] 45 O.G. 162, May, 1949*).

(6) Case

Republic v. Jacob 495 SCRA 529 (2006)

ISSUE: Does a more casual cultivation of portions of land by the claimant constitute sufficient basis for a claim of ownership?

HELD: No. Taken together with the words “continuous,” “exclusive,” and “occupation” sums to highlight the facts than for an applicant to qualify her possession of the property must not be a mere fiction.

(7) Catching of Sea Products by a Group of Fishermen

If a group of fishermen find some ambergris on the sea, said fishermen's seizure of the ambergris creates a co-ownership. (*Punzalan v. Boon Liat*, 44 Phil. 320).

(8) Sea Products

Regarding things found on the sea, we have the following classification:

- (a) marine products;
- (b) jetsam (composed of *floatsam*, floating on the sea surface; *ligan*, resting on the base of the sea);
- (c) the results of a shipwreck.

Art. 714. The ownership of a piece of land cannot be acquired by occupation.

COMMENT:**(1) Why Land Ownership Cannot Be Acquired by Occupation**

The reason for the article is the fact that "*when the land is without owner, it pertains to the State.*"

**Pinero v. Director of Lands
L-36507, June 14, 1974**

Under the Constitution, all lands of the public domain, and other natural resources of the Philippines belong to the State. (*See Art. XIII, Sec. 1, 1935 Constitution and Art. XIV, Sec. 8, 1973 Constitution [now Art. XII, Sec. 2, 1987 Constitution]*). The purpose of this REGALIAN DOCTRINE is to enable the state to have a permanent and fundamental policy relating to the conservation and utilization of all our natural resources. Accordingly, lands acquired from the State shall be subject to the reservation that false statements in the application therefor may result in the cancellation of the concession, title, or permit granted.

Thus, while a Torrens title issued on the basis of a home-stead patent is as *indefeasible* as one judicially secured and while not even the Government can file an action for annulment, still an ACTION FOR REVERSION may be instituted by the Solicitor-General in behalf of the Republic, if the successful applicant had attained said success thru FRAUD.

(2) Abandoned Land

Although it is a fact that lands which *never* had an owner belong to the State, still it is true that there is no legal express provision authorizing the State to become owner of land which formerly was owned by someone. In view however of Art. 714, it is submitted that it can now be implied that all lands whether originally with an owner, or without one, and which at present have no owner, belong to the State. It is likewise submitted that *abandoned* land (one with an owner before) becomes patrimonial land of the State susceptible of acquisition thru acquisitive prescription.

(3) Acquisition of Land by Prescription

While land cannot be acquired by occupation, it may be acquired by prescription (which is an altogether different thing).

Marcelo v. Court of Appeals
105 SCAD 561, 305 SCRA 800
(1999)

Acquisitive prescription is a mode of acquiring ownership by a possessor thru the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful, and uninterrupted.

For that matter, acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.

Mangahas v. CA
104 SCAD 331, 304 SCRA 375
(1999)

Acquisition of ownership under the law on prescription cannot be pleaded in support of petitioner's submission that subject land has *ipso jure* become his private property.

(4) 'Occupation' and 'Prescription' Distinguished

OCCUPATION	PRESCRIPTION
(a) original made — no owner	(a) derivative mode — somebody else was owner
(b) shorter period of possession	(b) generally, longer period of possession

Art. 715. The right to hunt and to fish is regulated by special laws.

COMMENT:**(1) Hunting and Fishing**

- (a) A municipality has the power to issue, and enforce, ordinances respecting fisheries. (*U.S. v. Goring*, 28 Phil. 199; *Bautista v. Angeles*, 34 Phil. 57).
- (b) To hold a municipality liable for the issuance of fishing licenses covering areas which overlap each other, clear proof of negligence is essential. (*Castro v. Reyes*, 37 Phil. 29).

(2) Hunting Law

Act 2590, as amended, regulates hunting to preserve as much as possible certain animal life; declares some seasons *closed* and others *open*; provides that even during the open season, one cannot hunt without a license.

(3) Fishing Laws

- (a) Fisheries Act 4003, as amended by Commonwealth Acts 116 and 471, and by Republic Act 659.
- (b) Act 1499, as amended by Act 1685 prohibiting the use of explosives and poisons for use in fishing.
- (c) Presidential Decree 534.

Art. 716. The owner of a swarm of bees shall have a right to pursue them to another's land, indemnifying the possessor of the latter for the damage. If the owner has not pursued the swarm, or ceases to do so within two consecutive days, the possessor of the land may occupy or retain the same. The owner of domesticated animals may also claim them within twenty days to be counted from their occupation by another person. This period having expired, they shall pertain to him who has caught and kept them.

COMMENT:

(1) Kinds of Animals

- (a) wild
- (b) domesticated or tamed (once upon a time they were wild) (*amansados*) (*Catabian v. Tunocul, 11 Phil. 49*)
- (c) domestic or tame (reared under man's control)

(2) Acquisition of Domesticated and Domestic Animals

- (a) Domesticated (tamed) animals (*amansados*) may be acquired by occupation (*20 days*) unless a claim has been made for them.
- (b) Domestic (tame) animals cannot be acquired by occupation unless there is an ABANDONMENT.

[NOTE: Art. 716 speaks of "domesticated," not "domestic" animals.]

(3) When Custody of a Carabao is Entrusted to Another

A carabao (even if considered a domesticated instead of a domestic animal) cannot be acquired by occupation when the person claiming was *entrusted* with its custody. (*Catabian v. Tunocul, 11 Phil. 49*).

Reason: There was a contract, not a straying away from the lawful possessor and owner.

Art. 717. Pigeons and fish which from their respective breeding places pass to another pertaining to a different owner shall belong to the latter, provided they have not been enticed by some artifice or fraud.

COMMENT:

Rule as to Pigeons and Fish

The Article explains itself.

Art. 718. He who by chance discovers hidden treasure in another's property shall have the right granted him in Article 438 of this Code.

COMMENT:

Hidden Treasure

The Article explains itself.

Art. 719. Whoever finds a movable, which is not treasure, must return it to its previous possessor. If the latter is unknown, the finder shall immediately deposit it with the mayor of the city or municipality where the finding has taken place.

The finding shall be publicly announced by the mayor for two consecutive weeks in the way he deems best.

If the movable cannot be kept without deterioration, or without expenses which considerably diminish its value, it shall be sold at public auction eight days after the publication.

Six months from the publication having elapsed without the owner having appeared, the thing found, or its value, shall be awarded to the finder. The finder and the owner shall be obliged, as the case may be, to reimburse the expenses.

COMMENT:

(1) Finding of "Lost" Movable

One who finds lost property is guilty of theft if he does not give it to the owner or to the authorities concerned, *whether or not* he knows who the owner is. (*People v. Panotes*, 36 O.G. 1008). The same is true with one who *buys* or successively possesses said property, with knowledge that he was buying lost property. (*People v. Silverio*, 43 O.G. No. 6, p. 2205).

(2) Reason

The reason is because lost property is not necessarily “abandoned” property. In “loss,” there is no renunciation of ownership; in “abandonment,” there is renunciation, the object becomes *res nullius*, and may, therefore, be acquired by prescription. Abandonment apparently is implied in the last paragraph of the Article.

(3) Extra-Official Expenses

Extra-official efforts and expenses to find the owner should be reimbursed, as a form of quasi-contract.

Art. 720. If the owner should appear, in time, he shall be obliged to pay, as a reward to the finder, one-tenth of the sum or of the price of the thing found.

COMMENT:

Reward to Finder

The Article explains itself.

Title II. — INTELLECTUAL CREATION

Art. 721. By intellectual creation, the following persons acquire ownership:

- (1) The author with regard to his literary, dramatic, historical, legal, philosophical, scientific or other work;**
- (2) The composer, as to his musical composition;**
- (3) The painter, sculptor, or other artist, with respect to the product of his art;**
- (4) The scientist or technologist or any other person with regard to his discovery or invention.**

COMMENT:

(1) Intellectual Creation as a Mode

Intellectual creation is recognized in the Civil Code as a mode of acquiring ownership. (*Art. 712*). “The State shall protect and secure the exclusive rights of gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law.” (*Sec. 13, Art. XIV, The 1987 Constitution*). Arts and letters shall enjoy the patronage of the State. The State shall conserve, promote, and popularize the nation’s historical and cultural heritage and resources, as well as artistic creations. (*Sec. 15, id.*).

(2) Historical Basis

It is clear that the Constitution itself places a high value on intellectual property. But even before the Constitution, we already had under Spain, the Law of Jan. 10, 1879, on Intellectual Property, which was extended to the Philippines by the Royal Decree of May 5, 1887, and published in the *Gaceta de*

Manila with the approval of the Governor-General, on June 15, 1887, and it took effect in the Philippines six months after its promulgation or publication. (*Serrano Laktaw v. Paglinawan*, 44 *Phil.* 855).

Art. 722. The author and the composer, mentioned in Nos. 1 and 2 of the preceding article, shall have the ownership of their creations even before the publication of the same. Once their works are published, their rights are governed by the Copyright laws.

The painter, sculptor or other artist shall have dominion over the product of his art even before it is copyrighted.

The scientist or technologist has the ownership of his discovery or invention even before it is patented.

COMMENT:

(1) Examples of Intellectual Creation

The Article enumerates examples of this mode of acquisition.

(2) Ownership Before Publication

Even *before* the author or composer has *published* the work, he is already the owner of the creation. To protect his right, however, he must ask for a copyright if he intends the work to be published. Unless the copyright is obtained, the ownership by him will be lost. Mere circulation among close friends and associates, notwithstanding, is not considered publication. (*See Mansell v. Valley Printing Co.*, 15 *Ann. Cos.* 133).

(3) Rule When Employees Write

If *A* employs *B* to write a poem for publication or other uses, *A* is considered the owner, not *B*. This is not true however, when *B* is a mere general employee (not entrusted with the task of making a poem), even if the poem was made during office hours. (*See Dielman v. White*, 102 *Fed.* 892; *Callaghan v. Myers*, 128 *U.S.* 617; *Beucicault v. Fox*, 3 *F. Case* 1, p. 691).

Art. 723. Letters and other private communications in writing are owned by the person to whom they are addressed and delivered, but they cannot be published or disseminated without the consent of the writer or his heirs. However, the court may authorize their publication or dissemination if the public good or the interest of justice so requires.

COMMENT:

(1) Meaning of ‘Letter’

Distinction should be made between the letter (ideas, thoughts) and the letter (paper, with words). The first in a way belongs to the sender; the second to the recipient. Thus, the recipient may burn the letter, and cannot be compelled to return them to the sender. The sender may publish the letter (when he has memorized its contents or kept a copy) even without the recipient’s consent.

(2) Rules

The recipient cannot publish or disseminate the letter:

- (a) unless the writer or the writer’s heirs consent;
- (b) or unless the public good or the interest of justice so requires. (*See Art. 723*).

Art. 724. Special laws govern copyright and patent.

(1) Philippine Copyright Law (RA 8293) In A Nutshell

**By Dr. Edgardo C. Paras
(Submitted to the United States Agency
for International Development)**

GENERAL PROVISIONS

State Policy and Statutory Basis

Sec. 1. *State Policy*. The State recognizes that an effective intellectual and industrial property system is vital to the development of creative activity. To this end, it shall streamline and

liberalize administrative procedures of registering copyright and enhance the enforcement of intellectual property rights in the Philippines.

Sec. 2. *Statutory Basis.* Section 228 of RA No. 8293, otherwise known as the Intellectual Property Code of the Philippines (hereinafter to be referred to as IPC), provides as follows:

“Sec. 228. *Public Records.* The section or division of the National Library and the Supreme Court Library charged with receiving copies and instruments deposited and with keeping records required under this Act and everything in it shall be opened to public inspection. The Director of the National Library is empowered to issue such safeguards and regulations as may be necessary to implement this Section and other provisions of this Act.”

These Copyright Safeguards and Regulations are, therefore, issued pursuant to the aforementioned provision of the IPC.

Definition of Terms

The following terms are herein defined:

1. *Author* is the natural person who has created the work;
2. *Collective work* is work which has been created by two (2) or more natural persons at the initiative and under the direction of another with the understanding that it will be disclosed by the latter under his own name and that contributing natural persons will not be identified;
3. *Communication to the public or communicate to the public* means the making of a work available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time individually chosen by them;
4. *Computer program* is a set of instructions capable, when incorporated in a machine-readable medium, of causing a machine having information-process-

ing capabilities, to indicate, perform, or achieve a particular function, task, or result.

5. *Copyright* is a right granted by statute to the author or originator of literary, scholarly, scientific, or artistic productions, including computer programs. A copyright gives him the legal right to determine how the work is used and to obtain the economic benefits from the work. For example, the owner of a copyright for a book or a piece of software has the exclusive rights to use, copy, distribute, and sell copies of the work, including later editions or versions of the work. If another person improperly uses material covered by a copyright, the copyright owner can obtain legal relief;
6. *Copyright Office* refers to the Copyright Division of the National Library;
7. *Copyright Symbol* is represented by ©;
8. *Date of Publication* is the earliest date when a copy of the first authorized edition of the work was placed on sale, sold, distributed, or otherwise made available to the public, by the copyright owner or his representative;
9. *Decompilation* means the reproduction of the code and the translation of the forms of a computer program to achieve the inter-operability of an independently-created computer program with other programs;
10. *Exhibition of an audiovisual work* means any form of exploitation of a work, including its distribution in copies, its public performance, and its communication to the public, including broadcast or rebroadcast, cable retransmission, or satellite broadcast or transmission;
11. *Fee* refers to the amount prescribed by The National Library for the issuance of a Certificate of Registration and Deposit to claim copyright or for the filing

- of assignment or license, or for such other services or transactions;
12. *Performance symbol* is represented by **p**;
 13. *Public lending* is the transfer of possession of the original or a copy of a work or multimedia for a limited period, non-profit purposes, by an institution the services of which are available to the public, such as a public library or archive;
 14. *Public performance* is the recitation, playing, dancing, acting or any performance of the work, either directly or by means of any device or process; in the case of an audiovisual work, the broadcast or showing of its images in sequence and the making of the sounds accompanying it audible; and in the case of a sound recording, the making of the recorded sounds audible at a place or at places where persons outside the normal circle of a family and that family's closed social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and at the same time, or at different places and/or different times, and where the performance can be perceived without the need for communication within the meaning of "communication to the public," defined above;
 15. *Published work* means work which, with the consent of the author, is made available to the public by wire or wireless means in such a way that members of the public may access the work from a place and time individually chosen by them: *Provided*, That availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work;
 16. *Publisher* is one who produces and makes available for circulation or distribution the published work;
 17. *Rental* is the transfer of the possession of the original or a copy of a work or multimedia for a limited period of time, for profit-making purposes;

18. *Reproduction* is the making of one (1) or more copies of a work, including multimedia, in any manner or form. A reprographic reproduction, as authorized under certain circumstances by the IPC, does not include a digital or machine-readable copy, but is limited to photography, xerography and similar processes, resulting in a paper or microform copy;
19. *Reprographic right* is one exercisable anywhere to reproduce or authorize the reproduction of the work by means of any appliance or process capable of producing multiple copies of the work in such a form that the work may be perceived visually. Reprography and other forms of reproduction require the permission of the copyright holder;
20. *SCL* refers to The Library of the Supreme Court of the Republic of the Philippines;
21. *TNL* refers to The National Library of the Republic of the Philippines;
22. *TNL Director* refers to the head of The National Library of the Republic of the Philippines;
23. *Unpublished work* means work that has not been disseminated, circulated or distributed to the public prior to its registration with the Copyright Office;
24. *Work* refers to any original work, derivative work, performance of producers, sound recording, or recording of broadcasting organizations. Derivative work is work that is derived from another work;
25. *Work of applied art* is an artistic creation with utilitarian functions, or incorporated in a useful article, whether made by hand or produced on an industrial scale;
26. *Work of the Government of the Philippines* is work created by an officer or employee of the Philippine government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations, as part of his regularly prescribed official duties.

Scope of Safeguards and Regulations

Copyright shall apply to original works, derivative works, performances of producers, sound recordings, and recordings of broadcasting organizations.

Sec. 1. The following are original works:

- (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 audiovisual recordings;
- (m) pictorial illustrations and advertisements;

- (n) computer programs;
- (o) other literary, scholarly, scientific, and artistic works.

Sec. 2. The following are derivative works:

- (a) dramatizations, translations, adaptations, abridgments, arrangements, and other alterations of literary or artistic works;
- (b) collections of literary, scholarly or artistic works, and compilations of data and other materials which are original by reason of the selection or coordination or arrangement of their contents.

Sec. 3. Works of producers of sound recordings are those which contain in the fixation of the sounds of a performance or of other sounds, or representation of sound, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work. Such fixations may include but are not limited to formats such as phonographic records, cassette tapes, optical discs, CDs, CD-ROMs, DVDs, etc.

Sec. 4. The following are works of broadcasting organizations: recordings, films, videotapes, television broadcasts, and other wire or wireless transmissions.

RULES ON COPYRIGHT OWNERSHIP

Sec. 1. *Rules on Copyright Ownership.* Copyright ownership shall be governed by the following rules:

- (a) Subject to the provisions of this section, in the case of original literary and artistic works, copyright shall belong to the author of the work;
- (b) In the case of works of joint authorship, the co-authors shall be the original owners of the copyright and in the absence of agreement, their rights shall be governed by the rules on co-ownership. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the

- original owner of the copyright in the part that he has created;
- (c) In the case of work created by an author during and in the course of his employment, the copyright shall belong to:
 - (i) The employee, if the creation of the object of copyright is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.
 - (ii) The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.
 - (d) In the case of a work-commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;
 - (e) In the case of audiovisual work, the copyright shall belong to the producer, the author of the scenario, the composer of the music, the film director, and the author of the work so adapted. However, subject to contrary or other stipulations among the creators, the producers shall exercise the copyright to an extent required for the exhibition of the work in any manner, except for the right to collect performing license fees for the performance of musical compositions, with or without words, which are incorporated into the work; and
 - (f) In respect of letters, the copyright shall belong to the writer subject to the provisions of Article 723 of the Civil Code. (*Sec. 6, P.D. No. 49a*)

Sec. 2. *Anonymous and Pseudonymous Works.* — Publishers shall be deemed to represent the authors of articles and other writings published without the names of the authors or

under pseudonyms, unless the contrary appears, or the pseudonyms or adopted name leaves no doubts as to the author's identity, or if the author of the anonymous works discloses his identity.

REGISTRATION AND DEPOSIT OF COPYRIGHTED WORKS

Registration and Deposit of Work

Sec. 1. *Who may apply.* The owner or assignee of the copyright or his duly authorized agent or representative, may apply for a certificate of registration and deposit of the work: *Provided,* That if an author could not claim the benefit of copyright protection, his assignee or agent cannot claim it. If the applicant is not the owner or author or assignee of the work, he shall be required to submit his authority to apply.

An assignee is a person to whom an author may assign copyright in whole or in part. The assignee is entitled to all the rights and remedies which the assignor has with respect to the copyright.

Although no copyright should subsist in any work of the government, any employee may claim it by submitting for registration any work that has been created during the time of his employment but which does not form part of his regularly prescribed official duties.

Sec. 2. *Identification of Author or Authors.* An application for copyright certificate shall identify the author or authors, as far as practicable, without prejudice to the provisions of Sections 171.2 and 179 of the IPC.

Sec. 3. *Non-Resident Applicant.* A non-resident applicant shall appoint a resident agent, by special power of attorney (SPA), who shall be authorized to pursue the copyright application for his/her/its behalf with TNL and/or the SCL and to receive service of notice or other legal process relating to the application and the copyright. In the event of death, absence or incapacity of the resident agent, the applicant shall appoint a new resident agent, by SPA with revocation of the prior SPA, and file notice and a copy thereof with TNL and/or the SCL.

Sec. 4. *Works that shall be Registered and Deposited.* Two (2) copies or reproductions of the following classes of works, and transfers and assignments related thereto, shall be registered and deposited with TNL Copyright Division and another two (2) copies with the SCL:

- Books, pamphlets, articles and other writings;
- Periodicals and newspapers;
- Lectures, sermons, addresses, dissertations prepared for oral delivery whether or not reduced in writing or other material form;
- Letters;
- Musical compositions with or without words.

Sec. 5. *Replicas and Pictures.* For practical purposes, only replicas and pictures of the following classes of works, shall be registered and deposited with TNL Copyright Division:

- Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art, models or designs for works of art;
- Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other work of applied art;
- Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- Drawings or plastic works of a scientific or technical character.

Sec. 6. *Works that may be Registered and Deposited.* The following works that may be registered and deposited:

- Dramatic or dramatic-musical compositions, choreographic works or entertainment in shows;
- Photographic works including works produced by a process analogous to photography, lantern slides;
- Audiovisual works and cinematographic works and works produced by a process analogous to cinema-

tography or any process for making audio-visual recordings;

- Pictorial illustrations and advertisements;
- Computer programs;
- Other literary, scholarly, scientific and artistic works;
- Sound recordings;
- Broadcast recordings.

Sec. 7. When to Register and Deposit. The registration and deposit of copies or reproductions of the work or works, using the prescribed form, shall be made personally or by registered mail within three (3) weeks after the first public dissemination or publication as authorized by the author.

PROCEDURE FOR REGISTRATION AND DEPOSIT

Sec. 1. Filing of Application. The application for a certificate of registration and deposit shall be filed, using the prescribed form, personally or by registered mail, with the Copyright Division of TNL and the SCL. Only complete applications complying with the requirements prescribed in Sec. 3 hereof shall be given due course.

Sec. 2. Fees. Application and service fees shall be charged as prescribed.

Fees paid by mistake, when not required by law, in excess of the required amount, or erroneously charged, shall be refunded. However, a mere change of purpose after the payment of money, as when a party desires to withdraw his/her application, will not entitle a party to a refund of the fees paid.

When an application is withdrawn or refused, fees paid with the application will be considered as the examination and processing fees and shall not be refunded to the applicant.

Sec. 3. Supporting Documents. All applications must be filed together with the following supporting documents:

- (a) a duly accomplished application form in duplicate for each work, *provided*, that a separate application is

- submitted for each number of a periodical containing a notice of copyright;
- (b) a supporting document evidencing ownership of the copyright, the manner of its acquisition if the claimant is not the original author, translator, or editor, and where and in what establishment the work was made, performed, printed, or produced, and the date of its completion and publication;
 - (c) receipt showing payment of the registration fee if the application is filed personally, or by postal money order if the application is filed by registered mail;
 - (d) documentary stamps in the correct amount, which shall be affixed to the registration and deposit certificate;
 - (e) two (2) complete copies or reproductions of the work or replica or picture provided under Rule 5;
 - (f) two (2) printed copies with copyright notice printed in front or at the back of the title page or on any conspicuous space for a non-book material, if the work is a published work;
 - (g) if the work is a musical work, two (2) copies of the original work, in the form of a music sheet, in cassette, optical disk or multimedia;
 - (h) if the work is an unpublished literary work, two (2) copies of the work without the copyright notice;
 - (i) a technical description of the design, if the work is an original ornamental design;
 - (j) two (2) duplicate original or certified true copies of the deed of assignment, letters of administration, letters testamentary, letters of guardianship, or affidavit of extrajudicial settlement of estate, as the case may be;
 - (k) original special power of attorney appointing a resident agent who shall be authorized to pursue the copyright application for his/her/its behalf and

to receive service of notice or other legal process relating to the application and the copyright, if the applicant is a non-resident alien;

- (l) a certified true copy of the certificate of registration for corporations and partnerships, or business name registration for sole proprietorships, to clarify doubts concerning the corporate, partnership or business name; and
- (m) original copyright waiver in writing and under oath executed by the author in favor of a third party, if a third party is claiming copyright ownership.

Sec. 4. *Documents Executed Outside the Philippines.* All certifications and documents which are executed outside the Philippines shall be duly authenticated by either the proper diplomatic or consular representative of the Philippines, or by a notary public authorized to authenticate documents under the law of the country in which the certification and documents are executed.

Sec. 5. *Copyright Notice of Published Works.* The form of the copyright notice for published works shall be as follows:

Philippine copyright _____ (year of publication)

By _____ (name of copyright owner)

Sec. 6. *Copyright Notice to be Clearly Printed Without Alterations, Etc.* The copyright notice shall be clearly and neatly printed and shall be without any amendments, erasures, additions, or deletions whether handwritten, typewritten, or otherwise.

Sec. 7. *Affixing of Prescribed Copyright Notice.* The prescribed copyright notice must be affixed to each copy of the published work which is intended for circulation or sale in the Philippines. The name of the claimant given in the copyright notice should be the true legal name of the owner of the copyright. However, a pseudonym or pen name may be used in the copyright notice. The year of the copyright notice must be the same as the year of publication.

Sec. 8. *Processing of Applications.* Upon receipt of an application and the prescribed fees, the following procedure shall be observed:

- (a) **Initial Process** — The application shall be processed to ascertain compliance with Rule 6, Sec. 3 of this SAR;
- (b) **Review of Application** — The application shall thereafter be reviewed and acted upon by the Chief of the Copyright Division and finally by the Director of TNL;
- (c) **Issuance of Certificate** — The Director of TNL shall issue the Certificate of Copyright Registration and Deposit immediately upon approval of the application therefor. In case there are two (2) or more copyright holders, each may receive, upon his application, an original copy of the registration;
- (d) **Classification** — Each work shall be classified and numbered consecutively upon its registration and deposit. Works shall be classified as follows:

Class	Work
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 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 regis-

trable 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;
 - P Sound recordings;
 - Q Broadcast recordings.
- (e) Recording — After classification, each work shall be recorded as provided in Rule 10;
- (f) Safekeeping — Each work accepted for registration and deposit shall be kept in a proper repository by qualified custodians and curators.

EFFECTIVITY AND EFFECTS OF REGISTRATION AND DEPOSIT

Sec. 1. *Effectivity of Registration and Deposit of Work.* The registration and deposit of the work takes effect on the date specified on the Certificate of Registration and Deposit covering the work.

Sec. 2. *Effects of Registration and Deposit of Work.* The registration and deposit of the work is purely for recording the date of registration and deposit of the work and shall not be

conclusive as to copyright ownership or the term of copyrights or the rights of the copyright owner, including neighboring rights.

Sec. 3. *Effects of Non-Registration and Deposit.* If within three (3) weeks after receipt by the copyright owner of a written demand from TNL and/or SCL for the deposit of a work herein listed, the required copies are not delivered and the fee for registration and deposit is not paid, the copyright owner, his assignee, or his agent shall be liable to pay a fine equivalent to the required fee per month of delay and to pay to TNL and the SCL the amount of the retail price of the best edition of the work.

Sec. 4. *Other Laws.* Upon issuance of a certificate of deposit, the copyright owner shall be exempt from making additional deposits of the work with TNL or the SCL under other laws.

CANCELLATION OF CERTIFICATE OF COPYRIGHT REGISTRATION AND DEPOSIT

Sec. 1. *Cancellation.* The TNL or SCL Director may cancel the Certificate of Copyright Registration and Deposit covering a specific work on the following grounds:

- (a) Upon a final court decision ordering the cancellation of the certificate;
- (b) By final order of proper quasi-judicial or administrative bodies;
- (c) Upon registration of deed of transfers, assignments, and other transactions affecting copyright, including transfers by inheritance, conveying copyright over a specific work;
- (d) Upon expiration of the term of copyright.

PUBLIC INSPECTION AND REPRODUCTION

Sec. 1. *Public Inspection.* All copies of works registered and deposited with TNL and the SCL are deemed the property of the Philippine government. All copies of works registered and deposited with TNL and the SCL, except for unpublished

works, shall be open to public inspection, subject to the following conditions:

- (a) The Director of TNL may open to public inspection only copies of deposited works that are fragile, rare, frequently used, or in other similar conditions;
- (b) Under no circumstances will the public be allowed to reproduce any of the works during inspection;
- (c) A written request signed by the interested party shall be submitted to TNL at least one (1) day prior to the requested inspection, and shall specify the work to be inspected, his/her purpose, his/her principal together with the proper authorization from the principal if he/she is an agent or representative, and the preferred date and time of inspection;
- (d) Upon approval of the request and payment of the inspection and handling fees, the interested party, on the date and time specified, shall be accompanied by a designated TNL Copyright employee to an inspection officer to ascertain that the party does not have in his/her possession any camera, video or any other gadget for reproduction, and thereafter to the custodian of the work;
- (e) The custodian shall designate the place for inspection after the party has signed the inspection register, and the work will thereafter be brought to the party by a TNL Copyright employee who shall remain to watch and ensure that the work or any part thereof is not copied and remains intact during the entire period of inspection; and
- (f) After the inspection, the work shall be returned to the custodian who shall examine the work and ascertain that it is intact.

Sec. 2. Special Inspection Conditions. The inspection of certain works shall be subject to special conditions, such that only authorized TNL Copyright employees shall operate or run the work for the party to view, listen, or perceive. The inspecting party shall in no case be permitted to handle the work, operate, or run the same.

Sec. 3. *Inspection of Work Does Not Authorize Exploitation, Abuse or Misuse.* The opening for public inspection of a deposited copy of a work shall in no way authorize exploitation, abuse, or misuse of the work.

DOCUMENTATION AND RECORDING

Sec. 1. *Documentation.* Each work registered and deposited with TNL and/or SCL shall be issued a Certificate of Registration and Deposit.

Sec. *Recording.* Each work shall be recorded as classified in separate record books or through electronic processes. The records shall indicate, *inter alia*, the following: title of work, name of copyright owner, author, publisher, date applied, copyright registration number and the retail price of the work.

Sec. 3. *Recording of Transfers, Assignments, and Other Transactions Affecting Copyright.* Deeds of transfers, assignments, or exclusive licenses, and other transactions affecting copyright, including transfer by inheritance, may be filed in duplicate with TNL upon payment of the prescribed fee. Notice of the record shall be published in the Intellectual Property Office Gazette.

After the record of the conveyance, the transferee of the copyright may obtain a certificate of registration in his/her/its own name to endure for such period as specified in the deed of conveyance but not to exceed the remaining life of the term of the copyright over the work.

Sec. 4. *Safekeeping.* All works shall be kept by qualified custodian and curators separately as classified in suitable places to ensure their safety and preservation for posterity.

OTHER RULES ON COPYRIGHT

COMMUNICATION TO THE PUBLIC OF COPYRIGHTED WORKS

Sec. 1. *Communication to the Public of Copyrighted Work.* “Communication to the public” or “communicate to the public,” also includes point-to-point transmission of a work, including

video on demand, and providing access to an electronic retrieval system, such as computer databases, servers, or similar electronic storage devices. Broadcasting, rebroadcasting, retransmission by cable, and broadcast and retransmission by satellite are all acts of “communication to the public” within the meaning of the IPC.

FIRST PUBLIC DISTRIBUTION OF WORK

Sec. 1. *First Public Distribution of Work.* An exclusive right of first distribution of work includes all acts involving distribution, specifically including the first importation of an original and each copy of the work into the jurisdiction of the Republic of the Philippines.

Enforcement of Economic and Moral Rights

Sec. 1. *Role of Societies.* The role of societies of artists, writers, composers, or other copyright owners in enforcing copyright shall not prejudice the right of a copyright owner to designate an assignee, licensee, or other agent to carry out enforcement activities on his behalf. A copyright owner may also enter into agreements with more than one such society.

Limitations on Copyright

Sec. 1. *Public Performance or Communication to the Public of Work by Non-Profit Institution.* The public performance or the communication to the public of a work, in a place where no admission fee is charged in respect of such public performance or communication, by a club or institution for charitable or educational purpose only, whose aim is not profit-making, shall not constituted infringement of copyright, if:

- (a) The works are limited to non-dramatic literary works and non-copyrighted musical compositions, and do not include audiovisual works or computer programs;
- (b) The clubs or institutions to which this subsection applies are limited to those organized exclusively for charitable or educational purposes;

And if the following conditions are satisfied:

- (i) No fee or compensation is paid to any performers, promoters or organizers of the public performance;
- (ii) There is no direct or indirect admission charge to the place where the performance occurs; and
- (iii) Admission to the performance is restricted to persons who are, and for at least the preceding thirty days have been, members in good standing of the club or institution for whose charitable or education purposes the performance is being carried out.

Sec. 2. *Use in Judicial Proceedings or by Legal Practitioners.* Without prejudice to other exceptions to protection, the use of copyrighted works as provided in the IPC “for the giving of professional advice by a legal practitioner” is limited to those uses directly connected to the rendering of legal advice with respect to such works, or to individuals, institutions, events or circumstances to which the creation or exploitation of such works are directly related. This exception does not apply to the exercise of exclusive rights of copyright owners in legal research materials, legal-related computer software, legal-related on-line material, or other works utilized in the practice of law on a regular basis.

Sec. 3. *Uses Compatible with Fair Use.* To determine whether use of a copyrighted work is “compatible with fair use,” the criteria set forth in Sec. 185 of the IPC shall be applied.

Sec. 4. *Fair Use and Decompilation of Computer Software.* An act of decompilation of software may qualify for analysis under the fair use provisions if it meets all of the criteria set out in the IPC, *viz.:*

- (a) It consists only of the reproduction of code and translation of the forms of a computer program;
- (b) The reproduction and translation are indispensable to obtain information, such that information can be obtained in no other way than through decompilation;

- (c) The information is necessary in order to achieve interoperability (*i.e.*, interoperability cannot be achieved without obtaining the information and without using decompilation to obtain it); and
- (d) The interoperability that is sought is between the decompiled program and an independently created computer program (*i.e.*, a computer program that was created prior to and without reference to the decompilation).

If the above criteria are satisfied, then the fair use factors set forth in the IPC can be applied in order to decide whether or not the decompilation, in the particular circumstances involved, constitutes a fair use. The fact that a use is decompilation (as defined by the statutory criteria) creates no presumption that the use is fair.

Sec. 5. *Effect on Value of the Work.* The effect of the use upon the value of the copyrighted work shall also constitute a limitation on fair use of works, particularly whenever their reproduction will affect their usefulness, reliability, and validity, such as psychological tests and others of similar nature. Reproduction of these works shall, therefore, need prior authority of the copyright owner.

Sec. 6. *Reproduction or Communication to the Public by Mass Media of Articles, Lectures, etc.* The reproduction or communication to the public by mass media of articles, such as those published in newspapers or periodicals on current political, social, economic, scientific, or religious topics, as well as lectures, addresses, and other works of the same nature, which are delivered in public, shall not constitute infringement of copyright if such use is for information purposes and has not been expressly reserved: *Provided*, That the source is clearly indicated and that the use of the work should not unreasonably prejudice the right holder's legitimate interests.

Importation for Personal Purposes

Sec. 1. *Importation for Personal Purposes.* The importation of a copy of a work by an individual strictly for his own personal use is permitted when copies of the work are not available in the Philippines and is not intended for sale and subject to the

provisions of Sec. 190 of the IPC and to such rules and regulations as may be prescribed by the Commissioner of Customs, and approved by the Secretary of Finance. This right to import without authorization a copy of a work for personal purposes, is an exception to the distribution right only, not to the public performance right.

RIGHTS OF PRODUCERS OF SOUND RECORDINGS

Sec. 1. *Right of Rental or Lending.* The right of producers of sound recordings to “authorize the direct or indirect reproduction of their sound recordings, in any manner or form,” provided for in the IPC, shall include the right of producers of sound recordings to make such works available to the public by placing these reproductions in the market, and the right of rental or lending.

Protection and Enforcement

Sec. 1. *Works Protected upon Creation.* Works are protected from the moment of their creation, irrespective of their mode or form of expression, as well as their content, quality, and purpose.

Sec. 2. *Term of Protection of Economic Rights of Authors.*

- (a) Subject to the provisions of Subsections (b) to (e) hereof, the copyright in works shall be protected during the life of the author and for 50 years after his death. This rule also applies to posthumous works.
- (b) In the case of works of joint authorship, the economic rights shall be protected during the life of the last surviving author and for 50 years after his death.
- (c) In the case of anonymous or pseudonymous works, the copyright shall be protected for 50 years from the date on which the work was first lawfully published: *Provided*, That where, before the expiration of the said period, the author’s identity is revealed or is no longer in doubt, the provisions of Subsections (a) and (b) shall apply, as the case may be: *Provided*,

further, That such works if not published before shall be protected for 50 years counted from the making of the work.

- (d) In the case of works of applied art, the protection shall be for a period of 25 years from the date of making.
- (e) In the case of photographic works, the protection shall be for 50 years from publication of the work and, if unpublished, 50 years from the making.
- (f) In the case of audio-visual works including those produced by a process analogous to photography or any process for making audio-visual recordings, the term shall be 50 years from the date of publication and, if unpublished, from the date of making.

Sec. 3. Term of Protection of Moral Rights of Authors.

The moral rights of an author shall last during the lifetime of the author and for 50 years after his death and shall not be assignable or subject to license. The person or persons to be charged with the posthumous enforcement of these rights shall be named in writing to be filed with TNL. In default of such person or persons, such enforcement shall devolve upon either the author's heirs, and in default of the heirs, the Director of TNL.

Sec. 4. Term of Protection for Performers, Producers. The rights granted to performers and producers of sound recordings under this law shall expire:

- (a) For performances not incorporated in recordings, 50 years from the end of the year in which the performance took place; and
- (b) For sound or image and sound recordings and for performances incorporated therein, 50 years from the end of the year in which the recording took place.

Sec. 5. Term of Protection of Moral Rights of Performers.

Independently of a performer's economic rights, the rights granted to a performer as regards his live arual performances or performances in fixed sound recordings, shall be maintained

and exercised 50 years after his death, by his heirs, and in default of heirs, the government, where protection is claimed.

Sec. 6. *Term of Protection of Broadcast Organizations.* In the case of broadcasts, the term shall be 20 years from the date the broadcast took place. The extended term shall be applied only to old works with subsisting protection under the prior law.

Sec. 7. *Coordination by IPO.* The protection of intellectual property rights shall be coordinated by the IPO with other government agencies and the private sector.

Sec. 8. *Protection by NBDB.* The protection of the rights of authors and publishers and the enforcement of copyright laws and extension of legal assistance to authors and publishers in suits related thereto shall devolve on the National Book Development Board (NBDB) pursuant to Sec. 4(i) of RA No. 8047, otherwise known as the “Book Publishing Industry Development Act.”

RECIPROCITY AND INTERNATIONAL CONVENTIONS

Sec. 1. *Reverse Reciprocity of Foreign Laws.* Any condition, restriction, limitation, diminution, requirement, penalty or any similar burden imposed by the law of a foreign country on a Philippine national seeking protection of intellectual property rights in that country, shall reciprocally be enforceable upon nationals of said country, within Philippine jurisdiction.

Sec. 2. *International Conventions and Reciprocity.* Any person who is a national or who is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty, or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to benefits to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise entitled by the IPC.

(2) Cases

**Filipino Society of Composers, Authors
and Publishers v. Tan
GR 36401, Mar. 16, 1987
(Ponencia of J. Edgardo Paras)**

FACTS: The song “Dahil sa Iyo,” registered on Apr. 20, 1956, became popular in radios, juke boxes, etc., long before registration. The song “The Nearness of You,” registered on Jan. 14, 1955, had become popular twenty-five (25) years prior to 1968 or from 1943. The songs “Sapagkat Ikaw ay Akin” and “Sapagkat Kami Ay Tao Lamang,” both registered on July 10, 1966, have been known and sang as early as 1965 or three years before the hearing in 1968. Speaking thru Justice Edgardo L. Paras, the Supreme Court —

HELD: The musical compositions in question had long become public property, and are therefore beyond the protection of the copyright law. Under Paragraph 33 of the Patent Office Administrative Order No. 3 (as amended, dated Sep. 18, 1947), promulgated pursuant to Republic Act 165, “an intellectual creation should be copyrighted thirty (30) days after its publication, if made in Manila, or within sixty (60) days if made elsewhere, failure of which renders such creation public property.” If the general public has made use of the object sought to be copyrighted for thirty (30) days prior to the copyright application, the law deems the object to have been donated to the public domain and the same can no longer be copyrighted. The word “perform” as used in the Copyright Act is applied to “one who plays a musical composition on a piano, thereby producing in the air, sound waves which are heard as music.” If the instrument he plays on is a piano plus a broadcasting apparatus, so that waves are thrown out, not only upon the air, but upon the other, then he is also performing the musical composition. The performance in a restaurant or hotel dining room, by persons employed by the proprietor, of a copyright musical composition, to entertain patrons, without charge for admission to hear it, infringes the exclusive right of the owner of the copyright. While it is possible in such establishments for the patrons to purchase their food and drinks and at the same time dance to the music of the orchestra, the music is furnished and used by the orchestra

for the purpose of inducing the public to patronize the establishment and pay for the entertainment in the purchase of food and drinks. The proprietor conducts his place of business for profit and it is public; and the music is performed for profit. The playing of music in dine and dance establishment which was paid for by the public in the purchase of food and drink constituted "performance for profit" within Copyright Law.

If the rights under the copyright are infringed only by a performance where money is taken at the door, they are very imperfectly protected. Performances not different in kind from those of the defendants could be given that might compete with and even destroy the success of the monopoly that the law intends the plaintiffs to have. It is enough to say that there is no need to construe the statute so narrowly. The defendants' performance are not eleemosynary. They are part of a total for which the public pays, and the fact that the price of the whole is attributed to a particular item which those present are expected to order is not important. It is true that the music is not the sole object but neither is the food, which probably could be got cheaper elsewhere. The object is a repast in surroundings that to the people having limited power of conversation or disliking the rival noise, give a luxurious pleasure not to be had from eating a silent meal. If music did not pay, it would be given up. If it pays, it pays out of the public's pocket. Whether it pays or not, the purpose of employing it is profit, and that is enough. (*Herbert v. Shanley Co.*, 242 U.S. 590, *Holmes, J.*).

Columbia Pictures, Inc. v. CA
55 SCAD 864
(1994)

The essence of a copyright infringement is the similarity or at least substantial similarity of the purported pirated works to the copyrighted work.

Habana v. Robles
109 SCAD 208, 310 SCRA 511
(1999)

At present, all laws dealing with the protection of intellectual property rights have been consolidated and as the law

now stands, the protection of copyright is governed by RA 8293.

If so much is taken that the value of the original work is substantially diminished, there is 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. In cases of infringement, copying alone is not what is prohibited, the copying must PRODUCE an INJURIOUS EFFECT. To allow another to copy a book without appropriate acknowledgment is INJURY ENOUGH.

In copyrighting books, the purpose is to give protection to the INTELLECTUAL PRODUCT of an author. Thus, even if two authors 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.

At least five (5) views re: copyright are in order, namely:

1. 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. In essence, copyright infringement, known in general as "piracy," is a trespass on a domain owned and occupied by a copyright owner — it is a violation of a private right protected by law.

3. The test of copyright infringement is whether an ordinary observer comparing the works can readily see that one has been copied from the other.

4. 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.

5. The *fair use doctrine* 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.

(3) The Songwriter's Rights

Of late, the art of songwriting has attained prominence for many songwriters, and notoriety, for some. Even award-winning compositions of local songwriters have not been spared with allegations, mostly founded, that these plagiarized certain foreign materials. Recall the Metropop Music Festival's award-winning song "*Ewan*." This was obviously copied from the Frank Sinatra-sung, hitherto unknown composition, *Dream Away Child*.

What is *songwriting*? Likened to composition writing, songwriting is the act of combining musical sounds in accordance with the rules of musical form, and of the whole art of invention or creation.

Musical compositions include vocal and instrumental compositions, with or without words, and consist of rhythm, harmony and melody. Thus, originality, if it exists, must be found in one of these. (*Northern Music Corp. v. King Record Dist. Co.*, 105 F. Supp. 393, S.D.N.Y. 1952). As held in *Consolidated Music Publishers, Inc. v. Ashley Publications, Inc.*, 197 F. Supp. 17, S.D.N.Y. 1961, the Court found the necessary originality in fingering, dynamic marks, tempo indications, slurs, and phrasing.

A question is interposed: What rule applies when an employee is hired to write the song? If *A* employs *B* to write a song for publication or other uses, *A* is considered the owner, not *B*. (Sec. [b], PD 49, otherwise known as the Decree on Intellectual Property). This is not true, however, when *B* is a mere general employee (not entrusted with the task of songwriting), even if the song was made during office hours. (See *Dielman v. White*, 102 Fed. 892; *Callaghan v. Myers*, 128 U.S. 617; *Beucicault v. Fox*, 3 F. Case 1, p. 691).

Intellectual creation, which includes that of the songwriter/composer, as to his musical composition (Art. 721, par. 2, Civil Code), is protected by law as a recognized mode of

acquiring ownership. To protect his right, however, he must ask for a copyright if he intends the work to be published. (*See Art. 722, Civil Code*). Unless the copyright is obtained, the ownership by him will be lost.

(4) Computer Program Protection

While the computer software industry in the Philippines cannot be considered as one of our strategic industries, not yet anyway, the necessity for legal protection of computer programs need not be underscored. Just ask the computer and software procedures, program authors, and program users.

Under RA 8293 (*The Intellectual Property Code*), computer programs are copyrightable. (*Sec. 2[n]*). Still, the lack of a comprehensive legal framework may result in insufficient protection and confusion. For instance, although a program author may sue an infringer for damages as well as obtain injunctive relief under both the Copyright Law and the Patent Law, there is the problem of accommodating computer programs, which often appear as little more than the embodiment of an idea in magnetic or silicon form.

Since as already adverted to, a computer program is protected by copyright law, the important question is whether computer programs constitute a form of literary work as established under copyright principles. Now since most computer programs are mass-distributed on diskettes or on cartridges and can be easily copied in either medium, copyright law is arguably the most effective means to protect them. Or is it?

Is it feasible for our Congress to enact a new statute or amend RA 8293 specifically designed for computer program protection? The fact of lumping computer programs with other literary works as embodied in our copyright law needs to be reexamined.

What, after all, is a *computer program* but a set of instructions or orders to be used directly or indirectly in a computer or other data processor in order to bring about a certain result?

Note here that the abovementioned definition is broad enough to include two functionally different types of programs: *application programs and operating programs*. Application

programs usually allow the computer user to perform a specific task on the computer such as producing a report or updating a specific file. Programs that control input-output or monitor user time are examples of operating system programs. In a sense, the operating system acts as an interface or intermediary between the application program and the computer's hardware.

Moreover, a computer program protection law is said to encompass programs written in *source code* and in *object code*, "both of which refer to the type of computer language." "Source code" means the original language in which a computer program is written, such as ALGOL, COBOL, FORTRAN, BASIC, PLI, APL or ADA, assembly languages, or even machine languages. "Object code" means the version of a program that is directly usable in the computer, usually written in a so-called machine language, and when printed, looks like a string of numbers and letters depending on the technical characteristics of the computer.

Computer software is sometimes defined to include not only the idea upon which a computer program is based, but the computer program itself, a program description and supporting material. Thus, while not protected by the copyright law, a computer program protection law will have a program description or supporting material such as a flow chart or a program language.

Necessarily, the statutory framework of a computer program copyright under the computer program protection law will include the usual provisions on the following: (a) subject matter of a computer program; (b) copyright owner; (c) registration of computer program copyright; (d) contents of computer program copyright; and (e) remedies against copyright infringement.

For copyright owners at present, the only means available to secure their rights under the present copyright law is to seek judicial enforcement. Despite the inexperience of the bench and the bar, the copyright law leaves considerable scope for judicial intervention, and thus confers to the courts, the task of translating law into effective protection no matter its inadequacy. The solution then is for the enactment of a future law geared toward protecting computer programs and copyrighted digital works

in today's Internet knowledge-based economy. In fine, this step will go a long way towards upgrading and updating our quite inadequate intellectual property law.

(5) Computers and Courts

Invariably, Filipinos are experiencing firsthand the revolutionary transformation of media from a mere information dissemination tool to a built-in extension of man in the sphere of decision-making processes. In the business world, the value of media cannot be ignored. Solutions to business problems require an accurate insight into the nature of economic problems not only in the country but also in other parts of the world.

When confronted with business problems, there is a need to process the mass of information made available by global media to come out with a fairly safe and sound decision. Imagine a computer-based on-line retrieval service containing information accessible instantaneously via a push-button keyboard (where much of its contents is contributed data from the marketplace).

A sophisticated software package that creates up to 20,000 pages of information on the screen can give investors, money managers, and business leaders up-to-the-minute quotes and instant visual information on every major money market instrument. For instance, a dealer (like a bank) that wants to look at several currency quotes simultaneously can do so by calling a comparative page containing six banks quoting six different currencies. Similar comparative pages are available in the data for deposit rates in the various currencies.

To illustrate some more, the bottom six lines of the pages are kept free precisely to provide for a non-stop window which displays financial wires just as it does on the printer. The system is capable of storing news for one complete day. It enables one to call up the entire menu-card of headlines of all new stories of the past 24 hours. For example, the master computer in New York has a data base that contains money market news, economic indicators from around the world, a very comprehensive and speedy coverage of Federal Reserve activity, in North America, prime rates (current and histori-

cal), commercial quotas, bullion and even sports results from Europe and America.

What am I trying to say? It is simply that computers have become a major part of our civilization. A computer was used to typeset the newspaper you read in the morning. The car you drive had many of its parts designed via computer. Your bank statement each month is prepared by the computer. Most probably, too, even the patterns for the clothing you wear have been drawn, and the material even cut, under automatic computer control.

Computer technology has blossomed to a point where it is used in almost every aspect of society, even by tribunals of justice. Our Supreme Court, for one, feels that there exists the need for the creation of a monitoring unit in its midst. Case monitoring is critical to the court's operations. The computerized case administration system, which has been designed to fill this vacuum, should therefore be implemented without further delay.

The purpose of a monitoring unit is laudatory. It can provide timely information about the status and aging of unsettled cases, case administration statistics, and related matters. Under the set-up of the Philippine Supreme Court, such will help the chief justice and the division chairman (there are at present three divisions except for the *en banc*) decide what action to take to speed up the disposition of cases. The highest tribunal has likewise availed of office automation options. Accordingly, a local area network (LAN) is installed for the following objectives: monitoring of cases that are still in the process of adjudication (case administration system), cataloguing and indexing of current as well as settled cases, and archiving and retrieval of case information, for reference. Another use: assuming a LAN of micro-computers, the machines can be utilized for work processing. Still another automation possibility is a microfilm archiving system (although this requires special micro-film equipment).

Aside from its novelty, computers for the courts will purportedly enhance the quality of justice dispensed. There is now available an almost complete data bank (here all pertinent laws and jurisprudence are conveniently stored). Indeed, time

will come when shoddy work will inevitably be spotted. So the *raison d'être* for its being cannot be overemphasized.

(6) MIDI Guitar and Computer Law

Since the dawn of the computer age, the legal community has been seeking an effective way to protect a form of intellectual property called *computer software*.

Authors David H. Brandin and Michael A. Harrison, in their book *The Technology War* (1987), report that as part of their national policy, governments enact protection laws so that inventors and innovators are encouraged to share their ideas in order to improve the flow of technology and still enjoy some economic reward for the use of their ideas.

In the United States, the enabling authority is the U.S. Constitution (*Art. 1, Sec. 8*), aimed toward “promot[ing] the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Similarly, Sec. 13, Art. XIV of the 1987 Philippine Constitution reads: “The State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law.”

From these almost identical sections of the two constitutions, have sprung the trademark, trade secret, patent, and copyright laws that are intended, in one form or another, to protect inventors and motivate them to share their ideas while simultaneously rewarding them with economic gain.

“Because software is an increasing valuable asset,” aver Brandin and Harrison, “invoking such protection is a growing practice on the part of many suppliers in the U.S. [at least].” It is expensive and does require the manipulation of complex law, for it is no simple trick to separate an idea from its expression in a computer program. While there must be some language in which to express an idea, it is even more difficult to distinguish between an algorithm or process and its embodiment in a computer system.

In the international plane, revisions to copyright laws and related case law have clearly placed the responsibility for the intellectual property protection in the copyright domain, although many argue that this has become destructive to the competitive process in the software industry. Thus, when one reviews the history of software protection under the U.S. Copyright Act, one is almost tempted to propose to a tripartite body, namely: the Congress, the courts, and the software developers — to place the *onus* of protection on the marketplace through the use of contract law, complemented by trademark and trade secret law.

Illustrative in this age of digital technology is a most conspicuous but programmable multi-effect processor, known as the Musical Instrument Digital Interface (MIDI). The MIDI is both a sophisticated hardware and software which could generate polyphonic (more than one note at a time), in addition to four voices without the use of a synthesizer. Via the MIDI, says Hector M. Saquin in his “Composing Music With Computers” (*Manila Bulletin*, Mar. 14, 1991, B-22), it is even possible to invent the sound of a never-before-heard musical instrument, *i.e.*, the sounds can be synthetically created waveforms or digitally recorded samples of real sounds from ordinary musical instruments to animal sounds.

Take the case of Casiotone’s guitar synth PG 380. As the latest word in guitar innovation, the PG 380 features Casio’s revolutionary IPD sound source, for 548 built-in sounds (like the harp, piano, sax, cello, flute, organ, etc.) with the use of a RAM (random-access memory) card or a ROM (read-only memory) card and total control of virtually any MIDI sound source — plus an incredible natural guitar sound. Never before can a guitarist have so much versatility at his fingertips — straight guitar licks, balanced mixtures of guitar and synth sounds. As the PG 380 catalogue succinctly puts it: “It is a hot new axe that will take you into bold new sonic frontiers.” In fact, jazz-rock super guitarists Stanley Jordan uses a PG 380, explaining briefly the magical sounds of his guitar.

PG 380 has indeed revolutionized our concept of an electric guitar, notwithstanding the fact that said innovations brought about by digital technology have presented American (and in

a limited scale, the Philippines) copyright law with a “crisis.” What happens, for instance, if music guitar companies the likes of Casiotone PG 380, Roland GR 50, and Lorg Z3 sue each other for violating each other’s MIDI models, or more specifically, the “look and feel” of each software user’s interfaces? In quizzical terms, thus: Does copyright law protect that look and feel of any copyrighted work? More particularly, does copyright protect the look and feel of software?

In the opinion of a Pittsburgh law school professor, Pamela Samuelson (the principal investigator of the 1985-86 Software Engineering Institute’s Software Licensing Project which recommended substantial changes in the U.S. Defense Department’s Software acquisition policy), the short and simple answer to the aforementioned questions is that “look and feel has virtually no standing in copyright law as to any category of protected work.” She hastens to add though that “there are a couple of cases involving copyrighted fabric designs which contain some discussion of similarities in the look and feel of the fabrics, although look and feel has no precedent as a copyright standard.”

Making a strong case for reevaluating the way the U.S. copyright law views software user interfaces like the MIDI guitar, Prof. Samuelson underscores the fact that “[b]ecause the sequence of screen displays generated by software is generally reflective of a sequence of functions being performed by the software, and because machine-human interaction devices have traditionally been patentable, it is more consistent with legal tradition to protect most aspects of software user interfaces through patent law than through copyright law. [For] it would undermine the policies underlying patent law if one could protect through copyright law, aspects of user interfaces that failed to be inventive enough to qualify for patent protection.”

Accordingly, three (3) immediate problems face software user interfaces: (1) the new technology results in more infringement which is less likely to be detected; (2) the “fair use” doctrine will continue to permit even further private unauthorized copying and use; and (3) the present definition of “copyrightable work” will prove overly narrow.

Until the legal issues are definitely resolved, the present uncertainty in the copyright law hurts the computer software industry and freezes up development efforts. For this purpose, it is *apropos* to repeal the “fair use” doctrine, except insofar as it is grounded in constitutional protection. Likewise, the definition of copyrightable work must include “distinguishable elements” contained within “works of authorship.” Finally, it is recommended that a centralized agency be set up in order to develop new policy methods to deal with the evolving computer law *vis-a-vis* digital technology.

(7) Due Process and Computers

In some instances, the Supreme Court rendered an interpretation of what procedural process means. The Court ruled: “The prosecution must be given an opportunity to present, within a reasonable time, all the evidence that it may desire to introduce before the court [decides to] resolve the motion for bail. If as in the criminal case involved in the instant special action, the prosecution should be denied such an opportunity, there would be a violation of procedural due process, and the order of the court granting bail should be considered void on that ground.” (*People v. Dacudao*, 170 SCRA 480 [1989] and *People v. San Diego*, 26 SCRA 522 [1968]).

In *People v. Hon. Jose Burgos, et al.* (GR 92739, Aug. 2, 1991), a question involving procedural process was put to issue. Herein, petitioner questioned an order given in open court by respondent Judge. Said order disallowed a prosecution witness from holding an actual demonstration in court by printing out the contents of the seized diskettes using the very same computer seized from the accused on the ground that they could be “manipulated.”

The Order stated:

“COURT: It has been a common knowledge of both prosecution and defense that these diskettes have been in possession of the prosecution since the start and anything may happen while they are in their possession, so much so that the witness admitted that the diskettes can be manipulated or altered.

FISCAL MARCOS: Since they are the exhibits for the prosecution, naturally they are in our possession, just like the exhibits for the defense. They are in their possession.

COURT: To let this witness operate the computer is very dangerous, because the witness said that these diskettes can be manipulated. So the motion of the prosecution to let this witness have an actual demonstration before the court on the computer is denied.”

In his Comment, respondent Judge reiterated that he did not allow the printing out of the contents of the seized diskettes because they could be “manipulated” which would be prejudicial to the rights of the accused. According to the Supreme Court, “respondent Judge’s insinuation or speculation that the prosecution, considering the fact that it had the diskettes in its possession prior to the hearing may have tampered with them appears absolutely baseless and quite unfair to the prosecution. Such statement had in fact no basis in the evidence before the respondent Judge. There was neither testimonial evidence nor any physical evidence on the diskettes themselves which might indicate they had actually been tampered with or that their contents had been altered in order to secure the conviction of the accused. Respondent Judge was in effect charging the prosecution with fabricating evidence against the private respondents, which constitutes serious misconduct and quite possibly a criminal offense.” “The mere fact that the diskettes had been in the possession of the prosecution does not necessarily imply that it had altered or tampered with the evidence to suit its prosecutorial objectives. The presumption that official duty has been regularly performed prevails, in the absence of any evidence to the contrary.”

The Court thereupon held that the printing out of data (if any) encoded in the diskettes should be allowed. Thus, “respondent Judge’s asserted apprehension that the witness brought in by the prosecution to undertake the printing out of the diskettes’ contents could himself ‘manipulate’ said diskettes during the actual printing out may very easily be relieved by designating a competent person agreeable to both parties, and especially to respondent Judge, who can perform the task of

printing out the contents of the diskettes.” “Respondent Judge’s ostensible lack of confidence in the prosecution witness,” said the Court, “should not in any way affect the integrity of the diskettes themselves or the right of the prosecution to show the contents of the diskettes subject of course, to applicable rights of the accused.”

Contrary to private respondents’ contention that the diskettes themselves should be deemed inadmissible in evidence because they were not included in the things mentioned in the search warrant, the highest tribunal opined that these diskettes had been “sufficiently described in the search warrants.” The search warrant provides: “You are, therefore, hereby commanded to make immediate search at any time of the day or night of Rm. 3-1 of the third floor of said building where the persons or suspects above-named are presently occupying and to seize and to take possession of the following properties used or intended to be used as the means of committing a violation of RA 1700 and/or Art. 142 of the Revised Penal Code: ‘Incendiary or subversive documents, pamphlets: books, computer print-outs and subversive materials, and *computer machine used in printing seditious or subversive literature.*’ ”

The Supreme Court decreed: “The phrase ‘computer machine used in printing seditious or subversive literature’ is appropriately regarded as necessarily including diskettes into which data is encoded and stored, such as those seized in the present case on the same occasion the computer itself was seized, for indeed a computer system cannot store and print out any data without diskettes.” “Technically and realistically speaking, diskettes are deemed integral parts of a computer system, the diskettes constituting one of the ‘input-output devices’ or ‘peripherals,’ in the same manner that the keyboard is an ‘input-output device’ and the monitor, keyboard and printer are ‘peripherals’ in relation to the memory or central processing unit (CPU) of a computer system.” (See *Goldschlager and Listen, Computer Science: A Modern Introduction* [1988]; *Sanders, Computers Today* [1985]; *Dumas, Fundamentals of Basic Programming* [1984]; *Givone and Roesser, Micro-processors/Microcomputers: An Introduction* [1983]).

(8) Advent of Information Technology

The dawning of *multimedia* (i.e., computing involving sights and sounds via digital technology) alongside CD-ROMs, Internet, American Online, Cyberspace, and the like — has spawned intricate problems resulting from the influence of technical progress on the development of creativity and the laws of intellectual property.

Needed at this point in time is a modification or at least a changed interpretation of the existing international copyright law in order that copyright could fulfill the fundamental functions of stimulating creation and guaranteeing in social interest the optional use of works, despite the altered conditions of creation and usage of works, caused by technological progress. (*Dr. E.C. Paras, Jr., Multimedia and Copyright, Foreign Relations Journal, Vol. X, No. 1, Mar. 1995, pp. 74-105*).

NOTE: The Internet is a decentralized computer network linked together thru routers and communications protocols that enable anyone connected to it to communicate with others likewise connected, regardless of physical location. (*Mirpuri v. CA, 115 SCAD 648, 318 SCRA 516 [1999]*).

(9) Patents Are Governed By the Intellectual Property Code (RA 8293)

The special law governing patents as referred to under Art. 724 is the *Intellectual Property Code* or RA 8293 governing copyright and patent. The term “*intellectual property rights*” consists of:

- a) copyright and related rights;
- b) trademarks and service marks;
- c) geographic indications;
- d) industrial designs;
- e) patents;
- f) layout-designs (topographies) of integrated circuits; and
- g) protection of undisclosed information.

(10) Patentable Invention

Any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable shall be Patentable. It may be, or may relate to, a product, or process, or an improvement of any of the foregoing. (*Sec. 21, RA 8293*).

The term “*patentable*” refers to something suitable to be patented, *i.e.*, entitled by law to be protected by the issuance of a patent. And to be patentable, a device must embody same new idea or principle not before known, and it must be a discovery as distinguished from mere mechanical skill or knowledge. (*Hobart Mfg. Co. v. Landers, Frary & Clark, D.C., Conn., 26 F. Supp. 198, 202; In re Herthel, Asst. & Pat. App., 104 F. 2d 824, 826*).

(11) Meaning of ‘Patentee’

A *patentee* is one to whom a patent has been granted. The term is usually applied to one who has obtained letters patent for a new invention. (*Black’s Law Dictionary, 5th ed., p. 1014*).

(12) ‘Patent Infringement’ Defined

This is the act of using or selling any patented invention without authority during the term of the patent and this includes one who induces the infringement. (*35 U.S. C.A. Sec. 271*).

Infringement of patent is the unauthorized making, using, or selling for practical use, or for profit, of an invention covered by a valid claim of a patent during the life of the patent. It may involve any one or all of the acts of making, using, and selling. (*Phillips Electronics & Pharmaceutical Industries Corp. v. Thermal & Electronics Industries, Inc., D.C.N.J., 311 F. Supp. 17, 39*).

To constitute infringement of a patent claim there must be present in the infringing device or combination every element of such claim or its equivalent, so combined as to produce substantially the same result operating in substantially the

same way. (*Montgomery Ward & Co. v. Clair, C.C.A. Mo., 123 F.2d 878, 881*).

(13) Right to a Patent

Such right belongs to the inventor, his heirs, or assigns. When 2 or more persons have jointly made an invention, the right to a patent shall belong to them jointly. (*Sec. 28, RA 8293*).

(14) Bureau of Patents

This is the agency that takes charge of patents (*Sec. 20.1, RA 8293*) headed by a director (*Sec. 20.2, id.*), and which falls under the Intellectual Property Office (IPO). (*Sec. 6, id.*).

The Bureau has a three-pronged function:

1. Search and examination of patent applications and the grant of patents;
2. Registration of utility models, industrial designs, and integrated circuits; and
3. Conduct studies and researches in the field of patents in order to assist the Director General in formulating policies on the administration and examination of patents. (*Secs. 8.1-8.3, RA 8293*).

(15) Case

Smith Kline & French Laboratories, Ltd. v. CA 85 SCAD 50 (1997)

The legislative intent in the grant of a compulsory license was not only to afford others an opportunity to provide the public with the quantity of the patented product, but also to prevent the growth of monopolies.

NOTE: The Director of Legal Affairs of the IPO may grant a license to exploit a patented invention, even without the agreement of the patent owner, in favor of any person who has shown his capability to exploit the invention under certain

circumstances. *Examples* — if the patented invention is not being worked in the Philippines on a commercial scale, although capable of being worked, without satisfactory reason: *Provided*, That the importation of the patented article shall constitute working or using the patent. (See Secs. 93, 93.5, RA 8293).

(16) Primary Purpose of Patent System

Manzano v. CA
86 SCAD 723
(1997)

This is NOT about the reward of the individual but the **ADVANCEMENT OF THE ARTS AND SCIENCES**. The function of a patent is to add to the sum of useful knowledge and one of the purposes of the patent system is to encourage dissemination of information concerning discoveries and inventions. This is a matter which is properly within the competence of the Patent Office the official action of which has the presumption of correctness and may not be interfered with in the absence of new evidence carrying thru conviction that the Office has erred.

Since the Patent Office is an expert body preeminently qualified to determine questions of patentability, its findings must be accepted if they are consistent with the evidence, with doubts as to patentability resolved in favor of the Patent Office.

(17) Enforcement of Intellectual Property Rights (IPR) in the Context of TRIPS Agreement — Opinion of Supreme Court Chief Justice Hilario G. Davide, Jr.

“When one speaks of IPR, the general impression is often couched in these terms: authors have patents; commercial firms have trademarks, service marks, and trade names. Such terms are foreign to the uninitiated, and they have not even heard of the neighboring or related rights enjoyed by performers, producers of phonograms and broadcast companies.

“Considered as a ‘non-human right’ because it is not enshrined in the Universal Declaration of the Rights of Man,

IPR is a concept borne of exigency, evolving as it did from the increased commercial interaction among nations and spurred by the need to place a premium on man's ingenuity. The TRIPS (or the Agreement on Trade-Related Aspects of Intellectual Property Rights) Agreement, upon the other hand, sets the dimensions within which these commercial rights can be demanded and preserved in accordance with a pre-determined universal consensus. At the core lies the *enforcement* of IPR, which is all that really matters as far as a holder of an IPR is concerned.

“Even as the TRIPS Agreement simplified the source of IPR and the reliefs available to a right holder, it also extended protection to rights that have emerged in the global market concurrently with the growth of international commerce, especially in technology-dependent industries. The Berne Convention secured the copyrights of artists, writers and composers; the Rome Convention covered the related or neighboring rights of performers, producers of phonograms and broadcasting organizations; and the Paris Convention allowed inventors to patent their works.

“Over the years, other areas of concern surfaced, such as the production and distribution of live or still film and live music; information technology, including digital data transfers, computer programs and compilations of data, telecommunications, and satellite transmission; biotechnology and pharmaceuticals; and designer products.

“These are, by and large, addressed by the TRIPS Agreement, supplemented by the inclusion of rental rights in the use of computer programs and cinematographic works, undisclosed information or what is commonly known as trade secrets, and control of anti-competitive practices in contractual licenses. Hovering on the horizon is the highly controversial but potentially profitable field of genetic manipulation or GM, which in its embryonic stage is already the subject of dispute. In this time of seemingly unlimited access to information, products, and services via the digital highway that is the Internet, IPR holders are wary that their interests may be greatly compromised due to lack of sufficient safeguards along the boundless

coasts of global trade. Upon the other hand, developing country-members are quick to point out that IPR and the conventions protecting them primarily pertain to the developed nations, without necessarily taking into account products and industries endemic to a particular State, as well as the capacity of such country to police its own ranks.

“The TRIPS Agreement is no exception. In fact, it imposes additional obligations on developing States that are already signatories to the other three conventions, on top of extending protection to parties to the TRIPS Agreement which are not parties to the other conventions, thus, making the process of creation, infringement and redress clearly one-tracked. Still, in terms of enforcement, the TRIPS Agreement by far offers the best possible protection and recourse to any IPR holder. It even devotes an entire portion, composed of five sections and twenty articles, solely on IPR enforcement. Article 41(1) presumes that a member-state has adequate remedial mechanisms to prevent or at the very least deter infringement. The procedure must be fair and equitable, fundamental, and cost- and time-efficient. In other words, IPR cases are to be handled just like any other dispute employing municipal laws. Therefore, common due process requirements, such as notice, the right to present evidence, and the right to counsel, must be observed.

“The growing awareness on IPR and the corresponding concern on their protection and implementation are due in large measure to globalization. The vast world has now become a global village. The TRIPS Agreement itself is a mere product of the Uruguay Round of the General Agreement on Tariff and Trade, which treats of the more complex, more expansive realm of global commerce at both the macro and micro level. The seemingly unfettered business environment is fertile ground for violating or abusing IPR. Hence, enforcing IPR would be *mutually beneficial* to all members of the international community. But because it is not self-policing, we must ensure that, at the very least, IPR should be effectively and efficiently enforced in our own backyard or more specifically in our own ASEAN region. You may coin an acronym for it for easy recollection: EEE-IPR-ASEAN, Effective and efficient enforcement of intellectual property rights in the ASEAN.

“Obviously . . . the municipal laws pertain to IPR. [Thus, one] . . . can use as a model the Intellectual Property Code of the Philippines (IPCP), which was enacted into law on 1 Jan. 1998 as Republic Act No. 8293. Like the TRIPS Agreement, it unified the Philippines’ separate laws on patents, copyrights, trademarks, service marks, trade or business names, and other IPR; the TRIPS Agreement itself is embodied in the IPCP. [Judges and prosecutors simply have to] . . . apply the full force of municipal laws alongside the GATT-WTO. Let me, however, [take] the counsel of Lord Woolf: Litigation is to be avoided where possible, should be more cooperative and less adversarial, shorter and less complex, more affordable, more predictable, with costs more proportionate to the value of the claim.

“Clearly, negotiation, mediation, and arbitration are better than any other course of action because they are cheaper and provide a faster resolution of disputes. Being myself an advocate of alternative modes of dispute resolution, I fully concur with this suggestion. The initiative must come from the legislatures in countries where the authority in such matters is exclusively legislative, or by the Supreme Court if under the constitution of a country it is vested with broad power to prescribe the rules of procedure to enforce substantive rights, as in the Philippines. The message is: We can and must all do our part in balancing IPR in the context of the TRIPS Agreement with the national laws of each State.” *Keynote Address Delivered by Chief Justice Hilario G. Davide, Jr. at the ASEAN Colloquium for Judges and Prosecutors on Enforcement of Intellectual Property Rights in the Context of the TRIPS Agreement, Ballroom, Manila Diamond Hotel, 9:00 a.m., 27 Oct. 1999, cited in The Court Systems Journal, Vol. 5, No. 1, Mar. 2000, pp. 1-9.*

(18) Copyrighted Works Under the Electronics Commerce Act or RA 8792

On June 14, 2000, Republic Act 8792 of the “*Electronic Commerce Act*” came into being.

This Act aims to facilitate domestic and international dealings, transactions, arrangements, agreements, contracts

and exchanges and storage of information thru the utilization of electronic, optical and similar medium, mode, instrumentality and technology to recognize the authenticity and reliability of electronic data messages or electronic documents related to such activities and to promote the universal use of electronic transactions in the government and by the general public.

The sphere of application is to any kind of electronic data message and electronic document used in the context of commercial and non-commercial activities to include domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information.

Penalties are imposed on at least two cyberspace/Internet-related crimes, namely: (1) hacking; and (2) piracy.

“Hacking” or “cracking” which refers to unauthorized access into or interference in a computer system/server or information and communications system; or any access in order to corrupt, alter, steal, or destroy using a computer or other similar information and communication devices, without the knowledge and consent of the owner of the computer or information and communications system, including the introduction of computer virus and the like, resulting in the corruption, destruction, alteration, theft or loss of electronic data messages or electronic documents shall be punished by a minimum fine of P100,000 and a maximum commensurate to the damage incurred and a mandatory imprisonment of six months to three years.

“Piracy” or the unauthorized copying, reproduction, dissemination, distribution, importation, use, removal, alteration, substitution, modification, storage, uploading, downloading, communication, making available to the public, or broadcasting of protected material, electronic signature or copyrighted works including legally-protected sound recording or phonograms or information material on protected works, thru the use of telecommunication networks, such as, but not limited to, the Internet, in a manner that infringes intellectual property rights shall be punished by a minimum fine of P100,000 and a maximum commensurate to the damage incurred and a mandatory imprisonment of six months to three years.

(19) Protection of the Rights of Authors and Publishers, Thru Strict Enforcement of Copyright Laws

Conformably with the National Book Policy laid down by law, one of its basic purposes and objectives is to respect and inculcate the concept of intellectual property ownership and to protect the rights of authors and publishers by strictly enforcing copyright laws and providing legal assistance to authors and publishers in suits related thereto. (*RA 8047, Sec. [i], otherwise known as The Book Publishing Industry Development Act*).

(20) Administrative Rules and Regulations Re Intellectual Property Rights

**Republic of the Philippines
Department of Trade and Industry
INTELLECTUAL PROPERTY OFFICE**

NOTICE

Pursuant to Section 1 of the Final Provisions of the Rules and Regulations on Administrative Complaints for Violation of Laws involving Intellectual Property Rights which took effect on 16 December 1998, NOTICE IS HEREBY GIVEN that the Intellectual Property Office will begin to accept and adjudicate complaints for violations of laws involving intellectual property rights on 26 APRIL 2001 to commemorate the FIRST WORLD INTELLECTUAL PROPERTY DAY.

For the information and guidance of all concerned, the Rules and Regulations have been modified and are hereby published in full, as modified:

**RULES AND REGULATIONS ON ADMINISTRATIVE
COMPLAINTS FOR VIOLATION
OF LAWS INVOLVING INTELLECTUAL
PROPERTY RIGHTS**

Whereas, the State recognizes that an effective intellectual and industrial property system is vital to the development of domestic creativity, facilitates transfer of technology,

attracts foreign investments and ensures market access for our products;

Whereas, the State recognizes that the use of intellectual property bears a social function and 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;

Whereas, it is the policy of the State to enhance the enforcement of intellectual property rights in the country and to protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people;

Whereas, it is the policy of the State to enhance the enforcement of intellectual property rights in the Philippines;

Now, therefore, pursuant to the provisions of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, the following rules and regulations on administrative complaints for violation of laws involving intellectual property rights are promulgated:

RULE 1

DEFINITIONS, INTERPRETATION, RULES OF COURT

SECTION 1. *Definition of Terms.* — Unless otherwise indicated, the following terms shall be understood as follows:

(a) “Answer” means a pleading in which the adverse party sets forth the negative and affirmative defenses upon which he relies;

(b) “Bonds” and “Counterbonds” shall refer to cash bonds and cash counterbonds in the form of cash, cashiers check or manager’s check, excluding surety bonds and surety counterbonds;

(c) “Bureau” means the Bureau of Legal Affairs of the Intellectual Property Office;

(d) “Chief Hearing Officer” means the officer within the Bureau who exercises immediate supervision over any Hearing Officer. His title or official designation may differ from the words “Chief Hearing Officer” depending on the structure of the Office;

(e) “Complaint” means a concise statement of the ultimate facts constituting the complainant’s cause or causes of action. It shall specify the relief sought, but it may add a general prayer for such further or other relief as may be just and equitable;

(f) “Court” means a court of general jurisdiction such as Regional Trial Court;

(g) “Director General” means the head of the Intellectual Property Office;

(h) “Director” means the Director of the Bureau of Legal Affairs;

(i) “False Designation of Origin” means the act of any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

(i) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or

(ii) in commercial advertising or promotion, misrepresents the nature, characteristics, qualifications, or geographic origin of his or her or another person’s goods, services or commercial activities, shall be liable to a civil action for damages and injunction provided in Sections 156 and 157 of the IP Code by any person who believes that he or she is likely to be damaged by such act.

(j) “False or Fraudulent Declaration” means the act of any person who shall procure registration in the Office of a

mark by a false or fraudulent declaration or representation, whether oral or writing, or by any false means;

(k) “Hearing officer” means the officer within the Bureau authorized to exercise the functions of “Hearing Officer” in these Regulations. The title or official designation of such officers may differ from the words “Hearing Officer” depending on the structure of the Office;

(l) “Infringement of Copyright and Related Rights” means any violation of the rights provided under Part IV of the IP Code and/or the applicable IP Law, including the act of any person who at the time when copyright subsists in a work has in his possession an article which he knows, or ought to know, to be an infringing copy of the work for the purpose of:

(i) selling, letting for hire, or by way of trade offering or exposing for sale, or hire, the article;

(ii) distributing the article for purpose of trade, or for any other purpose to an extent that will prejudice the rights of the copyright owner in the work; or

(iii) trade exhibit of the article in public;

(m) “Infringement of Patent” means any violation of any of the rights of patentees and holders of utility model patents and industrial design registrations under Part II of the IP Code and/or the applicable IP Law, including the act of making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee;

(n) “Infringement of mark” means any violation of any of the rights of the registered owner under Part III of the IP Code and/or the applicable IP Law, including the act of any person who shall, without the consent of the owner of the registered mark, and regardless of whether there is actual sale of goods or services using the infringing material:

(i) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any

goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(ii) reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive;

(o) “Intellectual property rights” include:

- (i) Copyright and Related Rights;
- (ii) Trademarks and Service Marks;
- (iii) Geographic Indications;
- (iv) Industrial Designs;
- (v) Patents;
- (vi) Layout-Designs (Topographies) of Integrated Circuits; and
- (vii) Undisclosed Information;

(p) “IP Code” means Republic Act No. 8293 otherwise known as the Intellectual Property Code of the Philippines;

(q) “IP Law” means any law, in addition to the IP Code, involving intellectual property rights;

(r) “Office” means the Intellectual Property Office;

(s) “Regulations” means this set of rules and regulations and such Regulations as may be formulated by the Director of Bureau of Legal Affairs and approved by the Director General;

(t) “Unfair Competition” means the act of any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for

those of the one having established such goodwill, or who shall commit any acts calculated to produce said result.

The following shall likewise constitute unfair competition:

(i) the act of selling one's goods and giving them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices of words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer or the act of clothing the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or the act of reselling the goods by any subsequent vendor with a like purpose;

(ii) the act of employing any other means, by artifice or device, calculated to induce the false belief that a person is offering the services of another who has identified such services in the mind of the public;

(iii) the act of making any false statement in the course of trade or any act contrary to good faith of a nature calculated to discredit the goods, business or services of another;

(u) "Violation of laws involving intellectual property rights mentioned in Rule 2, Section 2" means violation of any law relating to the intellectual property rights enumerated under Section 4 of Republic Act No. 8293.

SEC. 2. Interpretation. — These Regulations shall be liberally construed to carry out the objectives of the IP Code and IP Laws and to assist the parties in obtaining just and expeditious settlement or disposition of administrative cases filed before the Office.

SEC. 3. Suppletory Application of the Rules of Court. — These Regulations shall primarily govern in the prosecution of administrative complaints in the Bureau. The provisions of the Rules of Court, however, shall apply in a suppletory character.

RULE 2**COMMENCEMENT OF ACTION**

SECTION 1. *Complaint, When and Whom Filed.* — All administrative complaints for violation of the IP Code or IP Laws shall be commenced by filing a verified complaint with the Bureau within four (4) years from the date of commission of the violation, or if the date be unknown, from the date of discovery of the violation. A complaint is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on “information and belief” or upon “knowledge, information, and belief” or lacks proper verification, shall be treated as an unsigned pleading.

The complaint shall include a certification that the party commencing the action has not filed any other action or proceeding involving the same issue or issues before any tribunal or agency nor such action or proceeding is pending in other quasi-judicial bodies: *Provided, however,* That if any such action is pending, the status of the same must be stated, and should knowledge thereof be acquired after the filing of the complaint, the party concerned undertakes to notify the Bureau within five (5) days from such knowledge. Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for dismissal of the case without prejudice. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt.

SEC. 2. *Original Jurisdiction.* — (a) The Bureau shall have original jurisdiction in administrative actions for violations of laws involving intellectual property rights where the total damages claimed are not less than two hundred thousand pesos (P200,000.00): *Provided, however,* That availment of the

provisional remedies may be granted in accordance with these Regulations and the provisions of the Rules of Court: The Director shall coordinate with local enforcement agencies for the strict and effective implementation and enforcement of these Regulations.

The commencement of the action under these Rules and Regulations is independent and without prejudice to the filing of any action with the regular courts.

SEC. 3. *Venue of Hearing.* — All hearings on actions covered by these regulations shall be held within the premises of the Office.

SEC. 4. *Formal Requirement.* — The Complaint shall be typewritten and addressed to the Bureau, and shall contain the names and residences of the parties and a concise statement of the ultimate facts constituting the complainant's cause or causes of action. It shall specify the relief/s sought, but it may add a general prayer for such further or other relief/s as may be deemed just or equitable. Every pleading filed shall likewise contain a caption setting forth the name of the Office and the Bureau, the title of the case, the case number, and the designation of the pleading.

No pleading shall be accepted by the Bureau unless it conforms to the former requirements provided by these Regulations and accompanied by the required filing fee.

SEC. 5. *Partners, Named Individually.* — When two or more persons associated in any business, transact such business under a common name, the associates may be sued under such common name.

The associates of the business who are sued under a common name may be named individually in the Answer filed by them or on their behalf with their respective postal addresses.

SEC. 6. *Payment of Filing Fee and Docketing.* — The complaint shall be filed in triplicate with the Bureau, which shall issue an order for the payment of the required fee.

Upon payment of the required fee, the complainant, his counsel, or representative shall submit to the Bureau a copy of the official receipt and present the original copy thereof for

comparison. Immediately after the receipt or proof of payment of the required fee, the Records Officer or any authorized officer of the Bureau shall acknowledge receipt of the papers by assigning the Administrative Complaint Number, docket the same, and raffle the case to any of the Hearing Officers.

SEC. 7. *Representation and Confidentiality of Records.*

— (a) The complaint may be prosecuted by the complainant by himself or through counsel. The complainant and his counsel are required to conduct their business with politeness, decorum and courtesy.

It is strictly and absolutely forbidden for the Director and other employees of the Office to discuss the case or any phase thereof with either counsel of record in the absence of the other or with any third person not having any interest or legal standing before the Bureau.

SEC. 8. *Summons.* —

(a) Within three (3) days from receipt of the complaint, the Staff Clerk shall prepare, and the Process Server shall serve, the Summons or Notice to Answer together with a copy of the complaint to the Respondent by mail or by personal service. If the service is done through registered mail, the return card shall be attached to the documents as evidence of receipt. The proof of service of a summons shall be made in writing by the server and shall set forth the manner, place and date of service, shall specify any papers which have been served with the process and the name of the person who received the same, and shall be sworn to when made by a person other than a sheriff or his deputy.

(b) If service cannot be made under the preceding paragraph, the office and place of residence of the party being unknown, service may be made by publication in a newspaper of general circulation, once a week for three (3) consecutive weeks and at the expense of the complainant. When a party summoned by publication failed to appear in the action, final orders or judgments against him shall be served upon him also by publication at the expense of the prevailing party. If the service has been made by publication, service may be proved by

the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager, to which affidavit a copy of the publication shall be attached, and by an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the party by registered mail to his last known address.

(c) Any application for leave to effect service by way of publication shall be made by motion in writing, supported by affidavit of the complainant or some person on his behalf, setting forth the grounds for the application.

(d) When the service has been completed, the server shall within five (5) days therefrom, serve a copy of the return, personally or by registered mail, to the plaintiff's counsel, and shall return the summons to the Hearing Officer who issued it, accompanied by proof of service.

SEC. 9. Answer. — (a) The summons shall require respondent to answer the complaint within ten (10) days from receipt thereof. The respondent shall answer the complaint in writing, by either specifically denying the material allegations of the complaint or alleging any affirmative defense.

If the respondent fails to answer within the time allowed therefor, the Hearing Officer shall, *motu proprio* or upon motion of the complainant with notice to the respondent, and proof of such failure, declare the respondent in default. Thereupon, the Hearing Officer shall proceed to render judgment granting the complainant such relief as his pleading may warrant, unless the Hearing Officer in his discretion requires the complainant to submit evidence. All such decisions or orders shall comply with Rule 11 of these Regulations.

(b) A party declared in default may, at any time after notice thereof and before judgment, file a motion under oath to set aside the order of default upon proper showing that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense. In such a case, the order of default may be set aside on such terms and conditions as the Hearing Officer may impose in the interest of justice.

(c) A party in default shall not be entitled to notice of subsequent proceedings, unless he files a motion to lift or set aside the order of default.

SEC. 10. *Answer to Amended Complaint.* — If the complaint is amended, the time fixed for the filing and service of the answer shall, unless otherwise ordered, run from the service of such amended complaint. The original answer shall be considered as answer to the amended complaint unless a new answer is filed within ten (10) days from receipt or service of the amended complaint.

SEC. 11. *Motion to Dismiss Not Allowed.* — No motion to dismiss on any of the grounds mentioned in the Rules of Court and in any other law shall be allowed except on the ground of prescription. Such grounds other than prescription shall instead be pleaded as affirmative defenses, the resolution of which shall be made in the decision on the merits. The Hearing Officer may, for good cause shown, conduct a preliminary hearing on any of the affirmative defenses if this will expedite the resolution of the case.

SEC. 12. *Pre-trial.* — Upon joinder of issues, the pre-trial conference shall be set immediately by the Hearing Officer. The notice of said pre-trial shall be delivered by the Process Server within three (3) days from receipt of the answer or last pleading. The notice of pre-trial shall require the parties to submit a pre-trial brief containing the following:

(a) A brief statement of the parties' claims and defenses;

(b) Suggestions, if any, for simplification of issues;

(c) A list of documents they intend to produce as evidence, together with appropriate markings as exhibits as well as the identification of witnesses and a statement of the substance and purpose of their testimony during the hearing on the merits. The originals of these documents must be produced for comparison during the pre-trial conference without prejudice to the presentation of additional documents during the trial if the party was prevented from producing the same during the pre-trial on account of fraud, accident, mistake, excusable

negligence or such other reason which the Director or Hearing Officer deems justifiable in the interest of justice and fair play;

(d) A statement whether they can stipulate on facts not covered by admissions in their pleadings. If so, they should come up with drafts of matters they are ready to stipulate on;

(e) The limitation on the number of witnesses;

(f) A statement whether they are open to the possibility of an amicable settlement; and

(g) Such other matters as may aid in the prompt disposition of the action.

SEC. 13. *Effect of Failure to File Pre-Trial Brief or to Appear.* — The failure of the complainant to submit the Pre-Trial brief within the prescribed period or to appear at the pre-trial pursuant to these Regulations shall be cause for dismissal of the action with prejudice *motu proprio* or upon motion. A similar failure on the part of the respondent shall be cause to declare respondent as in default *motu proprio* or upon motion and to allow the complainant to present his evidence *ex-parte* and the office to render judgment on the basis thereof.

SEC. 14. *Appearance of the Parties.* — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear on his behalf fully authorized in writing to enter into an amicable settlement and to enter into stipulations or admissions of facts and of documents.

SEC. 15. *Effect of Failure to File Pre-trial Brief or to Appear in the Pre-trial Conference.* — The failure of the complainant to submit the Pre-trial Brief within the prescribed period or to appear at the pre-trial pursuant to these Regulations shall be cause for dismissal or the action with prejudice *motu proprio* or upon motion. A similar failure on the part of the respondent shall be cause to allow the complainant to present his evidence *ex-parte* and the Bureau to render judgment on the basis thereof.

SEC. 16. *Record of Pre-Trial Results.* — After the Pre-Trial, the Hearing Officer shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered. Such order shall limit the issues for trial to those not disposed of by admissions or agreements of counsel and when entered, controls the subsequent course of the action, unless modified before trial to prevent manifest injustice.

SEC. 17. *Pre-Trial Calendar.* — The Hearing Order shall cause to be prepared a pre-trial calendar of cases for consideration as above provided. After preparing Notice of Pre-Trial, it shall be the duty of the designated clerk of the Bureau to place such case in the pre-trial calendar.

RULE 3

POWERS OF HEARING OFFICERS

SECTION 1. *Powers of Hearing Officers.* — (a) A Hearing Officer conducting the hearing and investigations shall be empowered to administer oaths and affirmations, issue subpoena and subpoena *duces tecum* to compel attendance of parties and witnesses and the production of any book, paper, document, correspondence and other records which are material to the case; grant provisional remedies in accordance with these Regulations and Rules of Court; and make preliminary rulings on questions raised at the hearings, with the ultimate decision on the merits of the issues involved being left to the Director.

(b) Furthermore, a Hearing Officer as alter ego of the Director, shall have the power to cite a party or counsel or any person in contempt in accordance with these Regulations.

The Hearing Officer shall likewise have the power to pass upon and approve bonds and counterbonds that may be posted by the parties; the bond or counterbond shall be in the form of cash, cashier's or manager's check issued in the name of the Intellectual Property Office.

SEC. 2. *Service of Subpoena.* — Service of Subpoena shall be made at least three (3) calendar days before the scheduled hearing so as to allow the witness reasonable time for preparation and travel to the place of attendance.

SEC. 3. *Quashing a Subpoena Duces Tecum.* — The Hearing Officer, upon motion before the time specified in a subpoena *duces tecum* for compliance therewith, may quash the subpoena if it is unreasonable or the relevance of the books, papers, documents, correspondence and other records does not appear, or if the person on whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

RULE 4

PRELIMINARY ATTACHMENT

SECTION 1. *Grounds Upon Which Attachment May Issue.* — At the commencement of action or at any time before entry of judgment, a complainant or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a) In an action against a party who has been guilty of fraud in procuring the registration of a mark in the Office by false or fraudulent declaration or representation, whether oral or in writing, or by any false means;

(b) In an action against a party who has employed deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals or his business or services for those of the one having established such good will, or who shall commit any act calculated to produce said result whether or not a mark is involved;

(c) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication;

(d) In an action for the recovery of a specified amount of money or damages on a cause of action arising from a violation of the IP Code against a party who is about to depart from the

Philippines with intent to evade the execution of judgment; or

(e) In an action against a party who has removed or disposed of his property or is about to do so, with intent to defraud the aggrieved party.

SEC. 2. *Issuance and Contents of Order.* — An order of attachment may be issued either *ex-parte* or upon motion with notice and hearing conducted by the Hearing Officer. The Hearing Officer shall determine whether the attachment sought is meritorious or not. Should an order of attachment be issued by the Hearing Officer, he shall sign and forward the order to the Director who shall direct, without delay, the officer or such other designated employee of the Bureau to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs.

SEC. 3. *Affidavit and Bond Required.* — An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit and the receipt evidencing payment of the bond must be duly filed with the Hearing Officer and forwarded to the Office of the Director before the order issues.

SEC. 4. *Condition of Applicant's Bond.* — The party applying for the order must give a bond executed to the adverse party in the amount fixed by the Hearing Officer in his order granting the issuance of the writ, conditioned that the applicant will pay all the costs which may be adjudged to the adverse

party and all damages which he may sustain by reason of the attachment, if the Hearing Officer shall finally adjudge that the applicant was not entitled thereto.

SEC. 5. *Manner of Attaching Property.* — The officer enforcing the writ shall, without delay and with all reasonable diligence, attach, to await judgment and execution in the action, only so much of the property in the Philippines of the party against whom the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless the former files a counterbond, in an amount equal to the bond fixed by the Hearing Officer in the order or attachment or to the value of the property to be attached, exclusive of costs. No levy on attachment pursuant to the writ shall be enforced unless it is preceded, or accompanied by service of summons, together, with a copy of the complaint, the application for attachment, the applicant's affidavit and bond, and the order and writ of attachment on the defendant within the Philippines.

The requirement of prior or contemporaneous service of summons shall not apply where the summons could not be served personally or by substituted service despite diligent efforts, or the defendant is a resident of the Philippines temporarily absent therefrom, or the defendant is a non-resident of the Philippines.

SEC. 6. *Sheriff's Return.* — (a) After enforcing the writ, the sheriff must likewise, without delay, make a return thereon to the Hearing Officer from whom the writ issued, with a full statement of his proceedings under the writ and a complete inventory of the property attached, together with any counterbond given by the party against whom attachment is issued, and serve copies thereof on the applicant.

(b) The sheriff shall submit a report to the Hearing Office on the action taken on all writs and processes designed to them within twenty (20) days from receipt of said process or writ. Said report shall form part of the records of the case.

(c) At the end of every month, said Hearing Officer shall submit a report to the Director indicating therein the number of writs and processes issued and served, as well as the number of writs and process unserved during the month and the names

of the sheriffs who executed each writ. Unserved writs and processes shall be explained in the report.

SEC. 7. *What May be the Subject of Attachment and the Manner of Executing the Same.* — The following properties may be the subject of attachment:

(a) *Real Properties.* — Real properties, or the machineries that may be found inside the premises belonging to the party against whom the writ is issued, or any interest therein, by filing with the Registry of Deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description; and notice with the occupant of the property, if any, or with such other person or his agent if found within the city or province where the property is located. The Registrar of Deeds must index attachments filed under this section in the name of the applicant, the adverse party, or the person by whom the property is held or in whose name it stands in the records. If the attachment is not claimed on the entire area of the land covered by the certificate of title, a description sufficiently accurate for the identification of the land or interest to be affected shall be included in the registration of such attachment.

(b) *Personal Properties.* — Those personal properties capable of manual delivery, by taking such properties after issuing the corresponding receipt therefore. The sheriff shall thereafter deliver the attached properties to the complainant or proper party who shall be the responsible for the custody, safekeeping, preservation, and the inventory and return of said properties to the other party or proper party upon termination of the case.

(c) *Shares of Stocks.* — Shares of stocks or an interest in shares of stocks of any corporation or company, by leaving with the president or managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the party against whom the attachment is issued is attached in pursuance of such writ.

SEC. 8. *When Attached Property May Be Sold After Levy on Attachment and Before Entry of Judgment.* — Whenever it shall be made to appear to the Hearing Officer, upon hearing with notice to both parties, that the property attached is

perishable, or that the interests of all the parties to the action will be subserved by the sale thereof, the Hearing Officer may order such property to be sold at public auction in such manner as he may direct, and the proceeds of such sale to be deposited as the Director may prescribe to await the judgment in the action.

SEC. 9. *Discharge of Attachment Upon Giving Counterbond.* — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The Hearing Officer shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counterbond with the Office of the Director in an amount equal to that fixed by the Hearing Officer in the order of attachment, exclusive of costs. But if the attachment, sought to be discharged is with respect to a particular property, the counterbond shall be equal to the value of that property as determined by the Hearing Officer. The cash deposit or the counterbond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or filing the counterbond, or to the person appearing on his behalf, the deposit or counterbond aforesaid standing in place of the property so released. Should such counterbond for any reason be found to be or become insufficient, and the party furnishing the same fails to file an additional counterbond, the attaching party may apply for a new order of attachment.

SEC. 10. *Discharge of Attachment on Other Grounds.* — The party whose property has been ordered attached may file a motion with the Hearing Officer before whom the case is pending, before or after levy or even after release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced or that the bond is insufficient, or that the property being attached is exempt from execution.

If the attachment is excessive, the discharge shall be limited to the excess. If said motion be made on an affidavit, the attaching party may oppose the same by a counter-affidavit or other evidence in addition to that on which the attachment was made. After due notice and hearing, the Hearing Officer shall order the setting aside or the discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith, or the property being attached is exempt from execution.

SEC. 11. *When the Property Attached is Claimed by Third Person.* — If the property attached is claimed by a person not a party to the proceeding, and such person makes an affidavit of his title thereto, or right to the possession thereof, and serves such affidavit upon the sheriff and a copy thereof upon the attaching party, the sheriff shall not be bound to keep the property under attachment unless the attaching party or his agent, on demand of the sheriff shall file a bond approved by the Hearing Officer to indemnify the third party claimant in a sum not less than the value of the property levied upon. In case of disagreement as to such value, the same shall be decided by the Director. No claim for damages for the taking, or keeping of the property may be enforced against the bond unless the action therefor is filed within sixty (60) days from the date of the bond.

The sheriff shall not be liable for damages for the taking or keeping of such property, to any such third party claimant, if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the attaching party from claiming damages against a third party claimant who filed a frivolous or plainly spurious claim, in the same or in a separate action.

SEC. 12. *Satisfaction of Judgment Out of Property Attached; Sheriff's Return.* — If judgment be recovered by the attaching party and execution issue thereon, the sheriff may cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose in the following manner:

(a) By paying to the judgment obligee the proceeds of all sales of perishable or other property sold in pursuance of

the order of the Bureau, or so much as shall be necessary to satisfy the judgment;

(b) If any balance remains due, by selling so much of the property, real or personal, as may be necessary to satisfy the balance, if enough property remain in the sheriff's hands for that purpose, in those of the Office of the Director.

The sheriff shall forthwith make a return to the Hearing Officer of his proceedings under this Section and furnish the parties with copies thereof.

SEC. 13. *Balance Due Collected Upon an Execution; Excess Delivered to Judgment Obligor.* — If after realizing upon all the property attached, and applying the proceeds to the satisfaction of the judgment, less the expenses of proceedings upon the judgment, any balance shall remain due, the sheriff must proceed to collect such balance as upon ordinary execution. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must return to the judgment obligor the attached property remaining in his hands, and any proceeds of the sale of the property attached not applied to the judgment.

SEC. 14. *Disposition of Money Deposited.* — Where the party against whom attachment had been issued has deposited money, it shall be applied under the direction of the Director to the satisfaction of any judgment rendered in favor of the attaching party, and after satisfying the judgment the balance shall be refunded to the depositor or his assignee. If the judgment is in favor of the party against whom attachment was issued, the whole sum deposited must be refunded to him or his assignee.

SEC. 15. *Disposition of Attached Property Where Judgment is for Party Against Whom Attachment was Issued.* — If judgment be rendered against the attaching party, all the proceeds of sales and money collected or received by the sheriff, under the order of attachment and all property attached remaining in such officer's hands, shall be delivered to the party against whom attachment was issued, and the order of attachment discharged.

SEC. 16. *Claim for Damage on Account of Improper, Irregular or Excessive Attachment.* — An application for damages on account of improper, irregular or excessive attachment must be filed with the Director before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

If, on appeal, the judgment of the Director-General be favorable to the party against whom the attachment was issued, the latter may claim damages sustained during the pendency of the appeal by filing an application in the Office of the Director-General, with notice to the party in whose favor the attachment was issued, before the judgment of the Director-General becomes executory. The Director-General may remand the application to the Bureau for hearing and decision.

Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

RULE 5

PRELIMINARY INJUNCTION

SECTION 1. *Preliminary injunction defined; who may grant.* — Preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, required a party to an administrative case or any third person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

A preliminary injunction may be granted by the Hearing Officer who is hearing the case but no such power can be exercised as against a concurrent court or other Office which has already acquired jurisdiction over the subject matter.

SEC. 2. *Ground for Issuance of Preliminary Injunction.*

— A Preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party or any person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding and tending to render the judgment ineffectual.

SEC. 3. *Verified Application and Bond for Preliminary Injunction or Temporary Restraining Order.* — A preliminary or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified and shows facts entitling the applicant to the relief demanded;

(b) Unless exempted, the applicant files with the Bureau a bond executed to the party or person enjoined in an amount to be fixed by the Hearing Officer, to the effect that the applicant will pay to such party or person all damages which the latter may sustain by reason of the injunction or temporary restraining order if the Hearing Officer should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued;

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or accompanied by service of summons, together

with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond upon the adverse party in the Philippines. However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a non-resident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

(d) The application for a temporary restraining order shall thereafter be acted upon only after all the parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the Hearing Officer to whom the case was raffled and to whom the records shall be transmitted immediately.

If it shall appear from the facts shown that great or irreparable injury would result to the applicant, the Hearing Officer to whom the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within said twenty-day period, the Hearing Officer must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

SEC. 4. *Preliminary Injunction not Granted Without Notice; Execution.* — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. Should the petition be granted after compliance with the requirement of due process, the Hearing Officer shall issue an order enjoining the party against whom it is issued from further committing acts detrimental or injurious to the applicant effective for a period of time not exceeding ninety (90) days as may be determined by the Hearing Officer with the concurrence of the Director without prejudice to the filing of a counterbond as provided in subsequent sections.

SEC. 5. *Grounds for Objection to, or for Motion of Dissolution of, Injunction or Restraining Order.* — The application for

injunction or restraining order may be denied, upon showing of its insufficiency. The injunction or restraining order may also be denied, or if granted, may be dissolved, on other grounds upon affidavit of the party or person enjoined, which may be opposed by the applicant also by affidavit. It may further be denied, or, if granted, may be dissolved, if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof, as the case may be, would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer, and the former files a bond in an amount fixed by the Hearing Officer conditioned that he will pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order. If it appears that the extent of the preliminary injunction or restraining order granted is too great, it may be modified.

SEC. 6. *When Final Injunction Granted.* — If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the Hearing Officer shall grant a final injunction perpetually restraining the party or person enjoined from further commission of the act or acts confirming the preliminary mandatory injunction.

RULE 6

CONTEMPT

SECTION 1. *Direct Contempt Punished Summarily.* — A person guilty of misbehavior in the presence of or so near the Director or Hearing Officer as to obstruct or interrupt the proceedings before him, including disrespect toward the Director or Hearing Officer, offensive personalities toward others, or refusal to be sworn to or answer as a witness, or to subscribe to an affidavit or deposition when lawfully required to do so, may be summarily adjudged in contempt by the Director or Hearing Officer and punished by fine not exceeding Two Thousand Pesos (P2,000.00) or imprisonment not exceeding ten (10) days, or both.

SEC. 2. *Indirect Contempt to be Punished After Charge and Hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt by the Director:

(a) Disobedience of or resistance to a lawful writ, process, order, judgment, or command of the Hearing Officer, or injunction granted by him;

(b) Any abuse of or unlawful interference with the process or proceedings of the Bureau, not constituting direct contempt under Section 1 of this Rule;

(c) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice or the performance of the Bureau's proper function;

(d) Failure to obey a subpoena duly served;

(e) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him; or

(f) The submission of a false certification, without prejudice to the filing of the appropriate civil and/or criminal action or non-compliance with any undertaking regarding commencement of actions.

But nothing in this section shall be so construed as to prevent the Director from issuing process to bring the respondent party into or before the Bureau, or from holding him in custody pending such proceedings.

SEC. 3. *Contempt Proceedings.* — Proceedings for indirect contempt may be initiated *motu proprio* by the Bureau by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions. If the contempt charges arose out of or are related to principal action pending

in the Bureau, the petition shall be docketed, heard, and decided separately, unless the Bureau in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

SEC. 4. *Hearing; Release on Bail.* — If the hearing is not ordered to be had forthwith, the respondent may be released from custody upon filing a bond, in an amount fixed by the Director or Hearing Officer, for his appearance to answer the charge. On the day set for the hearing, the Director or Hearing Officer shall proceed to investigate the charge and consider such answer or testimony as the respondent may make or offer.

SEC. 5. *Punishment for Indirect Contempt.* — If the respondent is thereupon adjudged guilty of indirect contempt committed, he may be punished by a fine not exceeding Thirty Thousand Pesos (P30,000.00) or imprisonment of not more than six (6) months, or both, and if the contempt consists in the violation of an injunction, he may also be ordered to make a complete restriction to the party injured by such violation.

SEC. 6. *Imprisonment Until Order Obeyed.* — When the contempt consists in the omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the Hearing Officer until he performs it.

SEC. 7. *Proceedings When Party Released on Bail Fails to Answer.* — When a respondent released on bail fails to appear on the date fixed for the hearing, the Hearing Officer may issue another order of arrest or may order the bond for his appearance to be prosecuted, or both; and, if the bond be prosecuted, the measure of damages shall be the extent of the loss or injury sustained by the aggrieved party by reason of the misconduct for which the contempt was prosecuted, and the costs of the proceedings, and such recovery shall be for the benefit of the party injured. But if there is no aggrieved party, the bond shall be liable and disposed of as in criminal cases.

SEC. 8. *Hearing Officer May Release Respondent.* — The Director or the Hearing Officer may discharge from imprisonment a person imprisoned for contempt when it appears that public interest will not suffer thereby.

SEC. 9. *Review of Judgment or Order by the Director.* — The judgment or order of the Hearing Officer made in a case of direct contempt punished after written charge and hearing may be reviewed by the Director, but execution of the judgment or order shall not be suspended until a bond is filed by the person in contempt, in an amount fixed by the Hearing Officer conditioned that if the appeal be decided against him he will abide and perform the judgment or order.

RULE 7

CALENDAR AND ADJOURNMENTS

SECTION 1. *Trial Calendar.* — The staff clerk shall have a trial calendar for the cases that have passed pre-trial stage. Cases where there is a prayer for preliminary mandatory injunction and/or attachment shall be given preference.

SEC. 2. *Notice of Trial.* — Upon entry of a case in the trial calendar, the staff clerk shall cause a notice of the date of its trial to be served upon the parties within three (3) days by the process server.

SEC. 3. *Continuous Trial.* — All hearings shall be continuous until the case is terminated subject to exceptions provided under Section 2 of Rule 9.

SEC. 4. *Raffle of Cases.* — Actions which are to be conducted before this Bureau shall be raffled to the different Hearing Officers who shall thereafter handle the proceeding from its commencement until its final resolution. However, should the Hearing Officer to whom the case was raffled be unavailable during any scheduled hearing, upon request of either counsel, the Director shall designate an appropriate officer to preside or conduct the proceedings.

RULE 8

DEPOSITIONS AND DISCOVERIES

SECTION 1. *Deposition pending action.* — By leave of the Hearing Officer after the Answer has been filed, the testimony

of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon written interrogatories. The attendance of witness through a subpoena may be compelled under Section 2(d) of Rule VI.

SEC. 2. *Effect of Taking Depositions.* — A party shall not be deemed to make a person his own witness for any purpose by taking his deposition.

SEC. 3. *Stipulations Regarding Taking of Depositions.* — If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at anytime or place, in accordance with the Rules of Court, and when so taken may be used like other depositions.

SEC. 4. *Period Within Which to Submit Answers to Written Interrogatories.* — Should party request to take the deposition of a non-resident in a foreign land, the answer to such written interrogatories must be submitted to the Hearing Officer handling the case within six (6) months from the date of issuance of the Letters Commission, without extension. Failure to submit the same within the period shall result in the striking off of said deposition and the affidavits of such deponent.

RULE 9

HEARING

SECTION 1. *Trial of Cases.* — The Hearing Officer shall, as far as practicable, set the case for successive and continuous daily hearing for the reception not only of the evidence in chief but also on any provisional remedy prayed for in the complaint or petition: *Provided, however,* That the hearing of the case on the merits or the reception of evidence of the parties shall be terminated within ninety (90) days, thirty (30) days to be allotted to complainant's or petitioner's evidence, thirty (30) days for respondent, and thirty (30) days for any rebuttal and sur-rebuttal evidence. In the case of provisional remedies, the hearings or reception of evidence thereof shall be terminated within thirty (30) days.

SEC. 2. *Postponement of Hearings.* — Postponement of hearings shall be allowed only on extremely meritorious

grounds provided, that the reception of evidence of the parties shall not exceed the periods provided under the preceding section.

SEC. 3. *Order of Trial.* — Unless the Hearing Officer, for special reasons, otherwise directs, the order of trial shall be as follows:

(a) The complainant or petitioner must produce evidence in support of his allegations in the complainant or petition. The affiants/witnesses whose affidavits were submitted must be subject to a cross-examination by the opposing counsel on the basis of their affidavits.

(b) The respondent shall then offer evidence in support of his defense, counterclaim, cross-claim, and third-party claim subject to cross-examination by complainant or petitioner or his counsel.

(c) The third party-respondent, if any, shall introduce evidence of his defense, counterclaim, cross-claim and third-party claim.

(d) The fourth party, and so forth, if any, shall introduce evidence of the material facts pleaded by him.

(e) The parties against whom any counterclaim or cross-claim has been pleaded shall introduce evidence in support of their defense, in the order to be prescribed by the Hearing Officer.

(f) The parties may then respectively offer rebutting evidence only, unless the Hearing Officer, for good reasons, in the furtherance of justice, permits them to offer additional evidence pertinent to the original issue.

(g) When the presentation of evidence is concluded, the parties may submit their respective memoranda within ten (10) days from date of the last hearing. Unless otherwise provided for by special laws, the appropriate final pleadings required of the parties to be submitted shall include a draft of the decision/resolution they seek, stating clearly and distinctly the facts and the law upon which it is based. The Hearing Officer may adopt, in whole or in part, either of the parties' draft

decisions/resolutions, or reject both. This requirement shall likewise be applied to orders other than final judgment.

SEC. 4. *Agreed Statements of Facts.* — (a) The complainant and the respondent may agree in writing upon the facts involved in the action, and ask judgment upon the facts agreed upon, without the introduction of evidence. The Hearing Officer shall immediately prepare the decision and submit it to the Division Chief of the Administrative Complaints Division who shall recommend the same to the Director for his approval, if the agreed statement of facts is sufficient to support a decision.

(b) If the parties can agree only on some of the facts in issue, a hearing shall be held as to the others.

SEC. 5. *Period for Resolving Cases.* — Unless a different period is fixed by special laws, all contested cases or any incident thereof shall be decided or resolved within thirty (30) calendar days from submission for decision or resolution by the Bureau.

SEC. 6. *Consolidation.* — When actions involving a common question of law or fact are pending before the Bureau, the Hearing Officer may order a joint hearing or trial on any or all the matters in issue in the actions. It may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

RULE 10

EVIDENCE

SECTION 1. *Evidence Required.* — Substantial evidence shall be sufficient to support a decision or order.

A fact may be deemed established if it is supported by substantial evidence. It means such relevant evidence which a reasonable mind might accept as adequate to support or justify a confusion.

SEC. 2. *Documentary Evidence.* — Documentary evidence may be received in the form of copies or excerpts, if the origi-

nal is not readily available. Upon request, the parties shall be given opportunity to compare the copy with the original. If the original is in the custody of a public officer, a certified copy thereof may be accepted.

SEC. 3. *Director or Hearing Officer not Bound by Technical Rules of Evidence.* — The Director or Hearing Officer shall receive relevant and material evidence, rules on offer of evidence and exclude all irrelevant matters, and shall act according to justice and fairness. The Bureau, in the exercise of its power to hear cases within its jurisdiction shall not be strictly bound by the technical rules of evidence. The Bureau shall, however, take judicial cognizance of the official acts of the legislative, executive and the judicial departments of the Philippines; the laws of nature, scientific facts as published in treatises, periodicals, or pamphlets and other facts which are of public knowledge or general knowledge as would enable the Director or Hearing Officer to rule upon the technical issues in the case.

SEC. 4. *Burden of Proof in Process Patents.* — If the subject matter of a patent is a process for obtaining a product, any identical product shall be presumed to have been obtained through the use of the patented process if the product is new or there is substantial likelihood that the identical product was made by the process and the owner of the patent has been unable despite reasonable efforts, to determine the process actually used. In ordering the defendant to prove that the process to obtain the identical product is different from the patented process, the Director shall adopt measures to protect, as far as practicable, his manufacturing and business secrets.

SEC. 5. *Power to Stop Further Evidence.* — The Hearing Officer may stop the introduction of further testimony upon any particular point when the evidence is already so full that more witness to the same point cannot be reasonably expected to be additionally persuasive. The Hearing Officer, however, should exercise this power with caution so as not to cause manifest injustice to the parties.

SEC. 6. *Equitable Principles to Govern Proceedings.* — In all cases involving intellectual property rights, the equitable

principles of laches, estoppel, and acquiescence where applicable, may be considered and applied.

RULE 11

DECISION AND ORDERS

SECTION 1. *Rendition of Decisions.* — (a) The case is deemed submitted for resolution upon termination of the period for reception of evidence provided in Section 1 of Rule 9 and the evidence formally offered. Whether or not the parties submit a final pleading such as memorandum, the case shall be decided by the Bureau within thirty (30) calendar days from submission as provided herein.

All decisions determining the merits of cases shall be in writing, stating clearly and distinctly the facts and law on which they are based and signed by the Director.

(b) Decisions and final orders shall be served by mail, personal service or publication as the case may require.

RULE 12

ADMINISTRATIVE PENALTIES AND SANCTIONS

SECTION 1. *Administrative Penalties Imposable.* — After formal investigation, the Director, may impose one (1) or more of the following administrative penalties:

(a) Issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the Order;

(b) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

(i) An assurance to comply with the provisions of the Intellectual Property Law violated;

(ii) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigations;

(iii) An assurance to recall, replace, repair or refund the money value of defective goods distributed in commerce;

(iv) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau.

The Director may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his guarantee compliance of his undertaking.

(c) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director, such as by sale, donation to distressed local government units or to charitable or relief institutions, exportation recycling into other goods, or any combination thereof, under such guidelines as he may provide;

(d) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;

(e) The imposition of administrative fines in such amount as deemed reasonable by the Director, which shall in no case be less than Five Thousand Pesos (P5,000.00) nor more than One Hundred Fifty Thousand Pesos (P150,000.00). In addition, an additional fine of not more than One Thousand Pesos (P1,000.00) shall be imposed for each day of continuing violation;

(f) The cancellation of any permit, license, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director may deem reasonable which shall not exceed one (1) year;

(g) The withholding of any permit, license, authority or registration which is being secured by the respondent from the Office;

(h) The assessment and award of damages;

(i) Censure; and

(j) Other analogous penalties or sanctions such as those provided under Section 216 of Republic Act No. 8293.

RULE 13
JUDGMENTS, FINAL ORDERS AND
ENTRY THEREOF

SECTION 1. *Rendition of Judgments and Final Orders.*

— A judgment or final order determining the merits of the case shall be in writing, stating clearly and distinctly the facts and the law on which it is based, signed by the Director, and filed with the appropriate Register of the Office.

SEC. 2. *Entry of Judgments and Final Orders.* — If no appeal is filed within the time provided in these Regulations, the Director shall forthwith cause the entry of the judgment or final order in the appropriate Register of the Office. The date of finality of the judgment or final offer shall be deemed to be the date of its entry. The record shall constrain the dispositive part of the judgment or final order and shall be signed by the Director, with a certificate that such judgment or final order has become final and executory.

SEC. 3. *Order and Writ of Execution.* — As soon as a decision or order has become final and executory, the Director shall, *motu proprio* or on motion of the interested party issue an order of execution deputizing and requiring the appropriate officer or personnel of the Office, or such other duly authorized government agent, officer, or personnel, to execute and enforce said decision or order.

SEC. 4. *Execution Pending Appeal.* — On motion of the prevailing party with notice to the adverse party or *motu proprio* and upon filing of an approved bond, the Director may, in his discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in the order. The execution pending appeal may be stayed by the filing of an approved counterbond in an amount to be fixed by the Director.

RULE 14**APPEAL**

SECTION 1. *Finality of Decision and Order.* — (a) The decision and order of the Director shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party affected unless within the said period an appeal to the Director General has been perfected.

(b) Decisions of the Director-General shall be final and executory unless an appeal to the Court of Appeals or the Supreme Court is perfected in accordance with the Rules of Court applicable to appeals from decision of Regional Trial Courts.

(c) Interlocutory orders shall not be appealable.

(d) No motion for reconsideration of the decision of the Director General shall be allowed.

SEC. 2. *Appeal, How Perfected.* — Appeal may be perfected by filing a Notice of Appeal with the Director General and the Director and a copy thereof served upon the adverse party within fifteen (15) days from receipt of the order or Decision and upon payment of the corresponding docket fee.

FINAL PROVISIONS

SECTION 1. *Separability.* — If any provision in these Regulations or application of such provision to any circumstance is held invalid, the remainder of these Regulations shall not be affected thereby.

SEC. 2. *Furnishing of Certified Copies.* — Mr. Eduardo Josen, Records Officer II, is hereby directed to immediately file three (3) certified copies of these Regulations with the University of the Philippines Law Center, and one (1) certified copy each to the Office of the President, the Senate of the Philippines, the House of Representatives, the Supreme Court of the Philippines, and the National Library.

SEC. 3. *Effectivity.* — These rules and regulations shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Done this 28th day of March 2001.

(21) Rule on Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights

This Rule governs alleged infringement under RA 8293, Art. 50 of the TRIPS Agreement, and other related laws and international conventions. (*Sec. 1, Rule on Search and Seizure in Civil Actions for Infringement of IPR, AM 02-1-06-SC, effective Feb. 15, 2002*).

Violation of any of the terms and conditions of the order and the writ of search and seizure or any provision of this Rule constitutes contempt of court. (*Sec. 25, id.*).

Availment of the writ does not prevent the applicant from resorting to other provisional measures or remedies provided in existing laws and procedural rules. (*Sec. 26, id.*).

Title III. — DONATION

Chapter 1

NATURE OF DONATIONS

Art. 725. Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.

COMMENT:

(1) Donation as an Act and as a Contract

Although the article says “an act,” it cannot be denied that a donation is really a contract (gratuitous, the consideration being liberality). (*11 Scaevola 526-527*). Nevertheless, it is by itself a mode of acquiring ownership, and does *not* ordinarily require *delivery* (or tradition), before ownership can be transferred. (*Liguez v. Court of Appeals, et al., L-11240, Feb. 13, 1958; see however, Art. 748 with reference to ORAL donations of personalty*).

Banawa v. Mirano L-52278, May 28, 1980

If a ward (not legally adopted) is not given a primary education by those taking care of her, it is inconceivable she could have been given a donation of about P4,000. Besides, if they really intended to favor her, they could have legally adopted the said ward.

(2) Essential Characteristics of True Donations (Inter Vivos)

- (a) consent, subject matter, cause (as in other contracts)
- (b) the necessary form (including delivery in some cases)

- (c) consent or acceptance by donee during donor's lifetime
- (d) irrevocability (except for legal causes)
- (e) intent to benefit the donee (*animus donandi*) — “liberality” being emphasized more than “gratuitousness”

[NOTE: While *commodatum* is *gratuitous*, it is not considered a donation.]

- (f) resultant decrease in the assets or patrimony of the donor

[NOTE: The mere giving of a mortgage as security is not a donation, for the assets of the mortgagor are not really diminished. (See 3 *Castan* 93).]

(3) Necessity of Acceptance

Acceptance by the donee is required because no one can be compelled to accept the generosity of another.

Tanpingco v. IAC
207 SCRA 652
(1992)

A donation, as a mode of acquiring ownership, results in an effective transfer of title over the property from the donor to the donee and once a donation is accepted, the donee becomes the absolute owner of the property donated.

Tuazon v. CA
212 SCRA 739
(1992)

Donation is an act of liberality and never obligatory.

[NOTE: Even a donation *propter nuptias* must be accepted to be valid, although express acceptance is not needed.]

Art. 726. When a person gives to another a thing or right on account of the latter's merits or of the services rendered by him to the donor, provided they do not constitute a demandable debt, or when the gift imposes upon the donee a burden which is less than the value of the thing given, there is also a donation.

COMMENT:**(1) Classification of Donations**

(a) *From the viewpoint of motive, purpose, or cause:*

- 1) *simple* — the cause is pure liberality (no strings attached)

Example: A donates a parcel of land to B. (*FORM:* that of donations).

- 2) *remuneratory (of the FIRST KIND)* — purpose: to reward past services, with no strings attached. (The services here do *not* constitute recoverable debts.).

Example: A donates a parcel of land to B, who had previously helped him review for the bar examinations. (This is the remuneratory donation referred to in Art. 726, “on account of the services rendered by him to the donor, provided they do not constitute a demandable debt”). Other *examples:* a donation to one who saved the donor’s life (*Manresa, Vol. 1, p. 676*) or to the heirs of a deceased corporation manager who in life was greatly responsible for the corporation’s success. (*Carla v. De la Rama Steamship Co., Inc., L-5377, Dec. 29, 1954*).

(*FORM:* The form of donation should be followed REGARDLESS of the true value of the past services compared to the value of the donation.).

- 3) *remuneratory of (the SECOND KIND) (or compensatory or in a sense, conditional)* — purpose: to reward future services or because of certain *future* charges or burdens, when the VALUE of said services, burdens, or charges is LESS than the value of the donation.

Example: A donates to B a parcel of land worth P700,000 but B should give A a ring worth P150,000 or teach him certain things, the value of the instruction being P90,000.

[*NOTE:* This is really partly onerous, and partly simple. *FORM:* Insofar as it is onerous, follow the

form of contracts (sale, exchange, barter); insofar as it is simple, follow the form of donations. (THUS, in the example, given P150,000 must be in the form of an agreement of barter or sale; P550,000 must be in the form of a donation).].

[NOTE: This is the remuneratory donation spoken of in Art. 726 in these words — “when the gift imposes upon the donee a burden (necessarily *future*) which is LESS than the value of the thing;” and also the remuneratory donation referred to in Art. 733.J.

[NOTE: To avoid confusion, some writers refer to the “remuneratory donation of the second kind” as a modal or conditional donation, or donation with a burden.J.

Castillo v. Castillo **23 Phil. 364**

FACTS: A donation of land was given so that the donee would defray the cost of the donor’s subsistence and future burial and “if perchance anything should remain from the price of the land, the surplus of the said expenses is granted to him by me”: What kind of a donation is this from the viewpoint of cause?

HELD: This is a remuneratory or compensatory donation (of the second kind) insofar as the burden (which is *inferior* to the value of the land) is concerned.

- 4) *onerous* — here, there are burdens, charges or future service EQUAL in value to that of the thing donated.

Example: A donated land worth P2 million to B but B has to give A a Ford Expedition Limited vehicle ring worth also P2 million. (This is not really a donation.) HENCE, the FORM is that of a contract. [Refer to the following *confusing cases*: *Castillo v. Castillo*, 23 Phil. 367; *Carlos v. Ramil*, 20 Phil. 183; *Manalo v. Mesa*, 29 Phil. 500; *Fernandez v. Fernandez*, L-2667,

Feb. 13, 1951; Fernandez v. Fernandez, (CA) 2936-R, Mar. 5, 1954]. A conveyance for an onerous consideration is governed by the rules of contracts, and not by those of donations on testaments. (Manalo v. De Mesa, 29 Phil. 495; Puig v. Peñaflores, L-15939, Nov. 29, 1965).

- (b) *From the viewpoint of time of taking effect:*
 - 1) *inter vivos*
 - 2) *in praesenti* to be delivered *in futuro* (also considered *inter vivos*)
 - 3) *mortis causa*
- (c) *From the viewpoint of occasion:*
 - 1) ordinary donation
 - 2) donation *propter nuptias* (in consideration of marriage).
- (d) *From the viewpoint of object donated:*
 - 1) Corporeal property —
 - a) donations of real property
 - b) donations of personal property
 - 2) Incorporeal property — donations of *alienable rights*.

(2) Samples of Onerous Donations

The following donations have been held to be ONEROUS donations, and therefore do *not* have to have the form of donations:

Where the condition is to take care of the donor's family in the future (*Carlos v. Ramil, 20 Phil. 183*); or where the donee must take care of the donor's funeral expenses. Thus, even if real property is involved, it is not essential to have a public instrument. (*Manalo v. De Mesa, 20 Phil. 496*).

Carlos v. Ramil **20 Phil. 183**

FACTS: A young girl was brought up by Agustin Carlos and his wife Juliana Carlos. When the girl married, she and

her husband were given by the couple real estate on condition that they would live in the house of the couple, and take care of the latter. *Issue*: What kind of a donation was this?

HELD: An onerous one for the services had not yet been performed. (This is really remuneratory of the second kind, and is therefore onerous insofar as the burden *is concerned*.)

Manalo v. De Mesa
20 Phil. 496

FACTS: In a private document, Fernando and Placida Manalo “donated” a parcel of land to a niece, Leoncia, on condition that the *funeral expenses* of the “donors” would be shouldered by the donee. *Issue*: Is the “donation” valid although it was not in a public instrument?

HELD: Yes, because this is an onerous donation, governed by the law of contracts (sales), and therefore a private instrument was sufficient.

[NOTE: This is onerous, yes, but only to the extent of the burden, the funeral expenses. It is believed that insofar as the value of the land *exceeds* the value of such funeral expenses, such excess must be considered as a *simple* donation, requiring a *public* instrument.]

Art. 727. Illegal or impossible conditions in simple and remuneratory donations shall be considered as not imposed.

COMMENT:

(1) Effect of Illegal or Impossible Conditions

Like in testamentary dispositions (*Art. 873*), only the illegal or impossible conditions are *disregarded*. The donation itself remains valid.

[NOTE: It is believed that there is a valid reason for this rule in testamentary dispositions, for they cannot be cured any-

more after the testator's death; but donations with the above conditions may still be cured, hence, there is no valid reason for the rule.]

(2) Distinguished from the Rule in Contracts

Art. 727 is *different* from the rule in *contracts* where the presence of impossible or illegal conditions renders the *obligation itself* VOID. (See Art. 1183).

(3) Governing Law

Onerous donations are, of course, governed by the rule in *contracts* (Art. 1183) and not by Art. 727.

Art. 728. Donations which are to take effect upon the death of the donor partake of the nature of testamentary provisions, and shall be governed by the rules established in the Title on Succession.

COMMENT:

Donations Mortis Causa

See Comments under the next Article.

Art. 729. When the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered till after the donor's death, this shall be a donation *inter vivos*. The fruits of the property from the time of the acceptance of the donation, shall pertain to the donee, unless the donor provides otherwise.

COMMENT:

(1) Donations from the View Point of Effectivity

Arts. 728 and 729 deal with the classification of donations, viewed from the time they become effective.

[NOTE: As provided in Art. 729, express acceptance is not necessary for the validity of donations *propter nuptias*; implied acceptance is sufficient. (*Valencia v. Locquiao*, 412 SCRA 600 {2003}).].

(2) Distinctions as to Form and Effect (BAR)

(a) *Inter vivos*:

- 1) takes effect *during the lifetime* of the donor
- 2) must follow the formalities of donations (if ordinary and simple)
- 3) cannot be revoked except for grounds provided for by law
- 4) in case of impairment of the legitime, donations *inter vivos* are preferred to donations *mortis causa* (priority in time is priority in right)
- 5) the right of disposition is completely transferred to the donee (although certain reservations as to usufruct, for example, may be made)
- 6) acceptance by donee must be during lifetime of donor.

(b) *Mortis causa*

- 1) takes effect *after the death of the donor*
- 2) must follow the formalities of wills or codicils (holographic or notarial)

[NOTE: For instance, if notarial in form, there must be an attestation clause, the signatures of the three instrumental witnesses and that of the donor must appear on every page, etc., otherwise, the donation *mortis causa* is VOID. (*Narag v. Cecilio, et al.*, L-13353, Aug. 31, 1960).].

- 3) can be revoked at any time and for any reason while the donor is still alive (just as a will is essentially revocable). In other words, this donation is revocable *ad mutuum, i.e.*, at the discretion of the grantor or the so-called “donor” simply because he has changed

his mind. (*Bautista v. Sabiniano*, 92 Phil. 244; *Puig v. Peñaflorida*, L-15939, Nov. 29, 1965).

- 4) in case the legitime is impaired, donations *mortis causa* (since they partake of the nature of, or are really, legacies or devises) are reduced ahead of donations *inter vivos*, the latter being preferred.
- 5) the right of disposition is *not* transferred to the donee while the donor is still alive.
- 6) acceptance by donee *mortis causa* can only be done *after* the donor's death; any prior acceptance is immaterial or void. (There can as a rule be no contract relating to future inheritance.)

[NOTE: The designation (name) given by the donor or donee of the kind of donation is immaterial; what is important is what it really is. (*See Cariño v. Abaya*, 70 Phil. 182).].

[NOTE: In a very real sense, we may even say that donations *mortis causa* (originating from Roman Law and from Spanish pre-codal legislation) have been ELIMINATED both by the Spanish Civil Code and by the Civil Code of the Philippines. Actually, said donations should really be regarded today as legacies or devises. (*See Bonsato v. Court of Appeals*, 95 Phil. 481; *Angeles Puig, et al. v. Estella Peñaflorida, et al.*, L-15939, Nov. 29, 1965).].

(3) Donation in Praesenti

The donation "*in praesenti* to be delivered in *futuro*," referred to in Art. 729 is considered as a donation *INTER VIVOS*, and all the characteristics referred to above, of donations *inter vivos* are applicable to it.

Example: A donated a parcel of land to B on Dec. 18, 2003, accepted on the same date by B. The donation provided in part: "I hereby donate to you now my land. But while I am still alive, I will remain in its possession. The property will be delivered to you only upon my death." Is the donation *inter vivos* or *mortis causa*?

ANS.: This is a donation “*in praesenti* to be delivered in *future*,” therefore it is really a donation *inter vivos*. *Consequences*: Beginning Dec. 18, 2003, *B* is the owner of the property, and therefore entitled to the fruits starting said date, unless the contrary has been provided in the deed of donation. Moreover, *A* cannot without a valid legal reason ask for a successful revocation of the donation. *B* can, because he is now the owner, dispose of, or alienate, the property. (*See Art. 729*).

(4) Some Inter Vivos Donations

The following donations have been held to be *inter vivos*:

- (a) A donation where the causes of revocation have been specified. (*Zapanta v. Posadas, 52 Phil. 557*).
- (b) A donation where the donor reserved for himself a lifetime usufruct of the property, for if he were still the owner, there would be no need of said reservation. (*Balaqui v. Dongso, 53 Phil. 653*).
- (c) A donation where the donor warrants the title to the thing which he is donating (*Balaqui v. Dongso, 53 Phil. 653*) — there would be no need of warranty were he not be transferring the title.
- (d) Where the donor *immediately* transferred the ownership, possession and administration of the property to the donee, but stipulated that the right of the donee to harvest and alienate the fruits would begin only after the donor’s death. (*Guzman v. Ibea, O.G. June 16, 1941, p. 1834*). (But if what had been transferred in the meantime was only the administration of the property, the donation is *mortis causa*.) (*Cariño v. Abaya, 70 Phil. 182*).
- (e) Where the donor stated that while he is alive he would not dispose of the property or take away the land “because I am reserving it to him (the donee) upon my death.” (The Court held this to be *inter vivos* because in effect, he had already renounced

the right to dispose of his property). (*See Cuevas v. Cuevas, 51 O.G. 12, p. 6163*).

- (f) A donation where the donees “should not as yet get the possession until our demise,” the administration remaining with the donor spouses, or either one surviving. (*Guarin, et al. v. De Vera, et al., L-8577, Feb. 28, 1957*).

(5) Some Mortis Causa Donations

The following have been held to be *mortis causa*:

- (a) Where the donor has *reserved* (expressly or impliedly) the option to revoke the donation at any time before death, even without the consent of the donee. (*Bautista v. Sabiniano, L-4236, Nov. 18, 1952*).
- (b) Where the donation will be void if the transferee dies ahead of the transferor. (*Heirs of Bonsato v. Court of Appeals, L-6600, July 30, 1954, 50 O.G. 3568*).
- (c) If before the donor’s death, it is revocable at his will. (*Heirs of Bonsato v. Court of Appeals, supra*).
- (d) If the donor retains *full* or *naked* ownership and control over the property while he is still alive. (*Heirs of Bonsato v. Court of Appeals, supra*).
- (e) If what was *in the meantime* transferred to the donee was merely the administration of the property. (*Carriño v. Abaya, 70 Phil. 182*).
- (f) If title will pass only after donor’s death. (*Howard v. Padilla, L-7064, 7098, Apr. 22, 1955*).

[NOTE: The cases just given also give the essential characteristics of a donation *mortis causa*.]

(6) Cases

Mendoza v. Mercado **Adm. Case No. 1484, June 19, 1980**

A donation *mortis causa* must have the formalities of a will.

Bautista v. Sabiniano
L-4236, Nov. 18, 1952

FACTS: Alberto Bautista executed a public instrument donating certain properties to Marcelina and Candida Sabini-ano. The deed among other things stated: "Meantime I am still living, these properties *donated* are all yet at *my disposal* as well as the products therein derived, and whatever properties or property left undisposed by me during my lifetime will be the ones to be received by the donees if any." *Issue:* Was the donation valid?

HELD: The evident intent of the donor was to give a donation only after death. This is so because the donor reserved during his lifetime the right to *dispose* of the properties allegedly donated. In a true donation *inter vivos*, no such reservation or power to revoke can be made, except in the instances provided for by law. The donation is therefore *not inter vivos*. On the other hand, it *cannot* even be valid as a donation *mortis causa*, for this kind of donation requires the formalities of a will. Since a will was *not* made, it follows that even as a donation *mortis causa*, it is void. Therefore, the donees are not entitled to the properties. Instead, they should go to the legal heirs of Bautista.

David v. Sison
76 Phil. 418

FACTS: Margarita David donated to two adopted children, Narcisa and Priscilla de la Fuente, certain properties, but reserved to herself the complete usufruct over the properties. Moreover, she prohibited them to alienate or encumber said properties without her consent. *Issue:* Is the donation *inter vivos* or *mortis causa*?

HELD: Clearly the donation is *mortis causa* for under its terms, the donees would in the meantime be merely "paper owners" of the properties. For all practical purposes, the properties remained the properties of Margarita David.

**Bonsato, et al. v. Court of Appeals
and Utea, et al.
50 O.G. 3568, July 30, 1954**

FACTS: Domingo Bonsato donated to his brother Juan Bonsato and to a nephew Felipe Bonsato certain parcels of land. Some of the provisions of the deed of donation were as follows:

- (a) “For the present, I make and give a donation, perfect, irrevocable, and consummated in favor of Felipe Bonsato.”
- (b) “I reserve for myself, the fruits and produce.”
- (c) “After my death, the donation shall become effective.”

Issue: Was the donation *inter vivos* or *mortis causa*?

HELD: It was *inter vivos*.

- (a) There is no stipulation that the donation was essentially revocable; as a matter of fact, the deed expressly declared it “irrevocable.”
- (b) The reservation as to the fruits and produce would have been unnecessary had the donor continued to be the owner.
- (c) The provision of effectivity after death simply meant that absolute ownership (including the usufruct) would pertain to the donee after the donor’s death.

[NOTE: In case of doubt, the conveyance should be deemed a donation *inter vivos* rather than *mortis causa*, in order to avoid *uncertainty* as to the ownership of the property which is the subject matter of the deed of donation. (*Puig v. Peñaflorida, L-15939, Nov. 29, 1965*).].

**Castro v. Court of Appeals
L-20122, Apr. 28, 1969**

FACTS: A deed of donation contained the following stipulations:

“In consideration of the meritorious services and good attention bestowed on me since she was a child up to the present and until my death, by the legitimate child of my second cousin, I hereby cede and transfer to her in the concept of an onerous donation and *inter vivos* in compensation for such services, the following properties under the following conditions:

- “1. That while I live, the donee shall not have any intervention or right over the fruits of the lands ceded by way of donation;
- “2. Upon my death, the donee shall pay the funeral expenses in accordance with my social standing; and
- “3. After my death, the naked ownership and usufruct will be consolidated immediately in favor of the donee with the obligation to allocate annually a just and sufficient amount of fruits from said property for prayers for the repose of my soul and, that of my deceased husband.”

Issue: Is the donation *inter vivos* or *mortis causa*?

HELD: The donation is *inter vivos*, the disposal thereof being made during the lifetime of the donor. The usufruct reserved by the donor for herself during her lifetime was consolidated with the naked ownership over the property upon the death of the donor. Thus, while ownership was transferred immediately, possession and enjoyment were turned over only upon death.

Art. 730. The fixing of an event or the imposition of a suspensive condition, which may take place beyond the natural expectation of life of the donor, does not destroy the nature of the act as a donation *inter vivos*, unless a contrary intention appears.

COMMENT:**Suspensive Condition Which May Be Fulfilled Beyond the Lifetime of the Donor**

Example: A donated to B a piece of land, on condition that X, A's son, would become a lawyer. This condition may take place beyond the lifetime of A, although A may have desired to see the condition fulfilled while he is still alive. But the donation is nevertheless a donation *inter vivos*, unless a contrary intention appears. Hence, a public instrument, *not* a will, would be needed.

Reason for the law — The retroactive effect of the fulfillment of a suspensive condition. (*Art. 187*).

Art. 731. When a person donates something, subject to the resolutive condition of the donor's survival, there is a donation *inter vivos*.

COMMENT:**(1) Donation Subject to the Resolutive Condition of the Donor's Survival**

Example: A was about to undergo an operation. He donated to B a parcel of land subject to the condition that if A *survives* the operation, B's ownership over the land would terminate, and the same would revert to A. This is a donation *inter vivos*, *not mortis causa*.

(2) Conditions to Last During the Lifetime

If A donates to B a piece of land with the condition that B will pay him a certain amount of rice and money each year during his (A's) lifetime; the donation to become effective upon acceptance, such a donation is *not mortis causa*, but *inter vivos*. (*Zapanta v. Posadas, 52 Phil. 557*).

Art. 732. Donations which are to take effect *inter vivos* shall be governed by the general provisions on contracts and obligations in all that is not determined in this Title.

COMMENT:**Suppletory Effect of Rules on Contracts**

- (a) The law of contracts and obligations has *suppletory* effect to the provisions of this title on ordinary donations.
- (b) After all, a donation is really a gratuitous contract.

Santiago v. Republic
L-48214, Dec. 19, 1978

FACTS: Ildefonso Santiago sued the Republic for revocation of a deed of donation executed by him and his wife for failure of the latter to follow certain terms of the donation (*e.g.*, installation of lighting and water facilities, and the construction of an office building and parking lot). Defendant moved to dismiss on the ground that the Republic cannot be sued without its consent.

HELD: The case should not be dismissed, for in taking the land, the state *implicitly consented to be sued*. *If the rule were otherwise, unfairness would result.* The government should set the example. If it is susceptible to the charge of having acted dishonorably, it forfeits public trust and rightly so. A donor, with the Republic or any of its agencies being the donee, is entitled to go to court in case of an alleged breach of the conditions of such donation.

Art. 733. Donations with an onerous cause shall be governed by the rules on contracts, and remuneratory donations by the provisions of the present Title as regards that portion which exceeds the value of the burden imposed.

COMMENT:**Governing Rules for Onerous and Remuneratory Donations**

- See discussion under Art. 726, *particularly* comment No. (1).

Art. 734. The donation is perfected from the moment the donor knows of the acceptance by the donee.

COMMENT:

(1) Perfection of the Donation

The donation is perfected, not from the time of acceptance but from the time of knowledge by the donor that the donee has accepted. (The knowledge may of course be actual or constructive). If there is no acceptance, the donation will of course be null and void. (*See Castillo v. Castillo, 23 Phil. 364*).

(2) When Acceptance Must Be Made

Acceptance (of a donation *inter vivos*) must be made during the lifetime of the *donor* and of the *donee*. (*Art. 746*).

(3) Rule Prior to Knowledge of Acceptance

Prior to learning of the acceptance, there is as yet no perfected donation (*no* donation at all), hence, the donor may give the property to somebody else, for he has not really parted with the *disposition* of the property.

(4) When the Donation and the Acceptance are in the Same Instrument

If the donation and the acceptance are in the same instrument, containing the signatures of both donor and donee, it is understood that there is already knowledge of the acceptance, hence, the donation is already perfected. (*See Laureta v. Mata, 44 Phil. 668*).

Chapter 2

PERSON WHO MAY GIVE OR RECEIVE A DONATION

Art. 735. All persons who may contract and dispose of their property may make a donation.

COMMENT:

(1) Who May Donate; Simultaneous Capacities

It is not enough that a person be capacitated to contract; he must also have capacity to *dispose* (by acts *inter vivos*) of his property.

Example: A, minor, 17 years of age, who has been emancipated by parental concession (*Art. 234, Family Code*), and who therefore can make a contract involving personal property (*Art. 236, id.*), is now allowed by himself or herself to make a donation of real property because such a donation need not be effected thru a guardian (*Art. 236, id.*), although necessitating its embodiment in a public instrument. (*Art. 749, Civil Code*). He is nonetheless allowed to donate personal property without parental consent or without intervention of a guardian. (*See Art. 236, id.*).

Question: May an emancipated minor by himself make donation *mortis causa*?

ANS.: Yes, because at the age of 17, a person of sound mind can already make a valid will.

(2) Capacity of a Husband

A husband is capacitated to enter into a valid contract if he is *sui juris*. He is also capacitated to donate to his own

children, whether of a present or a prior marriage, and whether legitimate or illegitimate, provided that the donation be taken from his capital or individual property. But insofar as donations of the *conjugal partnership* are concerned, he is allowed to donate same, without his wife's consent only in the following cases:

- (a) moderate donations given for charity or on occasions of family rejoicing or family distress. (*Art. 125, Family Code*).
- (b) donations or promises to common legitimate children (those of the husband *and* the wife) for the exclusive purpose of commencing or completing a professional or vocational course or other activity for self-improvement. (*Art. 121, id.*).

(3) Capacity of the Wife

Unless she is the administratrix of the conjugal partnership, she cannot donate conjugal property without the husband's consent except in the case of a moderate donation for charity or on occasions of family rejoicing or family distress. (*Art. 125, Family Code*). With respect to her exclusive property, she may, if of age, dispose of the same without the consent of the husband. (*See Art. 111, id.*).

(4) Status of a Donation Made by an Incapacitated Person

While the law provides for the case of donations made by specially disqualified persons in Art. 739 (like a donation made between persons guilty of adultery or concubinage at the time of the donation), the law making such donations *void*, still the law is silent regarding the status of donations made, for example, by unemancipated minors or by those of an unsound mind. Should said donations be considered void or merely voidable? It is submitted that following the laws in contracts (which are of suppletory application to simple donations) said donations should be merely considered voidable. The same answer should be given in case there was vitiated consent (as in the case of fraud or intimidation).

(5) Donation by a Corporation

If a corporation makes a donation, which is *not expressly authorized* by its *articles*, but which is *not in itself* illegal or prejudicial to creditors, but *later on* the *voidable* (not void) donation is *subsequently ratified*, the *ultra-vires* (if at all, it was one) contract becomes a binding one, and the corporation is estopped from disputing its validity. (*Carla, et al. v. De la Rama Steamship, 510 O.G. 755*). As a matter of fact, a corporation, by virtue of its implied powers may grant gratuities to its officers, servants, and even strangers. This is particularly true when the gratuity, or the donation, as in this case, is awarded to the *heirs* of a deceased manager, one “who was to a large extent responsible for the rapid and very successful development and expansion of the activities of this company.” Such a donation may be regarded as a remuneratory donation. (*Ibid.*).

Art. 736. Guardians and trustees cannot donate the property entrusted to them.

COMMENT:**(1) Donation by a Guardian or Trustee**

- (a) Under the *old law*, this prohibition to donate *did NOT* exist and therefore a donation made by a guardian or trustee should be considered valid, particularly if the ward or the beneficiary has been *benefited* in some way by the donation. Incidentally, Art. 736 *cannot* have retroactive effect.
- (b) Under this *new* provision, as worded, guardians and trustees may of course donate their own properties, unless they are otherwise disqualified by the law, but not the property entrusted to them, for the simple reason that they are not the owners thereof.

(2) Trustees Who Repudiate

Trustees who have repudiated the trust and have acquired the properties by prescription (*See Legura v. Levantino, 40 O.G. [14 S], p. 136*) are, of course, allowed to donate said properties.

(3) Query

May guardians or trustees donate property entrusted to them if they first obtain authorization from the courts? It is submitted that courts may *not* grant, *should not* grant any authorization, and even if granted, the authorization should be considered void. This is because the making of a donation is a personal act, depending always on the liberality or generosity of the owner of the property. The rule is however *different* in the case of onerous donations or where the owner would stand to benefit, for clearly the prohibition is directed at *simple* donation. (See *Araneta v. Perez*, L-18872, July 15, 1966).

Araneta v. Perez
L-18872, July 15, 1966

FACTS: A trustee donated more than 500 sq. meters of land pertaining to the trusteeship to the City of Manila. This was done with court approval. The land donated was to be made a city street, and the trustee made the donation to relieve the estate from the expenses and taxes attendant to the maintenance of a street. *Issue:* Is the donation valid?

HELD: Yes, for Art. 736 which states that “guardians and trustees cannot donate the property entrusted to them” applies only to simple donations or gifts of pure beneficence. In the instant case, the donation was made precisely in the interest of the estate trust or the trust beneficiaries.

(4) Status of a Donation of Ward’s Property by a Guardian

It is believed that such a donation, if made in the guardian’s name is null and void. On the other hand, if made by the guardian in the name of, and with the consent of the ward, it would be valid provided judicial permission is obtained. This is particularly true if the donation benefits, in some way, the ward.

Art. 737. The donor’s capacity shall be determined as of the time of the making of the donation.

COMMENT:**(1) Determination of Donor's Capacity, Meaning of "Making"**

"Making" must be interpreted to mean "perfection" of the donation, otherwise if "making" means "giving," Art. 737 would in some cases be inconsistent with Art. 734 which states that "the donation is perfected from the moment the donor knows of the *acceptance* by the donee." To avoid a contradiction, the rule may be stated thus: "at the time the donation is *perfected*, both the donor and the donee must be capacitated." (Incidentally, in the draft of the Civil Code, the word used was "acceptance" not "making." It was Congress that made the absurd change, resulting in the apparent contradiction with Art. 734.)

(2) Examples

- (a) Donor donates Jan. 1. Donee accepts Jan. 5. Donor dies Jan. 8. Acceptance of donation is received in donor's house on Jan. 10. Was the donation ever perfected?

ANS.: The donation never was perfected, and never became effective because the donor never knew of the donee's acceptance.

- (b) Insane donor donates Jan. 1. Donee accepts Jan. 5. Donor becomes sane Jan. 7. Donor receives acceptance Jan. 8, at a time when he was sane. Is the donation valid?

ANS.: Yes, the donation would be ordinarily valid, because at the time of "making" (perfection) both parties had capacity. If "making" means "giving," it would follow that donor was incapacitated. But as we have seen, "making" must be interpreted correctly. In the example given, if donor so desires, he can ask for annulment of the donation, on the ground that he did not know what he was doing at the time he offered the donation. If he does nothing about it, the donation should remain valid.

Art. 738. All those who are not specially disqualified by law therefor may accept donations.

COMMENT:**(1) When a Person is “Specially Disqualified” to Accept a Donation**

“*Specially disqualified*” does not refer to those incapacitated to contract like minors or those of unsound mind, but to people such as those mentioned in Art. 739, and husbands and wives with respect to immoderate donations from each other (donations of spouses *inter se*).

(2) Natural and Juridical Persons May Be Donees

Since the law does not distinguish, both natural and juridical persons may become donees. An unregistered partnership may become a donee because it is a juridical or artificial person despite its non-registration. But the conjugal partnership itself, not being natural or juridical, cannot be a donee. Instead, the donation should be given by the stranger to the husband and wife, the share of the husband being credited to his capital, and that of the wife being considered part of her paraphernal property.

(3) Donations to Alien Religious Organization

A donation of real property cannot be given to an *alien religious organization* — “*Ung Siu Si Temple*” — until 60% of its capital stock is owned by Filipinos; and in case of a *non-stock corporation* such as this, unless the controlling membership is in the hands of Filipinos. (*Reg. of Deeds v. Ung Siu Si Temple*, 51 O.G. 2866). But such a donation can be given to the Roman Catholic Church, since this is not considered an alien corporation.

(4) Attorney-in-Fact of the Donor May Be a Donee

An attorney-in-fact of the donor is *not incapacitated* as a donee. His incapacity to *purchase* the property which he had been authorized to sell does NOT disqualify him as a donee, because while in a sale *deceit* may occur, this can hardly happen in a donation, which after all, is a gratuitous disposal. The gratuitousness that essentially characterizes donations would itself put the donor on his guard (since he must understand

nothing will be received in exchange for the gift), regardless of whether the donee is an agent or a total stranger. (*Serrano v. Francisco, CA- GR 1405-R, Jan. 17, 1951*).

Art. 739. The following donations shall be void:

(1) Those made between persons who are guilty of adultery or concubinage at the time of the donation;

(2) Those made between persons found guilty of the same criminal offense, in consideration thereof;

(3) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.

In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouses of the donor or donee; and the guilt of the donor and donee may be proved by preponderance of evidence in the same action.

COMMENT:

(1) Donations That Are Void Because of Moral Considerations

The donations referred to in this article are not merely voidable or revocable; they are null and void from the very beginning. And it is not really essential that they be pronounced as such by the courts; it is the law that automatically declares their nullity provided, of course, that all the *conditions* mentioned in the law are present. The action referred to therefore in the article is not the action to annul, but to have the court expressly declare the nullity of the donation.

(2) The First Kind – “Those Made Between Persons who were Guilty of Adultery or Concubinage at the Time of the Donation”

(a) The adultery or concubinage need not be proved in a criminal action. In the same civil action for declaration of nullity (such declaration being as we have seen merely convenient and not necessary), the guilt may be proved by mere preponderance of evidence. (*Art. 739, 2nd par.*).

- (b) If the donation took place after the commission of adultery or concubinage, the donation is considered valid except if the consideration thereof is the commission of the act.

- (c) *Problem:*

H and *W* are husband and wife. Same with *H*² and *W*². *H* has carnal knowledge with *W*² in a hotel, and *H*² accuses his wife (*W*²) and *H* of adultery. The two defendants are subsequently convicted. If *H* had previously given a gift to *W*², may *W* now bring an action to have such donation declared void?

ANS.: Yes, because at the time of the donation, H and W² were guilty of adultery.

[NOTE: In the problem presented, may W bring an action for legal separation against H?

ANS.: No, because adultery on the part of the husband is not a ground for legal separation.]

- (d) *Problem:*

H and *W* were husband and wife. *W* has a sweetheart *S*, who however *never* had any sexual intercourse with him. If *W* gives *S* a donation, is the donation void?

ANS.: No, because although W and S are sweethearts, they are not guilty of adultery.

- (e) *Problem:*

H and *W* were husband and wife. *W* has a sweetheart *S*, who however has never had any sexual intercourse with her. If *S* gives *W* a donation, is it valid, voidable, or void? *Reason.*

ANS.: The donation is not void, because although S and W were sweethearts, they are not guilty either of adultery or concubinage. But the donation is voidable, inasmuch as H's consent to the donation had not been obtained. The wife as a general rule cannot receive property by gratuitous title from a stranger without the husband's consent. The precise reason for the law is to avoid alienation of affections.

(f) *Query:*

Suppose a husband wants to get rid of his *querida* (paramour) but the only way for her to go away is for him to give her a donation, should the donation be considered void under this article?

ANS.: It is submitted that the donation should be considered as valid, because its purpose or consideration is not to continue an immoral arrangement, but precisely to put an end to it. Since the giving of the donation will improve family relations, such donation should be considered valid, unless defective for some other reason. This is particularly true if the paramour had been originally fooled by the man who at the beginning of their relations had misrepresented himself as single and had even promised to marry the girl. If of course, from the very beginning the woman had known the man to be married, for her to now demand the donation as the price for the cessation of an immoral arrangement would amount to a threat, and therefore, the donation should be considered voidable, for then she would be taking advantage of her influence over the man. (*Tribunal Supreme, Apr. 2, 1941*).

(g) *Bar:*

If a man makes his paramour the beneficiary of a life insurance contract instead of his wife, the premiums being paid by the conjugal partnership, who should receive the insurance indemnity?

ANS.: If it can be proved that the man and the paramour were guilty of adultery or concubinage, the paramour cannot get the insurance indemnity. Same should be given to the wife, because under the law, those incapacitated to become a donee under Art. 739 are also incapacitated to be beneficiaries of insurance policies. (*Art. 2012*). The same rule would apply even if all the premiums had been paid from the *exclusive* funds or properties of the husband.

(h) If a married man gives a donation of parcels of land to a 15-year-old girl so that they will cohabit, is the donation valid or void?

ANS.: The donation is void and illegal in view of the illicit cause, but the donor or his heirs cannot get back the properties given because he who is a party to an illegal transaction cannot get back what has been given. (*See Liguez v. Court of Appeals, L-11240, Dec. 18, 1957.*)

(3) The Second Kind — “Those Made Between Persons Found Guilty of the Same Criminal Offense, in Consideration Thereof”

- (a) Regarding this kind of donation, apparently it is imperative that there must be a *criminal conviction*; hence, mere preponderance of evidence showing guilt is *not sufficient*. But it cannot be denied that even if the crime is not carried out, the contract would still have an illegal cause, and should therefore be considered void.
- (b) This kind of donation *inter vivos* is *not* really a simple donation; but a remuneratory or onerous one. And because the consideration is illegal, the donation should indeed be considered void.
- (c) It does not matter, it seems, whether the donation was made before or after the commission of the offense. Hence, whether offered as a reward for a previous act, or the price for a future one, the fact remains that the consideration is void.
- (d) *Query*: Is a donation made to prevent the commission of a crime void, voidable, or valid?

ANS.: It is submitted that under general principles the donation should be considered valid because the purpose is laudable. Hence, a donation given for example to a brother of a playground with facilities to keep him from joining criminal gangs would appear to be all right. But if a person insists that a donation be given him so that he would, for example, not kill the giver or any other person, this would be equivalent to extortion or blackmail, and hence, should be considered as *voidable*, the consent of the donor being given only because of force, intimidation, fear, or undue influence.

(4) The Third Kind — “Those Made to a Public Officer or His Wife, Descendants and Ascendants by Reason of His Office”

(a) *Purpose* — to prevent bribery. Even a gift given on the occasion of Christmas or a birthday would come under the prohibition if the donor would not have given had the donee not been occupying a public office.

(b) *Persons excluded*:

Relatives not enumerated in the law can validly be given unless the purpose is to have such relative give the gift to the public officer. (*See Art. 742*).

(c) *When Wife Is the Public Officer*:

If it is the wife who is the public officer, “spouse” should refer to the husband. The same principle applies for the reason is the same.

(d) *“Public officer” — meaning*:

Under this provision, “public officer” refers not only to officials given discretionary powers but also to mere employees of the government such as a messenger, who as such, is, of course, in a position to do either good or harm. Hence, the disqualification exists.

(e) *When Public Officer Is the Donor*:

This provision does not prevent the public officer from becoming a *donor*.

(5) Reason Why the Donations Are Void

The donations referred to in Art. 739 are void by *reason of public policy*. Another donation void because of public policy is that between spouses, as a rule. (*Art. 87, Family Code*). This is true even if the spouses be merely *common-law spouses*. (*Buenaventura v. Bautista, [CA] 50 O.G. 88, 3679*).

Agapay v. Palang
85 SCAD 145
(1997)

The transaction was properly a donation made by Miguel to Erlinda, but one which was clearly void and inexistent by

express provision of law because it was between persons guilty of adultery or concubinage at the time of the donation, under Art. 737 of the Civil Code. Moreover, Art. 87 of the Family Code expressly provides that the prohibition against donations between spouses now applies to donations between persons living together as husband and wife without a valid marriage, for otherwise, the condition of those who incurred guilt would turn out to be better than those in legal union.

Art. 740. Incapacity to succeed by will shall be applicable to donations *inter vivos*.

COMMENT:

(1) Applicability of Rules on Incapacity to Succeed by Will

Scope: This provision gives an example of people “specially disqualified” to become donees. Note that the Article does not refer to persons incapacitated *to purchase*. (See *Serrano v. Francisco, CA-G.R. No. 1405-4, Jan. 17, 1951*).

(2) Who Are Incapacitated to Inherit

Under the law of succession, there are two kinds of incapacity to inherit —

- (a) *absolute incapacity* — where in no case can there be a transmission of the inheritance (*Example: an abortive infant.*)
- (b) *relative incapacity* — where under certain conditions, a particular person cannot inherit from a particular decedent. (*Example: The priest who heard the confession of the testator during his last illness.*)

(3) Problems

- (a) *D* had an illness, and because he thought he was going to die, he confessed before *P*, a priest. After the confession, *D* gave a donation to *P*. Is the donation void, voidable, or valid?

ANS.: The donation is void because P is incapacitated to become D's donee under the circumstances presented.

- (b) In the preceding question, suppose the donation had been given long before the confession, would the answer be the same?

ANS.: No, because here the reason for the disqualification, the possibility of undue influence, does not exist.

- (c) A tried to kill B. Later B forgave A, and as a matter of fact gave him a donation. Is A capacitated to receive the donation?

ANS.: Yes, because there has been a condonation of the offense.

- (d) A tried to kill B. But B did not know who the assailant was. Later, B gave A a donation. Is A capacitated to become the donee here?

ANS.: No, because he is unworthy. In the law of testamentary succession, A would be considered as unworthy to inherit. So in the law of donation, A would also be incapacitated as a donee. (Art. 740).

- (e) A donated to B. Later B tries to kill A. Under the law of succession, B would be incapacitated to inherit from A. Is the donation to B void, voidable, or valid?

*ANS.: Here, we cannot well apply the law of succession because there are specific provisions on this point right in the law of donations. The correct answer is, the donation to B is not void, but merely voidable because this kind of ingratitude is one of the causes for the revocation of a simple donation *inter vivos*.*

(4) Unworthiness of the Donee

Art. 740 speaks of donations void by reason of the *unworthiness of the donee*. (The incapacity applies to those mentioned under Arts. 1032 and 1027, except paragraph 4 of Art. 1027 which refers to the disqualification to succeed of the *witnesses to a will*, and *some of their relatives*.)

Art. 741. Minors and others who cannot enter into a contract may become donees but acceptance shall be done through their parents or legal representatives.

COMMENT:

(1) Minors May Be Donees

Example:

An eleven-year-old child was given a donation. Is the donation valid?

ANS.: Yes, by express provision of the law but acceptance must be done thru his parents or legal representatives. (*See also Letuno v. Rodriguez, 56 Phil. 823*).

(2) May Minors Accept by Themselves?

ANS.: It depends:

- (a) If the donation is simple — yes, because after all this is for the benefit of the child. The exception is when *written* acceptance of the donation is required. In such a case, the parents or legal representatives must intervene. (*See 5 Manresa 98*).

[*NOTE:* Under the old Code, the Court of Appeals in *Perez v. Calingo, CA 40 O.G. Sup. 11, p. 53*, decided that a minor can personally accept a simple donation.

The Court of Appeals said: “In simple and pure donations, a formal acceptance is not important for the donor acquires no right to be protected, and the donee neither undertakes to do anything nor assumes any obligation. In this case, the acceptance may be said to be a mere formality required by law for the performance of the contract. Whenever the donation does not impose any obligation upon the donee, the acceptance may be made by the donee, (a minor) himself.” In the case of *Juanita Kapunan, et al. v. Alipio Casilan, et al., L-8178, Oct. 31, 1960*, also applying the *old Civil Code*, reiterated the doctrine in *Perez v. Calingo*, and held as **VALID** a donation of *land* given by a mother to her daughter, a minor, and accepted

in behalf of said minor by the minor's grandmother, an *acting* guardian, who AFTER the donation, was made the legal guardian. Here the donation was a SIMPLE one. The court added that while the donation may have been defective (in the sense that the grandmother, at the time of the donation was not yet the legal guardian), still the donation was *never* revoked or questioned before the grandmother's appointment as the legal guardian. This fact may thus be considered a confirmation or implied ratification of the act.

It seems, however, under Art. 741 which speaks of no exceptions that acceptance must always be done *thru* their parents or legal representatives./.

- (b) If the donation is *onerous or conditional* — because here some burden is imposed on the child. Here, the parents or legal representatives must intervene.

[NOTE: If the minor nevertheless accepts by himself, the contract (for it is really one), is considered voidable./.

(3) Acceptance by a Father of an Onerous Donation

Can a father accept an onerous donation in favor of his child if the value of the burden exceeds P5,000?

ANS.: By himself, no. He should ask court approval, for in a case like this, his rights as guardian are governed by the Rules of Court. If he goes ahead without judicial permission, it is as if there has been no acceptance. (*See for reference Di Sioc v. Sy Lioc, 43 Phil. 562*).

Art. 742. Donations made to conceived and unborn children may be accepted by those persons who would legally represent them if they were already born.

COMMENT:

(1) Donations to Conceived and Unborn Children

The donations here refer to both *simple* and *onerous* ones, except that in the case of the latter, if it turns out that the

onerous donation proves unfavorable to the child, it is as if the conceived child possessed no juridical personality. (*See Art. 40*).

(2) Requisites for the Article to Apply

For Art. 742 to apply, it is essential that:

- (a) the child be born *alive* later (if it had a normal intra uterine life).
- (b) or that the child, after being born alive, should live for at least 24 hours (if it had an intra uterine life of less than 7 months). Otherwise, if the child never possessed juridical personality, there being no donee, the donation is null and void.

NOTE: Art. II, Sec. 12 of the 1987 Philippine Constitution reads in part: “The State . . . shall . . . protect the life of the unborn from conception . . .”

Art. 743. Donations made to incapacitated persons shall be void, though simulated under the guise of another contract or through a person who is interposed.

COMMENT:

(1) Disguised Donations to Incapacitated Persons – Meaning of “Incapacitated”

The term does not refer to minors or those who are insane, but to those who are not allowed to become donees, like “persons who were guilty of adultery or concubinage at the time of the donation.”

(2) Example

A and *B* were paramours convicted of adultery. *A* donated to *X*, a mutual *friend*. Thru a previous understanding, *X* donated the same thing to *B*. Are the donations valid?

ANS.: No, otherwise the purpose of the law is frustrated.

Art. 744. Donations of the same thing to two or more different donees shall be governed by the provisions concerning the sale of the same thing to two or more different persons.

COMMENT:

(1) Donation of the Same Object to Two or More Different Donees; Cross-Reference to Art. 1544 (Double Sale)

If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (*Art. 1544, Civil Code*).

(*Note that Art. 1544 is the provision referred to by Art. 744.*)

(2) Example

A donated his land to B, who accepted. The next day, A donated the same land to C, who, not knowing that it had already been donated to B, accepted the same, and registered the deed of donation in the Registry of Property. Who should be considered as the lawful owner?

ANS.: C, because of his registration in good faith. (*Art. 1544*). Note however that A should not have donated the same property to C since he could not revoke the donation to B without any legal or lawful cause. Since he should not have done, he is liable to B for whatever damages B may suffer.

(3) Cases**Cagaoan v. Cagaoan**
43 Phil. 554

FACTS: A father donated a parcel of land to his son Felix on *November 3, 1915*. But Felix did not take possession of the land. Then the father donated the same land to another son Eugenio on *Nov. 26, 1915*, who took possession immediately, *not knowing* that it had previously been given to Felix. Later (*June 10, 1919*), with full knowledge of the donation to Eugenio, Felix registered his title (by donation) to the land. An action was brought by Eugenio to:

- (a) cancel the donation to Felix;
- (b) to cancel the registration by Felix;
- (c) and to have himself (Eugenio) declared the owner.
Will the action prosper?

HELD: Yes, the action by Eugenio will prosper, because Felix's registration was made in bad faith. Since Eugenio is in actual possession, he must be considered the owner, even if the donation was first made in favor of Felix.

[*NOTE:* Had Eugenio been also in bad faith, that is, if at the time he took actual possession he knew that the land had already been donated to Felix, the answer would have been different, for in this case, title would certainly go to Felix, since he was the first donee./]

Fernandez v. Mercader
43 Phil. 581

FACTS: Fernandez was given by Melgar *one half* of a parcel of land. Later, Melgar donated the *whole* land to Mercader, who although he knew of the previous donation to Fernandez, nevertheless still registered the whole land in his (Mercader's) name. Fernandez now brings this action to have the land partitioned, but Mercader claims sole ownership. Decide.

HELD: Fernandez wins, and the land must be partitioned into two. Mercader is entitled only to the *half-share* remaining

after the first half had been given to Fernandez. Mercader's registration of said "first half" also in his name was in bad faith in view of his knowledge about Fernandez's share. And his registration of said share gives him no additional right.

(4) Retroactive Effect of the Article

Art. 744 does not have any retroactive effect, and cannot apply to an instance where there is a donation and also a sale. (*Semana v. Goyena Vda. de Quizon*, [CA] 49 O.G. 7, 2897).

Art. 745. The donee must accept the donation personally, or through an authorized person with a special power for the purpose, or with a general and sufficient power; otherwise, the donation shall be void.

COMMENT:

(1) Formalities for Acceptance

The formalities for acceptance, if any, must also be present, otherwise the donation is void.

(2) Thru Whom Acceptance May Be Made

This article speaks of two kinds of *authorized* persons:

- (a) one with a *special* power;
- (b) one with a *general* and *sufficient* power.

In addition, a donee may accept PERSONALLY.

(3) Acceptance by An Agent

On general principles, an ordinary agent or administrator cannot accept in behalf of the principal, both in *simple* and *onerous* donations; in the first (simple) because the principal may not want to accept the donor's generosity, in the second (onerous) because the principal may not want to be bound. However, a donation in favor of a church may be accepted in its

name by the parish priest. (*Jamias v. Angco, CA-GR 19024-R, Sep. 30, 1959*). Upon the other hand, a donation in favor of a municipal corporation needs the signature of the *municipal mayor* (who will sign in behalf of the municipality under Sec. 2196 of the Revised Administrative Code). Thus, if the official who accepts is the municipal treasurer, the donation is null and void. (*Guillen v. Municipality of Molave, CA-GR 14902-R, Sep. 10, 1959*).

Query: In the case of an onerous donation, if an agent or administrator without authority from the principal, accepts the donation in behalf of the principal, would the donation be valid, rescindable, voidable, unenforceable, or void?

ANS.: Since an onerous donation is a contract, the rules on contracts must be followed. Hence, the onerous donation entered into is an unauthorized contract, more specifically an unenforceable contract. (*Art. 1403, No. 1*).

(4) While Art. 745 speaks only of the *acceptance*, it would seem that it is also applicable to the *giving* on the part of the donor.

(5) Authorization Must Be in a Public Instrument

According to Manresa, the authorization should be in a *public instrument* conformably with *Art. 1358*. It should be noted that special power of attorney is needed when an *inheritance* is to be accepted. (*Art. 1878, No. 13*).

Art. 746. Acceptance must be made during the lifetime of the donor and of the donee.

COMMENT:

(1) Applicability of the Article on When Acceptance Is to Be Made

The rule enunciated herein is applicable to donations *inter vivos* as well as donations which are onerous. In the case of onerous donations (contracts) without unconditional acceptance,

there is no meeting of the mind, and therefore no perfection of the contract.

(2) Reason for the Article

The donation is personal between the donor and the donee. (*Report of Code Com., p. 101*).

(3) Problem

A donated to B, who accepted. But before A knew of the acceptance, he (A) died. Is the donation valid?

ANS.: The donation is void. While it is true that acceptance was indeed made during the lifetime of both, still the donation was never perfected for the knowledge of the acceptance never reached the donor.

(4) Acceptance of Donations Mortis Causa

While this kind of donation should also be accepted to be effective, still the acceptance by the donee *must be made only after* the donor's death. The reason in this donation is really either a devise or a legacy, and is governed by the rules of testamentary succession. Any acceptance made by the donee during the lifetime of the donor is of no effect, and gives the donee no vested right thereto, because a donation *mortis causa*, like a will, is essentially revocable even without a justifiable cause.

Upon the other hand, the donee *mortis causa* need not accept the donation during his lifetime as long as he did not predecease the donor. Hence acceptance, in this case, may be made expressly or impliedly by the donee's heirs. If the donee predeceases the donor, the donee's heirs cannot accept in his behalf, because a donee *mortis causa* transmits no right (to the donation) to his own heirs.

Art. 747. Persons who accept donations in representation of others who may not do so by themselves, shall be obliged to make the notification and notation of which Article 749 speaks.

COMMENT:**Additional Duty of Those Who Accept for Others**

- (a) It is understood that the “persons” referred to here are duly authorized to do the acceptance.
- (b) Notification and notation, in the proper cases, are essential for the perfection of the donation.

Art. 748. The donation of a movable may be made orally or in writing.

An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.

If the value of the personal property donated exceeds five thousand pesos, the donation and acceptance shall be made in writing. Otherwise, the donation shall be void.

COMMENT:**(1) Importance of the Formalities for Donations of Movable Property**

The formalities in this article are very important. Without them, the donation is not only voidable. It is completely void.

(2) Formalities for the Donation of Movable Property

- (a) If the value of the donated movable is *more than P5,000*:

Should always be in *writing*. The acceptance must also be in *writing*. Hence, if the donation is made in an affidavit, and the donee merely signifies his acceptance orally, the donation is null and void.

- (b) If the value of the donated movable is *P5,000 or less*:
 - 1) can be made orally. (But here there must be —
 - a) simultaneous delivery of *thing*, or
 - b) simultaneous delivery of the *document* representing the right donated.

(Acceptance may of course be oral or written, express or implied.)

- 2) can be made in writing.

[NOTE: It should be observed that the law does not require the *acceptance* here to be in writing. It may therefore be oral.]

[NOTE: According to the Spanish Supreme Court, as long as there is NO simultaneous delivery, both the giving and the *acceptance* must be in writing, regardless of value. (TS, June 27, 1941).]

(3) Problem

A writes a letter to B on June 1, 2003, in which the former states that he makes to the latter a donation or gift of a certain sum of money (P800) which he may collect from the Bank of the Philippine Islands on June 20, 2003 in order to celebrate his birthday. B receives the letter but does *not* answer. On June 20, 2003, B goes to the bank which hands him the P800 donated as the Bank has orders from A to that effect. Does the donation produce legal effects? Give your reasons.

ANS.: *Yes, the donation was perfected since there was implied acceptance on B's part. While the donation was in writing, still the acceptance does not have to be in writing since the donation does not exceed P5,000. Had it exceeded P5,000, acceptance in writing would have been required. (It is, of course, understood that the implied acceptance here was relayed to the donor otherwise there could not have been any perfection.)*

**Florentino Genato, et al. v.
Felisa Genato de Lorenzo
L-24983, May 20, 1968**

FACTS: The late Simona Vda. de Genato gave certificates of stock to Florentino Genato, with instructions to transfer the same to himself and to his brother, who was *absent*, and who had not authorized his brother Florentino to accept in behalf of both. The donation was oral. *Issue:* Is the donation valid?

HELD: The donation is completely void, and therefore the

mother, Simona Vda. de Genato never ceased to be the owner of the shares of stock. The donation is void for three reasons.

- (a) The donation being oral, there should have been simultaneous delivery. This could not be done in view of the *non-presence* of Florentino's brother.
- (b) The acceptance by Florentino in behalf of the brother is not valid, in view of the lack of authority. There should have been a proper power of *attorney* set forth in a public document.
- (c) The donation by intention, was *indivisible* or *joint*. Hence, one could *not* accept independently of his co-donee, for there is *no* accretion between donees unless expressly so provided or unless they be husband and wife. (*See Art. 753, Civil Code*).

Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

COMMENT:

(1) Importance of the Formalities for Donations of Real Property

Without the formalities stated in this article, the donation of realty is *null* and *void*, not merely voidable. This is because a donation of real property is a solemn contract. (*See Art. 748; Uson v. Del Rosario, L-4963, Jan. 29, 1953*). Upon the other hand, if an instrument merely *acknowledges ownership of land by another*, no donation is involved. (*Caram v. Presbitero, CA-GR 20879-R, Oct. 14, 1959*).

**Vicente Aldaba, et al. v. Court of Appeals,
Cesar Aldaba, et al.
L-21676, Feb. 28, 1969**

FACTS: Dr. Vicente Aldaba and Dr. Jane Aldaba (father and daughter) rendered medical services to a relative, Belen Aldaba, for more than 10 years *without expecting* and *without receiving* any compensation. As a token of gratitude, Belen orally gave them real property where they were residing. A written note to them however stated:

“Huwag kayong umalis diyan. Talagang iyan ay para sa inyo.” (Do not leave the place. That is really for you.)

ISSUE: Does the real property now belong to the father and daughter?

HELD: No, in view of the following reasons:

- (a) As a *donation*, the contract is *void*, for it had been made *orally*. The written note by itself did not indicate a donation, but an “intent to donate.” The mere expression of an intention is *not* a promise, because a promise is an undertaking to carry the intention into effect. (*17 Am. Jur. 2d., p. 334*).
- (b) As an *onerous donation* (really a contract, and therefore governed by the rules on contracts), the contract is likewise void. When a person does *not* expect to be paid for his services, there cannot be a contract (express or implied) to make compensation for said services. For an *implied* contract (to pay for services) to arise, said services must have been rendered by one party in *expectation* that the other would pay for them, and have been accepted by the other party with knowledge of such expectation. (*See 58 Am. Jur., p. 512*).

(2) Formalities for Donations of Real Property

- (a) If the deed of donation and the acceptance are in the *same* instrument:
 - 1) The instrument must be a *public document*.

Tan Queto v. CA
GR 35648, Feb. 27, 1987

An oral donation of a parcel of land cannot be a valid donation *inter vivos* because it is not executed in a public instrument (*Art. 749, Civil Code*), nor as a valid donation *mortis causa* for the formalities of a will are not complied with.

The purported conveyance by the mother to the daughter of a parcel of land as the latter's hereditary share in the estate of the former cannot be sustained. The contractual transmission of future inheritance is generally prohibited.

- 2) The document must specify the property donated and the charges (burdens), if any.

[NOTE: If the giving and the accepting are in the SAME public instrument, notification to the donor of the fact of acceptance is NOT necessary. And this is true, even if the acceptance was made on ANOTHER date and in a place other than that where the deed was executed. What is important is that the acceptance was made in the SAME public instrument. (Kapunan, et al. v. Casilan, et al., L-8178, Oct. 31, 1960).]

[NOTE: In the same Kapunan case, the Supreme Court held that although the Notary Public who authenticated the document was related to the parties within the 4th civil degree of affinity, and was therefore, under the Spanish Notarial Law, incompetent, still said Spanish Law and System of Conveyance were repealed in the Philippines, and a different notarial system became the law here with the enactment of Act 496. Therefore, the document was really a PUBLIC one.]

- (b) If the deed of donation and the acceptance are NOT in the same instrument:
- 1) The *donation* must be in a public instrument or document.

- 2) The *document* must specify the property donated and the charges, if any. [*NOTE*: A donation which does not identify the land donated is of *no effect* and is therefore void. (*Manansala v. Sunga*, CA-L-23173-R, Feb. 27, 1959).].
- 3) The acceptance in a separate instrument must be in a *public instrument*.
- 4) The donor shall be *notified* in authentic form of the fact that acceptance is being made or has been made in a separate public instrument.
- 5) The fact that there has been a notification must be noted in both *instruments*.

[*NOTE*: If the notification and the notation are not complied with, the donation is VOID. (*Legasto v. Verzosa*, 54 *Phil.* 766; *Di Sioc v. Sy Lioc Suy*, 43 *Phil.* 562). However, it should be understood that the donor may waive the necessity of a formal notice or notification. (*See TS, June 12, 1896*). Moreover, since the object intended to be achieved by the notice of acceptance and the notation can be no other than to assure that the donor is informed of the acceptance and of the perfection of the donation, this purpose is *fully attained* where the donor in open court *confirmed* having made the donation and that it had been accepted by all the donees. (*Serrano v. Francisco, et al.*, CA-L-1405-R, Jan. 17, 1951). Note furthermore that if there is an agreement whereby the donee says he would respect the terms of the donation and reiterates gratitude for the donor, the acceptance is clear enough, and is sufficient, provided same is embodied in a public instrument. (*See Cuevas v. Cuevas*, 51 *O.G. No. 8, p. 6163*).].

(3) Meaning of “Charges”

“Charges” in this article refers to:

- (a) conditions or burdens imposed if any (but which should not be equal in value to the realty donated)

- (b) encumbrances on the property such as lease, usufruct, or mortgage

(4) Registration Not Required

The registration in the Registry of Property of the donation of real property is *not needed* for validity between the parties and their assigns; the registration is only useful for binding *third parties*. (See *Sales v. CA*, 211 SCRA 211 [1992]).

(5) Effects if the Donation Is only in a Private Instrument

- (a) The donation is null and void (*Art. 754*) unless it be a donation *propter nuptias*, because here the Statute of Frauds governs. However, under the OLD Civil Code, the donation *propter nuptias* of real property had to be in a public instrument, otherwise, it was null and void. (*Art. 633, Spanish Civil Code; Pontanilla, et al. v. Pacio Bielon, et al., L-15088, Jan. 31, 1961*).
- (b) Neither party may compel the other to execute a public instrument because Art. 1367 does not apply. Art. 1367 applies only when the contract or donation is already *valid* and *enforceable*, and its purpose is therefore only for *convenience*. Art. 1367 reads: "If the law requires a document or other special form, as in acts and contracts enumerated in the following Article (*Art. 1368*), the contracting parties may compel each other to observe that form, *once the contract has been perfected*. This right may be exercised simultaneously with the action upon the contract." (See also for reference *Solis v. Barroso, 53 Phil 912*).
- (c) *Cannot really be ratified* (if by ratification, we mean that the donation is valid from the very beginning). This is because the donation in a private instrument (of realty) is not merely voidable; it is void. But if a new donation is made, ratifying the previous one, this is all right, but this is because of the new donation (and not the old one), hence, the ratification here will not have any retroactive effect.

Example:

Abragan v. Centenera
46 Phil. 213

FACTS: Donor donated land in a private instrument. After his death, his heirs executed a public document where the former donation was ratified. Is this allowed?

HELD: Yes, since it is as if a new donation was made. However, the ratification cannot have any retroactive effect, and creditors of the donor cannot be prejudiced. The heirs who made the ratification cannot however, assert now any right to the properties donated. Indeed the “ratification” serves as a “quit-claim” of their rights to said property.

- (d) Although the private instrument of donation does not transfer ownership over the property, still the “donee” who received same may eventually acquire the property by prescription since the possession would be adverse and in *concepto de dueno*. (*Pensader v. Pensader*, 47 Phil. 959). Indeed a void donation may serve as basis for acquisitive prescription. (*Espique v. Espique*, L-8019, June 28, 1956; 53 O.G. 4079).

(6) Transfer of Both Ownership and Possession

It should be remembered that a valid donation of real property in a public instrument transfers not only *ownership* but also *possession* because the execution of such instrument is one form of delivery unless of course, there is a contrary intention which can be inferred from the deed. (*See Ortiz v. Court of Appeals*, L-737, Dec. 14, 1955).

Chapter 3

EFFECT OF DONATIONS AND LIMITATIONS THEREON

Art. 750. The donation may comprehend all the present property of the donor, or part thereof, provided he reserves, in full ownership or in usufruct, sufficient means for the support of himself, and of all relatives who, at the time of the acceptance of the donation, are by law entitled to be supported by the donor. Without such reservation, the donation shall be reduced on petition of any person affected.

COMMENT:

(1) Reason for the Law on Donations Without the Needed Reservation

This article is important because the claims of the donor's own family should not be disregarded. (*Report of the Code Commission, p. 101*). The father of a big family must *reserve an amount sufficient* for those he may be called upon to support. The sufficiency can be determined by the court in accordance with prudence and the exercise of reasonable discretion. (*See Gonzales v. Gonzales, 35 Phil. 105*). Thus, if the donor is a person who earns sufficient income from his profession like law, medicine, or accountancy he *need not reserve* property. (*Manresa*).

(2) Status of the Donation

An excessive donation under this article is not void, but merely reducible to the extent support of the relatives is impaired. The party prejudiced can ask the court for the reduction. (*See Agapito v. De Joya, [CA] 40 O.G., p. 3526*).

(3) Problem

A donor donated part of his present property to a friend such that he did not reserve for himself, even in usufruct, sufficient means for his own support. The donor has no relatives who depend upon him for support. May the donation be reduced on his own petition even if there are no relatives?

ANS.: Yes, otherwise he would starve. The law expressly grants him this right.

Question: Suppose he made the reservation but this does not appear in the deed of donation, is the donation all right?

ANS.: Yes, for the law does not state that the deed of donation must expressly say that a reservation has been made. That indeed there was a reservation can be proved by evidence *aliunde* (extrinsic evidence). (*Decision of Registrar General of Spain, Apr. 17, 1907*).

(4) Donations Not Included under the Article

- (a) the onerous donation
- (b) the donation *mortis causa* (for the donation takes effect only upon the donor's death)
- (c) donations *propter nuptias* (for these donations are never reducible; they are only revocable on the grounds expressly provided by law).

(5) Meaning of 'Present Property'

As used in this article, "*present property*" is that which the donor can dispose of at the time of the donation. (*See Art. 751*). Thus, a donation of accrued but undelivered inheritance may come under this article. (*See Osorio v. Osono, 41 Phil. 531*).

(6) The Relatives

The law states "relatives at the time of the *acceptance* of the donation" but this really refers to the relatives at the time of the *knowledge of the acceptance*, for before such knowledge, there has been no perfection as yet of the donation.

(7) Payment Of Existing Creditors

Aside from the reservation as to SUPPORT, the donor must also reserve enough of his property to pay off his *debts* contracted *before* the donation, otherwise there is a *presumption* that the donation was made to defraud creditors. (*See Arts. 759 and 1387*).

Art. 751. Donations cannot comprehend future property.

By future property is understood anything which the donor cannot dispose of at the time of the donation.

COMMENT:

(1) Definition of 'Future Property'

The law defines *future property* as "anything which the donor cannot dispose of at the time of the donation." Future inheritance cannot be the object of a donation, but *present* or *accrued* inheritance may be, even if the properties have not yet been delivered, for in succession, the rights to the inheritance are transmitted from the very moment of the death. (*See Osorio v. Osorio, 41 Phil. 531; Art. 777; see also Dais v. Court of First Instance, 51 Phil. 396; Uy Coque v. Sioca, 45 Phil. 430; Baun v. Heirs of Baun, 53 Phil. 654*).

[NOTE: In the law of conditional obligations, when the suspensive condition is fulfilled, the effects *retroact* to the date of the constitution of the obligation. Thus, if a person is promised a car if he passes the bar, may he right now donate the car to somebody else? It is submitted that he can, because although right now the car may be as to him still "future property," still when he passes the bar, the ownership retroacts to the day the obligation was constituted.]

(2) Reason for the Article Which Generally Prohibits the Donation of Future Property

It would seem that the principal reason for the prohibition is the fact that one cannot give away that which he does

not have *nemo dat quod non habet*. Furthermore, if a person is allowed to donate property which, for example, he has not yet purchased, the likelihood exists that he may decide *not to purchase* the property anymore, hence rendering the donation ineffective. If this were to be allowed, this would militate against the *irrevocability*, as a rule, of a donation *inter vivos*, save for causes provided for by law. (5 *Manresa* 134).

(3) Status of the Donation

A donation of future property, since it is prohibited by the law, should be considered null and void.

(4) Exception to the Rule

In at least one instance, however, the Civil Code allows the donation of future property in what authors generally refer to as “contractual succession.” This occurs when in a marriage settlement, the would-be spouses are allowed to donate *mortis causa* to each other “future property” to the extent permitted under the rules of testamentary succession. (See Art. 84, *Family Code*). It should be observed, however, that *strangers cannot* donate to the future spouses a donation *inter vivos* of future property, the privilege thereto being limited to the future spouses.

[NOTE: “The future spouses may give *each* other in their *marriage settlements* as much as one-fifth of their present property, and with respect to their future property, only in the event of death, to the extent laid down by the provisions of the Family Code referring to testamentary succession.” (Art. 84).]

(5) Rule Under the Election Law

A promise made by a candidate for a political office that he will, if elected, donate his *salary* (future) for the education of indigent but deserving students is not prohibited by Sec. 49 of the Election Law. This is because the donation is *not* made to *any particular person*. Here the identity of the future beneficiaries was, at the time of the election still unknown. (*Marcelino G. Collado v. Juan A. Alonzo*, L-23637, Dec. 24, 1965).

NOTE: That here there was really *no donation* of future property. There was only a promise.

Art. 752. The provisions of Article 750 notwithstanding, no person may give or receive, by way of donation, more than he may give or receive by will.

The donation shall be inofficious in all that it may exceed this limitation.

COMMENT:

(1) Limitation on the Giver

The limitation is really on the giver and not on the recipient, despite the misleading phrase “may *give* or receive.”

(Thus, a beggar may receive a million pesos as a donation, even if he has no property of his own, provided that the giver has still enough left for his own compulsory heirs.)

(2) Meaning of the Article

- (a) A person may not give by donation more than what he can give by will;
- (b) And, a person may *not receive* by way of donation more than what the *giver may give by virtue* of a will.

(3) To Whom Limitation Applies

The limitation naturally applies only to persons who have compulsory heirs at the time of the former’s death.

Mateo v. Laguna
L-26270, Oct. 30, 1969

FACTS: In 1917, a father of two sons gave to *one son* two parcels of land as donations *propter nuptias* on account of said son’s forthcoming marriage. In 1957, the second son sued for annulment of *one half* of the donation on the allegation that the two lots donated were the only properties of the father-donor and consequently the donation impaired his (the second son’s

legitimate). While the action was pending, the father died. This was in 1958. The donee contended that the donation should be completely upheld on the theory:

- (a) that the action had already prescribed, the donation having taken place some 40 years ago; and
- (b) that donations *propter nuptias* can be revoked only on the grounds stated in Art. 132 of the Civil Code [now Art. 86 of the Family Code] (enumerating the grounds for the revocation of such donations).

HELD: Annulment or revocation or reduction on the ground of inofficiousness can still be allowed –

- (a) because the action for reduction has *not* yet prescribed, the cause having arisen only in 1958, the death of the donor. It is only from such death in 1958 when we can begin to consider the matter of inofficiousness (upon computation of the hereditary estate); and
- (b) because, being in the nature of a “liberality,” donations *propter nuptias* remain subject to reduction, if found inofficious.

(4) Prescriptive Period

The action to revoke or reduce the inofficious donation must be brought by the donor’s compulsory heirs, within five years after the donor’s death. (*Art. 1149*).

(5) Reason Why Additional Restrictions Are Not Imposed

It should be noticed that the only limitations on the right to give donations are that they must not be inofficious, must not prejudice creditors, and must not harm the donor’s and his relative’s support. To add more restrictions would be to subdue the generous impulse of the heart. (*Martinez v. Martinez, 1 Phil. 182*).

Art. 753. When a donation is made to several persons jointly, it is understood to be in equal shares, and there shall be no right of accretion among them, unless the donor has otherwise provided.

The preceding paragraph shall not be applicable to donations made to the husband and wife jointly, between whom there shall be a right of accretion, if the contrary has not been provided by the donor.

COMMENT:

(1) Generally No Accretion

(a) *Example of First Paragraph:*

A donation was given to *A* and *B*. If *A* refuses to accept, *B* will *not* get *A*'s share unless the donor has provided otherwise.

(b) *Example of Second Paragraph:*

A donation was given to *H* and *W*, who are husband and wife. If both accept, *H* gets half as his capital, and *W*, the other half, as paraphernal property. (*See Art. 148*). If *W* refuses, *H* gets also *W*'s share, unless the donor has provided otherwise.

Genato v. Genato, et al.

L-24983, May 20, 1968

(See Comments and Facts under Art. 748, *supra*.)

If a donation is by intention indivisible or joint in favor of two donees, one *cannot* accept independently of his co-donee, for there is no *accretion* between donees unless expressly so provided in the deed of donation, or unless they be husband and wife.

(2) Instances When Accretion Is Proper

It is believed that accretion takes place in the proper cases (by way of exception in paragraph one; and as a rule in paragraph two) in the following instances.

- a) in case of predecease (donee dying ahead of donor before perfection).
- b) in case of incapacity (of donee).
- c) in case of refusal or repudiation (by donee).

In all three cases, there ordinarily would not be any perfection of the donation, hence the necessity of an express provision of the law on the matter.

[NOTE: By virtue of accretion, the *share* of the donee who dies ahead of the donor before perfection, or who is incapacitated, or who repudiates or refuses the donation, goes to the co-donees, provided that *accretion* is PROPER. (See Art. 1015).J.

(3) Problem

A donor gave to X and Y (two friends) a piece of land in Forbes Park. Both were capacitated, and they accepted the donation. In the deed of donation, the donor had provided for accretion. If subsequently the donor dies, and a day later X dies, will X's share go to Y?

ANS.: No. X's share will not go to Y, for accretion will not apply here, there being no predecease, incapacity, or repudiation. X's share will go to *his own heirs*.

(4) Donation to the Wife of Another

Note that in case a donation is made by a friend to the wife of another, the husband of the latter has to consent otherwise, the donation is not valid. The exception is when the donor is the ascendant, descendant, parent-in-law, or collateral relative within the fourth degree of the wife. (Art. 114).

Art. 754. The donee is subrogated to all the rights and actions which in case of eviction would pertain to the donor. The latter, on the other hand, is not obliged to warrant the things donated, save when the donation is onerous, in which case the donor shall be liable for eviction to the concurrence of the burden.

The donor shall also be liable for eviction or hidden defects in case of bad faith on his part.

COMMENT:

(1) Subrogation of Donee

(a) *Example of the First Sentence.* — “The donee is subrogated

to all the rights and actions which in case of eviction would pertain to the donor.”

X bought a *Lincoln Town Car* from *Y*, and then donated the same car to *R*. If the car has a hidden defect, the right of the buyer (*X*) to sue the seller (*Y*) for breach of warranty would appertain not to *X* but to *R*. In other words, *R* would step into the shoes of *X*.

(b) *Examples of the Second Sentence.* — “The latter (donor), upon the other hand, is not obliged to warrant the things donated, save when the donation is onerous in which case, the donor shall be liable for eviction to the concurrence of the burden”:

1) *A* donated to *B* a piece of land, which *A* thought belonged to him (*A*). If the real owner should oust or evict *B*, will *A* be responsible to *B*?

ANS.: No, because the donation was made in good faith, *A* thinking he owned the land.

2) Same problem as (1) but *A* knew he did not own the land.

ANS.: Yes, *A* would be liable because of bad faith on his part. (See 2nd par., Art. 754).

3) *A* donated to *B* a piece of land worth P1 million with the condition that *B* would pay him only P200,000. If the land really belongs to another (*R*) and *A* really thought he (*A*) was the owner, and *B* is evicted, would *A* be held responsible?

ANS.: Yes, even though he was in good faith, but only up to P200,000 which was the amount of the burden, the donation being in part onerous.

(2) Meaning of ‘Eviction’

“Eviction shall take place whenever by a final judgment based on a right prior to the sale (donation) or an act imputable to the vendor (donor), the vendee (donee) is deprived of the whole or of a part of the thing purchased (donated).” (Art. 1548).

(3) Meaning of Hidden Defects

Hidden defects are those which are *not patent* upon a physical examination of the object donated.

(4) When Warranty Exists

- (a) if donor is in bad faith. (*Art. 754, Civil Code*).
- (b) if donation is ONEROUS — (up to amount of burden *Art. 754, Civil Code*)
- (c) if warranty is *expressly made*.
- (d) if donation is *PROPTER NUPTIAS* unless the contrary is stipulated. (*See Art. 85, Family Code*). For in Art. 85, the law says that donations by reason of marriage of property subject to encumbrances shall be valid. In case of foreclosure of the encumbrance and the property is sold for less than the total amount of the obligation secured, the donee shall not be liable for the deficiency. If the property is sold for more than the total amount of said obligation, the donee shall be entitled to the excess.

Art. 755. The right to dispose of some of the things donated, or of some amount which shall be a charge thereon, may be reserved by the donor; but if he should die without having made use of this right, the property or amount reserved shall belong to the donee.

COMMENT:**(1) Donations With Reservations on the Right to Dispose**

This article speaks of a donation with a *reservation* to dispose of part of the object donated.

(2) Examples

- (a) A donated to B a parcel of land, with the provision that A could dispose of the first and second harvests of said land.

- (b) A donated to B three Range Rover automobiles with the reservation that he (A) could sell the 3rd *automobile*, but if he dies without having sold it, the automobile would belong to B.

[NOTE: The donation of the first two automobiles should be considered *inter vivos*; that of the 3rd automobile is really *mortis causa* since ownership is transferred really only after death, and because it is *mortis causa*, the donation (really a *legacy* of the third automobile) must comply with the formalities of a will or codicil.]

Art. 756. The ownership of property may also be donated to one person and the usufruct to another or others, provided all the donees are living at the time of the donation.

COMMENT:

(1) Donation of Naked Ownership and Usufruct

When one person receives the usufruct, it is understood that the other donee receives only the naked, not the full ownership.

(2) ‘Living’ Defined

The term “*living*” includes conceived children provided that they are later born with the requisites mentioned in Arts. 40 and 41, respectively, of the Civil Code.

(3) Form

The usufruct of real property, being real property by itself should be donated in the form prescribed for real properties. (And naturally, also the naked ownership.) The naked ownership and usufruct of personal properties are personal properties themselves, so only the formalities for the donation of personal property would be required.

(4) Query

If a piece of land is given in naked ownership to A, and the usufruct to his *unborn* (and still *unconceived*) child, would

both donations be void? It is submitted that only the donation of the usufruct would be void.

(5) Meaning of ‘At the Time of the Donation’

This refers to the *perfection* of the donation.

(6) Applicability of the Article

Art. 756 applies whether the usufructs made are *simultaneous or successive*, because in all cases, the donor should know that *the donees have accepted*.

Art. 757. Reversion may be validly established in favor of only the donor for any case and circumstances, but not in favor of other persons unless they are all living at the time of the donation.

Any reversion stipulated by the donor in favor of a third person in violation of what is provided in the preceding paragraph shall be void, but shall not nullify the donation.

COMMENT:

(1) Conventional Reversion

This refers to CONVENTIONAL REVERSION of donations. REVERSION means a “going back” or, as provided in this article, a “going to” a third person.

(2) Example of the First Paragraph

A donated to *B* a piece of land with the stipulation that upon *B*'s death, it goes back to him (*A*) or to his (*A*'s) estate.

[NOTE: It is all right to provide for reversion within a shorter period, say 5 or 10 years.]

(3) Example of the Second Paragraph

A donated to *B* a piece of land with the stipulation that after 3 years, the land would go to *X*, an unborn and still unconceived child of *Y*. The reversion in favor of *X* is void, but the

donation to *B* remains valid. In other words, only the provision regarding reversion would be disregarded.

Art. 758. When the donation imposes upon the donee the obligation to pay the debts of the donor, if the clause does not contain any declaration to the contrary, the former is understood to be liable to pay only the debts which appear to have been previously contracted. In no case shall the donee be responsible for debts exceeding the value of the property donated, unless a contrary intention clearly appears.

COMMENT:

(1) Stipulation that Donee Should Pay Debts of the Donor

This article deals with a donation where it is stipulated that the donee should pay the donor's debts; Art. 759 deals with a donation where there is no such *stipulation*.

(2) Rules

When there is a stipulation to pay debts, the following rules must apply:

- (a) Pay only for prior debts (not for debts contracted *after* the donation had been made, unless there is a stipulation to this effect).
- (b) Pay only for debts up to the value of the property donated (*unless the contrary is stipulated or intended*).

(3) Example

A owes *B* P10 million. Later *A* donated his land to *X* in a simple donation *inter vivos*. The value of the land is P6,000,000. There was a stipulation in the deed of donation that *X* should pay *A*'s debts. After the perfection of the donation, *A* borrowed P4,000,000 from *C*. How much all in all must *X* pay?

ANS.: *X* must pay only P6,000,000. In the first place, he is not liable for the new debt of P4,000,000. In the second place, while he is responsible only for *prior debts*, his liability is limited by the value of the property which is P6,000,000 only.

[NOTE: This answer is correct unless the contrary has been stipulated in the deed of donation, or there was a contrary intention.]

Art. 759. There being no stipulation regarding the payment of debts, the donee shall be responsible therefor only when the donation has been made in fraud of creditors.

The donation is always presumed to be in fraud of creditors, when at the time thereof the donor did not reserve sufficient property to pay his debts prior to the donation.

COMMENT:

(1) Rules When There is No Such Stipulation

This Article applies when there is no stipulation (express or implied) that the donee would pay the donor's debts.

General Rule: Donee is not required to pay.

Exception: When the donation is made in fraud of creditors (creditors at the time the donation was made, *not subsequent ones*, otherwise it cannot be said that they have been defrauded).

(2) Presumption

The law establishes a presumption when the donation is *apparently* in fraud of creditors, namely failure to reserve sufficient property (at time of donation) to pay previous debts.

[NOTE: The presumption is rebuttable, hence, even though there has not been enough reserved, there is still a chance that the donation is really not fraudulent, in which case, the donee does not have to pay.]

(3) Proof of Other Means

Fraud of creditors may of course be proved thru *other* means.

(4) Question

A mortgaged his land to the *ABC Co.*, then donated the same land to *B*, who knew of the existence of the mortgage. If *A* cannot pay his debt, and the mortgage is foreclosed, and *B* is deprived of his property, does *A* have to indemnify *B* for anything? Why?

(5) Remedy of Creditors

Donations made in fraud of creditors may be rescinded by said defrauded creditors up to the extent of their credits. (*See 5 Manresa 151-153*).

Chapter 4

REVOCATION AND REDUCTION OF DONATIONS

Art. 760. Every donation *inter vivos*, made by a person having no children or descendants, legitimate or legitimated by subsequent marriage, or illegitimate, may be revoked or reduced as provided in the next article, by the happening of any of these events:

(1) If the donor, after the donation, should have legitimate or legitimated or illegitimate children, even though they be posthumous;

(2) If the child of the donor, whom the latter believed to be dead when he made the donation, should turn out to be living;

(3) If the donor should subsequently adopt a minor child.

COMMENT:

(1) Two Kinds of Inofficious Donations

There are two (2) kinds of inofficious donations (those that impair or prejudice the legitime or *successional* rights of compulsory heirs):

- (a) those referred to in *Arts. 760 and 761* (where the donor at the time of donation either had no children or *thought he had no more*).
- (b) those referred to in *Arts. 771 and 752* (where the donor had at least one child already at the time he made the donation).

[NOTE: In (a), the value of the estate of the donor to be considered is its value at the time of the BIRTH, APPEARANCE, or ADOPTION of a child. In (b), the value is that at the time of the *death* of the donor.]

[NOTE: The *keyword* for the grounds enumerated under Art. 760 is B-A-R (birth, adoption, reappearance).]

(2) Example

X has no child. At the time he gave a donation of P1,000,000, he had P10,000,000. Therefore after the donation, he had P9,000,000 left. *Later*, he adopted a minor child. At the time he made the adoption, he had only P500,000 left. Should the donation be reduced? If so, by how much, why, and within what period?

ANS.: Since he had only P500,000 left at the time of adoption, his total estate at that time was P1,500,000 (P500,000 left plus P1,000,000 given as donation). Since the legitime of the adopted child is P750,000 (which is *one-half* of the estate), it follows that the *free portion* is also only P750,000. Therefore, the donation must be *reduced* by P250,000. The action for reduction must be brought within 4 years from the time of the adoption. (*Arts. 760, 761, 763*).

(3) Reason Why Reduction or Revocation Is Allowed

The law presumes that had the donor known he would have (or adopt) a child or that the child he thought was dead was really alive, he would not have made the donation (or at least he would have made a *smaller* one), because then his own child would have been the object of his affection and generosity.

(4) What Article to Apply

A donor at the time of donation already *had an unacknowledged* natural child. After the donation, he recognized the natural child. What article applies, *Art. 760* or *Art. 771*?

ANS.: *Art. 771* because for *Art. 760* to apply, it is essential that the donor, at the time of donation had no child.

The recognition afterwards is not important. What is vital is for the natural child to have been born after the donation. (See Art. 760, par. 1). Of course, if the natural child is born after the donation and is later on recognized, the value of the estate is that which it had at the time of birth (Art. 761), but the *prescriptive* period is to be counted from the recognition or the judicial declaration of filiation. (See Art. 763).

(5) Query

At the time of donation, the donor's child was already *conceived* but not yet born. Should Art. 760 or Art. 771 be applied?

ANS.: It depends:

- (a) If the donor did not *know* of such conception, Art. 760 applies. *Reason: For all intents and purposes, it is as if he had no child.* (This is the same as when he thought an absent child to be already dead, when the truth is that it was still alive.) While it is true that a conceived child is already considered born for all purposes favorable to it (Art. 40), still *in this case*, to consider it as already born would be *unfavorable* to it since a donation in favor of another is being made.
- (b) If the donor knew of such conception, then Art. 771 applies because in such a case, the non-knowledge required by the *reason* of the law for Art. 760 will not apply. Here, he fully knows that he is about to have a child, and still he deliberately makes the donation.

(6) Problem

A has a child, B, who in turn has a child, C. B disappeared. A did not know that B had the child, C. A made a donation in *favor of a stranger*. Later, it turned out that although B was already dead, C was *still alive*. If A receives information of the present existence of C, may the donation be revoked or reduced?

ANS.: It is believed that Art. 760(2) does *not apply* for here the law says "child" and not "descendants" or "grandchild." It

should be noted that *C* is a grandchild. (See 3 Valverde 454). BUT Art. 771 may apply if the donation would really impair *C*'s legitime and this time, it should be the value of *A*'s estate at the *time* of his (*A*'s) death that should be computed in determining whether or not donation is inofficious.

(7) Adoption

- (a) The adoption must have *judicial approval*.
- (b) The adoption must be that of a minor child. It should be noted that under the Civil Code even persons of age may be adopted. (*Art. 337*). But under Art. 760, the law speaks only of the adoption of the minor. (*Art. 760, No. [3]*). (Note however that the adoption of a child of major age may be a ground under Arts. 771 and 772.)
- (c) It will be observed that this adoption is practically one way of allowing the donor to revoke a donation *inter vivos at his own will* (and therefore an exception to the general rule that such donations are irrevocable). This is why perhaps Art. 760(3) speaks only of the adoption of a *minor*. To allow even adoption of a *sui juris* as a ground of revocation may give rise to adoption for *ulterior purposes* (which is generally not the case when minors are adopted because here obviously, adoption is made to give *comfort and companionship to the adopter*; to supply indeed a *falling* on the part of nature). In *Oracion v. Juanillo, 45 O.G. 5421*, the Court observed that the causes stated in Art. 760 are not self-executing or *self-operating* and that the party affected should bring the action. In other words, an action must be brought to revoke the donation, otherwise the donation continues to be valid.

(8) Applicability of Art. 760

Art. 760 applies only to donations *inter vivos*; and *not* to:

- (a) donations *propter nuptias* (which can be revoked only for causes mentioned in Art. 132).
- (b) onerous donations (for these are really contracts).

- (c) *mortis causa* (for these are revocable for any or no cause). (See 5 Manresa 159).

Art. 761. In the cases referred to in the preceding article, the donation shall be revoked or reduced insofar as it exceeds the portion that may be freely disposed of by will, taking into account the whole estate of the donor at the time of the birth, appearance or adoption of a child.

COMMENT:

(1) Reduction of the Donation

An example of this article has already been given under *comment No. 3 of the preceding article*.

(2) Value of the Hereditary Estate

The value of the estate (hereditary) is: *The value at the birth, appearance, or adoption PLUS the value of the donation (at the time donation was made)*.

[NOTE: The value of the donation must be added otherwise absurdities may arise: moreover, had not the donation been made, its value would still be part of the estate; finally, the law does not say that the whole estate will be that remaining at the time of birth, appearance or adoption, it merely says that said value must be *taken into account*. (See Art. 761).]

(3) Rule When Donation Can Be Covered by the Free Disposal

In so far as the free *disposal* is concerned, the donation will remain valid up to that extent. In other words, if the entire donation can be covered by the free disposal; it should remain untouched.

(4) Query

Suppose a donation given under Art. 760 is coverable by the free portion as of the time of birth, appearance, or adoption of the child, BUT cannot be covered any more by the free

portion at the time of donor's death, may the donation still be reduced or revoked?

ANS.: Although some authors are of the opinion that the answer is in the affirmative because of Art. 771, still it is believed that the answer should be negative otherwise the provision on *prescription* (of 4 years) in Art. 763 will be rendered nugatory, and would render the ownership of the thing donated unstable.

(5) Protection of PRESUMPTIVE Legitime

While Art. 760 seeks to protect the *PRESUMPTIVE* or *expected LEGITIME*, Art. 771 seeks to protect the *ACTUAL LEGITIME*.

Art. 762. Upon the revocation or reduction of the donation by the birth, appearance or adoption of a child, the property affected shall be returned, or its value if the donee has sold the same.

If the property is mortgaged, the donor may redeem the mortgage, by paying the amount guaranteed, with a right to recover the same from the donee.

When the property cannot be returned, it shall be estimated at what it was worth at the time of the donation.

COMMENT:

(1) What the Donee Must Do if the Donation is Reduced

- (a) If the property is still with him, return the property.
- (b) If the property has been sold, give the *value* (usually the price of the sale) to the donor.
- (c) If the property has been mortgaged, the donor may pay off the debt, but he can recover reimbursement from donee.
- (d) If the property cannot be returned (as when it has been lost or totally destroyed), return its value (value *not* at time of loss but at *perfection* of donation).

(2) Reason for Valuation in (1)-(d)

Since the donee becomes the owner from the time the donation was perfected, it is only logical that he bears the loss (*res perit domino*) and the risk of deterioration or depreciation.

Art. 763. The action for revocation or reduction on the grounds set forth in Article 760 shall prescribe after four years from the birth of the first child, or from his legitimation, recognition or adoption, or from the judicial declaration of filiation, or from the time information was received regarding the existence of the child believed dead.

This action cannot be renounced, and is transmitted, upon the death of the donor, to his legitimate and illegitimate children and descendants.

COMMENT:**(1) Prescription of Action for Revocation or Reduction**

- (a) If the donation was made when there was no child, it is the birth of the first child that counts, and not the birth of subsequent children. If therefore, 3 years after the birth of the first child, a second is born, the period left is only *one more year*. We should not begin counting four years all over again.
- (b) "First child" refers to first *legitimate* child.
- (c) Mere birth of a natural child is not a ground; it is the *recognition* (voluntary or by judicial compulsion) that is the ground for reduction. Therefore, the period of 4 years should start from the time of such recognition or acknowledgment.

(2) Rule in the Case of Legitimated Children

In the case of *legitimated* children, the period must be counted from the time of *legitimation* (that is, from the time *recognition* is made by both parents).

[NOTE: It is true that ordinarily, under Art. 180 of the Family Code, legitimation becomes effective from the child's

birth, but it is evident that under Art. 763, what is meant by “*legitimation*” is not the effectivity of the legal status (from birth) but the *act that completes* the process of legitimation (either the *recognition* or the *subsequent valid marriage*).].

(3) Query

If a donation was made when there was no child, but later on, a legitimate child is *born*, in other words, when there is a concurrence of *causes or grounds*, Manresa is of the opinion that prescription runs from the *earliest cause*. (5 *Manresa* 169).

(4) Effect if Reason Disappears

If the cause or ground disappears, as when for instance, the legitimate child dies before the action to reduce is judicially commenced, what happens to the donation? It is believed that the donation should remain valid. (See 3 *Navarro Amandi* 59).

(5) Prescriptive Period

Four years.

(6) Non-Waiver and Transmissibility

The action cannot be renounced, and is transmitted (if donor dies within 4 years) on his death to his *legitimate and illegitimate children* and *descendants* (not ascendants or surviving spouse).

Art. 764. The donation shall be revoked at the instance of the donor, when the donee fails to comply with any of the conditions which the former imposed upon the latter.

In this case, the property donated shall be returned to the donor, the alienations made by the donee and the mortgages imposed thereon by him being void, with the limitations established, with regard to third persons, by the Mortgage Law and the Land Registration Laws.

This action shall prescribe after four years from the non-compliance with the condition, may be transmitted to

the heirs of the donor, and may be exercised against the donee's heirs.

COMMENT:

(1) Failure to Comply With Conditions

“Conditions” must be understood to mean the charges or burdens imposed (like teaching the donor’s child for one semester, or working at least 8 hours a day in a certain factory). (*3 Castan 107*). It can also refer to “resolutive conditions.” (*Example: I am donating my land to you now but you should not get married for 2 years.*) But, it cannot refer to suspensive conditions (like, I will donate my land to you if you pass the coming *bar examinations*) because here, if the condition is not fulfilled, the donation never becomes effective, and therefore, there will be nothing to revoke. (Indeed, Art. 764 is a clear case not only of revocation but also RESOLUTION, because under Art. 1191, non-compliance of conditions can be considered a resolutive condition.).

(2) Necessity of Court Action

Although Art. 764 provides that the donation shall be revoked “*at the instance of the donor*” when the donee fails to comply with any of the conditions which the former imposed on the latter, the Supreme Court held in the case of *Ongsiako, et al. v. Ongsiako, et al.* (*L-7510, Mar. 30, 1957*) (as well as in previous cases), that the donor may not revoke a donation by his own unilateral act, even if the donee should have broken any of the conditions imposed by the donation. A court action is essential, if the donee refuses to return the property voluntarily.

**Ongsiako, et al. v. Ongsiako, et al.
L-7510, Mar. 30, 1957**

FACTS: The mother of the parties executed a deed of donation *inter vivos* in their favor in 1929, subject to the condition that each of the donees shall pay her a yearly pension of P1,000 as long as she lived. However, the defendant failed to pay the annual pension in 1930, and in 1941, the donor executed another deed revoking the donation in favor of the

defendant, and adjudicated the property previously donated to the defendant, to the plaintiff. This was duly accepted by the plaintiff, but was not registered. Neither was the defendant notified of the revocation. The donor dies in 1950, without having filed any action for the revocation, total or partial, of the donation. In 1951, the plaintiff filed an action seeking to get the land previously donated to the defendant alleging the revocation by the donor of the same, for breach by defendant of its condition.

HELD: The deed of revocation made unilaterally by the donor did not render the donation ineffective, it having been done without the intervention of the defendant-donee or of the court. Since the action for revocation was filed only in 1951, while the first breach of the condition to pay the yearly pension to the donor was incurred in 1930, the same is barred by prescription. Therefore, the defendant-donee continues to be the owner.

(3) Compliance With All Conditions

The law says “with any of the conditions.” This implies that all the conditions or charges imposed must be complied with unless they be immoral, illegal or physically impossible, in which case, they must be disregarded. (*Art. 727*).

Garrido v. CA
56 SCAD 318
(1994)

When the donee fails to comply with any of the conditions imposed by the donor, it is the donor who has the right to impugn the validity of the transaction affecting the donated property.

Central Philippine University v. CA
63 SCAD 72
(1995)

A modal donation is one in which the donor imposes a prestation upon the donee.

(4) Period for Fulfillment of Conditions

Within what period must the conditions be performed?

ANS.:

- (a) If there is a period given, said period is controlling, unless extended by the donor.
- (b) If there is no period, the Courts must fix a reasonable term. (*See Barretto v. City of Manila, 7 Phil. 416*).

(5) Case

**Barretto v. City of Manila
7 Phil. 416**

FACTS: Barretto donated his land fronting the Malacañang Palace with the condition that no structures would be erected upon the land and on the further condition that its only purpose would be to beautify the vicinity in the formation of a great public plaza. Later, the donee (the City of Manila) used it as a public street. Barretto then sued to recover the land for failure to comply with his conditions.

HELD: When the donee accepted the donation, it is understood that it also agreed to comply with all the conditions stated in the deed.

(6) Effect on Property Donated

- (a) If still with the donee, he must return the same to the donor.
- (b) If sold, donated, or mortgaged, the alienation or encumbrance will be considered void, unless the grantee be an innocent third party (*did not know of the non-fulfillment*) who has *recorded* or registered his own right. (*See the Spanish Mortgage, Art. 38, and the Land Registration Law, Act 496*).

(7) Prescriptive Period

4 years from the non-compliance of the condition. (*Art. 764, last par.; Nagrampa, et al. v. Nagrampa, L-15434, Oct. 31, 1960*).

(8) Transmissibility of the Right to Revoke

The heirs (whether compulsory or voluntary) are expressly

granted the right to revoke *if the donor is already dead*, that the prescriptive period has not yet lapsed.

If there be two or more heirs, what should be done if they cannot agree whether to revoke or not?

ANS.:

- (a) If the property donated is *divisible*, each heir can of course ask for the revocation of his own aliquot share.
- (b) If the object is essentially indivisible, each may ask for the *cash value* of his share.

(9) What the Phrase ‘Donee’s Heirs’ Includes

The phrase “donee’s heirs” also includes the donee’s assigns. (*Acunin v. Asis*, [CA] 46 O.G. 4980).

(10) When Court Action is Not Essential

Note that the non-fulfillment of the condition does not automatically revoke the donation. Court action is essential for revocation, unless the donee willingly surrenders the property or its value. It is the party prejudiced who should bring the suit. (*Oracion v. Juanillo*, 46 O.G. 5421). (See also *Ongsiako, et al. v. Ongsiako, et al.*, L-7510, Mar. 30, 1957).

(11) Revocation at the Instance of the Donor’s Heirs

May revocation be done at the instance of the donor’s heirs?

ANS.: It is submitted (and the law expressly says) that the answer is “yes” because one right of a creditor is to exercise the rights that could have been exercised by the *debtor* (unless the right is purely a personal one, and it is evident that his right granted in Art. 764 is not a purely personal right, *unlike* that where the ground is ingratitude). (*Acunin v. Asis*, 46 O.G. 4980).

(12) Action to Revoke May Be Waived

The action to revoke is waivable by the donor or his successors-in-interest. (This is because of the *absence of a prohibition.*)

(13) What the Word ‘Condition’ Does Not Refer To

**Central Philippine University v. CA
63 SCAD 72
(1995)**

The word “condition” in Art. 764 of the Civil Code does not refer to uncertain events on which the birth or extinguishment of a juridical relation depends, but is used in the vulgar sense of obligations or charges imposed by the donor on the donee.

Art. 765. The donation may also be revoked at the instance of the donor, by reason of ingratitude in the following cases:

(1) If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority;

(2) If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;

(3) If he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

COMMENT:**(1) Reason for the Law on Grounds of Ingratitude**

One who has been the object of generosity must not turn ungrateful. Gratitude here is a moral as well as a legal duty.

(2) Acts of Ingratitude Covered

The acts of ingratitude in Art. 766 are:

- (a) Purely PERSONAL (hence the act must have been committed by the DONEE, and not by his wife or relatives). (*Guzman v. Ibea, decided June 26, 1941*, held that if the donee's wife attacks the donor, the donation is not revocable on the ground of ingratitude.) (MOREOVER, as a *general rule*, it is only the donor who can, in the proper case, bring an action to revoke on ground of ingratitude.)
- (b) EXCLUSIVE (hence, those not enumerated are deemed *excluded*)

(3) Paragraph 1:

“If the donee should commit some offense against the PERSON (not merely the life), the HONOR, or the PROPERTY of the donor, or of his wife, or children under his parental authority”:

- (a) “Offense” includes both crimes and non-crimes; no criminal conviction is required, and proof of the offense, by mere preponderance of evidence, in the suit for revocation would be sufficient.
- (b) “Under parental authority” refers to those children not yet emancipated by reaching the age of majority, or marriage, or by parental concession, or by the appointment of a general guardian. (*Art. 327*). Hence, if the donee commits a crime against a 25-year-old child of the donor, the cause for revocation of the donation on the ground of ingratitude does not exist.

(4) Paragraph 2:

“If the donee imputes to (accuses or becomes a witness against) the donor any CRIMINAL offense, or any ACT involving MORAL TURPITUDE, *even though he should prove it, unless* the crime or the act has been committed against the donee himself, his wife, or children under his authority.”

(a) *Example of the General Rule:*

The donee accused the donor of murdering X, a stranger. The donee can prove his charge. May the donor ask for the revocation of the donation on the ground of ingratitude?

ANS.: Yes.

(b) *Example of the Exception:* If in the above example, X is the *minor* child of the donee, will the revocation prosper?

ANS.: No, because the crime was committed against a child under the donee's authority.

(c) "Authority" should be understood to refer to parental authority.

(5) Paragraph 3:

"If he unduly refuses him support when the donee is legally or morally bound to give support to the donor."

- (a) Note that the law says "legally OR morally bound."
- (b) The refusal to support must be "undue" or unjustified (Hence, if there is a just reason for refusal, there can be no revocation.)
- (c) It is understood that the support given periodically should *not exceed* the value of the thing donated. The moment this amount is reached, the duty to support also ends. Moreover, there will really be *no more donation* that can be revoked.
- (d) Even if the donor still has relatives who can adequately support him, it would seem from the wording and the intent of the article that once the donor calls upon him for support, the donee must give the support he is able to. Otherwise, there would indeed be ingratitude.

(6) Revocation of Donation 'Propter Nuptias'

One ground for revoking a donation *propter nuptias* is *ingratitude* as defined by Art. 765. And a more specific ground

to revoke such a donation given between the would-be spouses, is the commission later on of a ground that would cause legal separation. (*See Art. 107*).

Art. 766. Although the donation is revoked on account of ingratitude, nevertheless, the alienations and mortgages effected before the notation of the complaint for revocation in the Registry of Property shall subsist.

Later ones shall be void.

COMMENT:

Effect on Alienations and Mortgages If the Donation is Revoked Because of Ingratitude

- (a) *A* donated to *B* a parcel of land on Sep. 8, 2003. On Dec. 27, 2003, *B* sold the land to *X*. On Jan. 2, 2004, *B* tried to kill *A*, but failed. On Jan. 18, 2004, *A* sued for the revocation of the donation. The suit was recorded. Will the action prosper?

ANS.: Yes, the action will prosper because this is a clear case of ingratitude, but since the sale was made long before the annotation of the complaint for revocation in the Registry of Property, the sale in favor of *X* is valid. Therefore, all that *A* can recover from *B* would be the value of the property. (The value should be computed as of the date the donation was made). (*See Art. 766*). (*See also Art. 767*).

- (b) If in the problem given, the *sale* was made after the annotation of the complaint for revocation, how would this effect your answer?

ANS.: The suit for revocation will also prosper, and this time, the donor can get the property from the buyer *X*, because under the facts given, it is clear that the sale is null and void, and *X* cannot be termed a purchaser in good faith. (*Art. 766, 2nd par.*).

- (c) Suppose the sale is made *after* the suit for revocation was brought, but before the complaint was annotated in the Registry of Property, would the sale be *valid* or *void*?

ANS.: Although the law says apparently that the sale is valid since it was made before annotation, a distinction must be made. If notwithstanding its non-annotation, the buyer knew (thru other means) of the existence of the pending action, he should be considered a purchaser in bad faith, and therefore the sale should not be considered valid. It has been held that “actual knowledge” is equivalent to registration or annotation.

Art. 767. In the case referred to in the first paragraph of the preceding article, the donor shall have a right to demand from the value of the property alienated which he cannot recover from third persons, or the sum for which the same has been mortgaged.

The value of said property shall be fixed as of the time of the donation.

COMMENT:

(1) Rule When Third Persons Have the Property, or When It Has Been Mortgaged

The article applies when:

- (a) recovery cannot be had from third persons because they are innocent;
- (b) or when the property has been mortgaged.

(2) Meaning of ‘Time’

“*Time of the donation*” refers to the “*perfection*” of the donation.

(3) Rule When Donee is Insolvent

Suppose the third party is innocent, and the donee is *insolvent*, what are the rights of the donor?

ANS.: He will have the same rights as those possessed by a creditor over an insolvent debtor. He can, for example, exercise all actions of the donee-debtor with reference to the

recovery (if any) of other kinds of property (except those rights *inherent* in the *person* of the debtor); or he can wait until the debtor gets money or property in the future. (*See Art. 1177*).

(4) Effect of Loss or Deterioration

If the property has been lost or has deteriorated thru any cause including a fortuitous event, the donee should respond with damages, because as owner, he is supposed to bear the loss or deterioration (*res perit domino*).

Art. 768. When the donation is revoked for any of the causes stated in article 760, or by reason of ingratitude, or when it is reduced because it is inofficious, the donee shall not return the fruits except from the filing of the complaint.

If the revocation is based upon non-compliance with any of the conditions imposed in the donation, the donee shall return not only the property but also the fruits thereof which he may have received after having failed to fulfill the condition.

COMMENT:

(1) The Returning of Fruits

What fruits must be returned when the donation is revoked?

ANS.: It depends:

- (a) The fruits accruing from the *time the action is filed* must be returned if the ground is
 - 1) B-A-R (*Art. 760*); OR
 - 2) Inofficiousness of the donation because the legitime has been impaired (*Art. 771*); OR
 - 3) Ingratitude. (*Art. 765*).
- (b) The fruits received *after failure to fulfill the condition (or conditions)* must be returned if the ground is NON-COMPLIANCE with any of the conditions imposed. (*Art. 764*).

(2) Rule in Case of Money

If the property donated was MONEY, fruits thereof shall be the legal rate of interest (unless the contrary has been agreed upon). (*Art. 2209*). Poverty in this regard shall NOT be an excuse.

Art. 769. The action granted to the donor by reason of ingratitude cannot be renounced in advance. This action prescribes within one year, to be counted from the time the donor had knowledge of the fact and it was possible for him to bring the action.

COMMENT:**(1) No Renunciation in Advance of the Action to Revoke Because of Ingratitude**

The right to revoke because of ingratitude cannot be renounced *in advance* (that is, prior to or at the time of the perfection of the donation). However, if the act of ingratitude has already been *committed*, the right to revoke may be RENOUNCED for this would be merely an act of forgiveness.

(2) Form of Renunciation when Proper

When it can be done in a proper case, renunciation may be done *expressly* or *impliedly* since the law requires no formality under this article. However, when express renunciation is made, it is believed that this must comply with formalities of donations. Hence, if the property donated was *land*, the renunciation of PAST ingratitude, should, it is believed, be in the form of *public instrument*. (*See Art. 1270*). However, one who renounces must:

- (a) be aware of the act causing the ingratitude;
- (b) have capacity to dispose of his property at the time the waiver is made.

(3) Prescriptive Period

The action to revoke because of ingratitude *prescribes* within one year. The period must be counted from the time

- (a) the donor knew of the fact or cause of ingratitude;
- (b) provided that it was possible for him to bring the action. (Therefore, if immediately *after knowledge* of the fact, he becomes unconscious for *six months*, the period of six months should NOT be counted.)

Art. 770. This action shall not be transmitted to the heirs of the donor, if the latter did not institute the same, although he could have done so, and even if he should die before the expiration of one year.

Neither can this action be brought against the heir of the donee, unless upon the latter's death the complaint has been filed.

COMMENT:

(1) Generally, No Transmissibility of Right

The action as a rule *cannot* be transmitted because the right is purely personal to the donor. If however, he has already instituted the action, but dies before its termination, his heirs are allowed to continue the suit. If, upon the other hand, the donor is killed by the donee, it follows that the donor never had a chance to revoke, in this case the heir may institute the action within the proper prescriptive period, of course. (*5 Manresa 183*). In the same manner, the heirs may begin the action if the donor died *without having* known of the act of ingratitude. (*5 Manresa 184*).

(2) Problems

- (a) A donated to B a house. But B later accused A of a crime. A could have revoked the donation, but although *six months* had already elapsed since the accusation, A had still not brought the action to revoke. A then died. Can C, the heir of A, successfully bring the action two months after A's death?

ANS.: No more. The donor here could have brought the action had he wanted to but he did not. A alone is supposed

to judge the acts of the donee, and as in the case above, it is clear that he has because of generosity, renounced the action. This is so even if the donor died before the expiration of one year from knowledge. This is indeed a case of PRESUMED PARDON. (*5 Manresa 183*).

- (b) A donated property to B, who later committed a crime against A. A then instituted criminal proceedings against B. In the criminal proceedings, the civil action to revoke the donation was not included (of course). B was convicted, but before A could bring the action for revocation, he (A) died. May A's heirs still bring the action? Why?

ANS.: Yes, because from the facts given, it is evident that A had no intention at all to pardon B. (*See 3 Navarro Amandi 74*).

(3) Heirs of Donee Are Not Original Defendants

Under this article, the *donee's* heirs cannot be made *original* defendants, though they may later on be substituted.

Art. 771. Donations which in accordance with the provisions of article 752, are inofficious, bearing in mind the estimated net value of the donor's property at the time of his death, shall be reduced with regard to the excess; but this reduction shall not prevent the donations from taking effect during the life of the donor, nor shall it bar the donee from appropriating the fruits.

For the reduction of donations the provisions of this Chapter and of Articles 911 and 912 of this Code shall govern.

COMMENT:

(1) Rules Re Inofficious Donations

- (a) Note that the value of the estate is that which it had, not at the time of donation, but at the time of the donor's death. (The property left minus debts and charges plus *the value of the donation* equals the net hereditary estate. [*See Art. 908*].)

- (b) Inofficious donations may not only be reduced; they may be completely cancelled (when, for example, the donor had *no free portion left*, because of the presence of certain compulsory heirs). *Example*: If the compulsory heirs are the surviving spouse (she gets 1/4 of the estate), one legitimate child (1/2), and one illegitimate child (1/4), it is evident that everything constitutes the legitime, leaving nothing at the free disposal of the donor. Here, all donations *inter vivos* should be *totally reduced*, unless of course the compulsory heirs concerned refuse to institute the action.
- (c) Since the inofficiousness of the donation cannot be determined till after the donor's death, it follows that in the meantime, the donation is valid and ownership is transmitted to the donee during the donor's lifetime.

(2) Some Implications From the Transfer of Ownership

Because of this transfer of ownership, it follows that:

- (a) The donee gets the fruits while the donor is still alive (by the principle of *accession discreta*).
- (b) The donee can take advantage of natural or artificial incorporations or attachments (by the principle of *accession continua*).
- (c) The *donee* bears the loss in case of destruction or deterioration.

(3) Preference of Donations

Donations (*inter vivos*) are preferred over devises and legacies (dispositions *mortis causa*). (*Par. 1, Art. 911*).

(4) Rule in Case of Real Estate

If real estate has been donated, and it is *inconvenient* to divide it (in case a reduction is to be made), then it will go to the donee if the reduction is less than 60%, otherwise it goes to the compulsory heirs; but in either case there must be a reimbursing of each other. (*Art. 912*).

Art. 772. Only those who at the time of the donor's death have a right to the legitime and their heirs and successors-in-interest may ask for the reduction of inofficious donations.

Those referred to in the preceding paragraph cannot renounce their right during the lifetime of the donor, either by express declaration, or by consenting to the donation.

The donees, devisees and legatees, who are not entitled to the legitime and the creditors of the deceased can neither ask for the reduction nor avail themselves thereof.

COMMENT:

(1) Persons Who Can Ask for the Reduction of Inofficious Donation

This Article refers to the people who can ask for the reduction of an inofficious donation. Note that the *donor himself has no right* to ask for the reduction. This is because it is only at his death when the officiousness or the inofficiousness of the donation can be determined.

Note that only the following may ask for the *reduction* on the ground of inofficiousness:

- (a) the compulsory heirs of the donor (whether children, other descendants, ascendants or surviving spouse)
- (b) the heirs and successors-in-interest of the above-mentioned compulsory heirs.

The following cannot ask for the reduction:

- (a) *voluntary* heirs of the donor (such as friends, brothers, etc.)
- (b) devisees (recipients of gifts of *real* property in a will)
- (c) legatees (recipients of gifts of personal property in a will)
- (d) *creditors* of the deceased (The Register of Deeds is *not allowed* to raise the question as to whether or not a donation is inofficious. (TS Apr. 17, 1907).

(2) Non-Waiver

If a son of a donor *consents* to the donation to the stranger or expressly tells his father that he *waives* the right to ever bring suit to reduce the inofficious donation, he may still do so after the father's death. (*Art. 772, second paragraph*).

(3) Prescriptive Period

The action to reduce (or revoke, in the proper case) must be brought within 5 years from the time of the donor's death. (*See Art. 1149*).

(4) Collation

If the donee happens to be a compulsory heir, he must *collate* (bring back the *value*) the property donated, for its value is considered already an advance of his legitime or inheritance. (*Art. 1061*). The donee's share of the estate (if also compulsory heir) shall be *reduced* by an amount equal to that already received by him; and his co-heirs shall receive an equivalent, as much as possible, in property of the same nature, class, and quality. (*Art. 1073*).

(5) Adoption of a Person of Major Age

Whereas *adoption* of a person of *major age* is not a ground under Art. 760, it may serve as a ground under Arts. 771 and 772 in case the donation impairs his legitime.

Catibog, et al. v. Razon, et al.
(CA) 50 O.G. 5433

If the creditors of the deceased believe that certain donations made by the deceased while still alive are inofficious, their remedy *is not to go against the donees* (for under Art. 772, they have *no such right*) *but to go against the estate of the deceased*.

Art. 773. If, there being two or more donations, the disposable portion is not sufficient to cover all of them, those of the more recent date shall be suppressed or reduced with regard to the excess.

COMMENT:

(1) Preference Given to Earlier Donations

Preference is given to *earlier* donations (first come first served). Therefore, if it is essential to reduce, the *subsequent* ones must first be reduced.

Exception to Rule: Wedding gifts of jewelry, clothing and outfit by parents and ascendants in favor of descendants *shall not be reduced* (even if they be more recent), provided they do not exceed *one tenth* (1/10) of the free portion. (See Art. 1070).

(2) Rule If Donations Were Perfected At the Same Time

It is understood that if the donations were *perfected* at the same time, the reduction must be *proportionate*.

Exception: When preference is expressly stated in the deed of donation itself.

RESUME

(1) Distinctions Between Revocation and Reduction (of Donations):

REVOCAATION	REDUCTION
(a) This is TOTAL (affects the whole property) regardless of whether the legitime has been impaired or not.	(a) This is as a rule, only PARTIAL (though in some cases as in comment No. 2 under Art. 771, the reduction may cover or absorb the WHOLE donation, in which case, it is as if the WHOLE has been reduced or revoked), and applies only when the legitime has been IMPAIRED . Thus, the legitime must always be preserved.

<p>(b) As a rule, for the benefit of the donor.</p> <p>(c) As a rule, for the benefit of the heirs of the donor.</p>	<p>(b) As a rule, for the benefit of the heirs of the donor, since their legitimes are supposed to be preserved.</p>
--	--

(2) Grounds for Revocation

- (a) Fulfillment of resolutive conditions or charges. (*Art. 764*).
- (b) Ingratitude. (*Art. 765*).

(3) Grounds for Reduction

(In some cases, TOTAL REDUCTION or ABSORPTION making them appear to be cases of REVOCATION):

- (a) *B.A.R.* (birth, adoption, reappearance). (*Art. 760*).
- (b) Inofficiousness. (*Art. 771*).
- (c) If insufficient property is left for support of *donor* and his relatives. (*Art. 750*).
- (d) If made in fraud of creditors (creditors at the time of the *donation*). (*Art. 1387*).

(4) Void, Ineffective, or Unperfected Donations: (Bar)

- (a) Those not perfected in accordance with the forms and solemnities of law (particularly when there is no proper acceptance). (*Example: donations of land if not made in a public instrument*). (*Art. 794*).
- (b) Those made with property *outside the commerce of man*.
- (c) Those made with future property (*Art. 751*) except those provided for in marriage settlements. (*Art. 84, Family Code*).
- (d) Those made to persons *specially* disqualified:
 - 1) by reason of public policy. (*Art. 739*).

- 2) by reason of unworthiness. (*Art. 740*).
- 3) by reason of possible undue influence. (*Art. 87, Family Code*).

(*Example* — donations between spouses except in certain instances).

Dumanon v. Butuan City Rural Bank
119 SCRA 193

An action to annul a donation prescribes in 4 years from the date of discovery of the fraud. The discovery of the fraud must be counted at the latest from the time the deed is registered, because registration is a notice to the entire world. Even if it is proved that the registration of the deed of donation had been made in bad faith, the action to annul said registration prescribes in 4 years.

— oOo —

CIVIL CODE of the PHILIPPINES ANNOTATED

By

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*Associate Justice
Supreme Court of the Philippines
(1986-1992)*

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To my dearly beloved wife Gloria,† my loving children Emmanuel, Edgardo, Jr., and Eugene; my caring daughter-in-law Ylva Marie; and my intelligent talented grandchildren Yla Gloria Marie and Edgardo III – in all of whom I have found inspiration and affection – I dedicate this humble work.

PREFACE

Several doctrines on the subject of Property have been reiterated and/or restated by the Philippine Supreme Court, by way of its most recent pronouncements. These include rules on the meaning of just compensation, the role of the judiciary in fixing said compensation, the essential features of good faith and bad faith, particularly on the matter of possession, and the applicability of the law on intellectual property *vis-à-vis* the Internet and cyberspace/multimedia (CD-ROMs) in today's E-Commerce Age.

At this point, the PARAS family extends sincere gratitude to the Philippine Supreme Court for its bestowal of the *Centenary Book Award* to the 'Civil Code of the Philippines Annotated' (a 5-volume series) authored by the late revered Dr. Edgardo L. Paras, himself a former Associate Justice of the august body that is the Supreme Court — given last June 8, 2001, on the occasion of the Centenary of the Supreme Court — by the Executive Committee of the Centenary Celebrations composed of the following as members: Chief Justice Hilario G. Davide, Jr., Justice Artemio V. Panganiban (Overall Chair of the SC Centenary Celebrations), Justice Ameurфина A. Melencio-Herrera (chair of the SC Centenary Legal Publications Committee), and Justice Camilo D. Quiason (Chair of the Subcommittee on Centenary Legal Publications).

Be it noted that the 5-volume series first saw light in 1949 (mimeographed) and 1959 (hardbound). This 2002 version is the 15th edition.

For the eventual realization of this updated edition, the PARAS family hereby values the solicitous help rendered by Dean Edgardo "Edgie" C. Paras, Jr., a Ph.D. in Economics (*summa cum laude*), a doctor of civil law (*summa cum laude*), a fellow of the Hague Academy of International Law, vice-president-trustee of the De La Salle University Press, director and trustee of the San Beda College Alumni Association/San Beda College Alumni Foundation, member of the Order of the Blue Eagles (Ateneo de Manila University), member of the Order of Utopia, board member of the Poveda Parents Associa-

tion, class president of the La Salle Green Hills Elementary Parents' Auxiliary, author of numerous books on law, business, economics and philosophy, president of the Philippine Legal Writers Association, editor-in-chief of SCAD (Supreme Court Advance Decisions), editor of *Foreign Relations Journal*, a consultant of United States Agency for International Development — A.G.I.L.E. (an attached group of the Harvard Institute for International Studies and PricewaterhouseCoopers), and former consultant of AP-Dow Jones/Telerate, acting chair and governor of the National Book Development Board of the Office of the President (Malacañang), professor of Assumption College San Lorenzo, DAP Institute of Public Management, PMI Institute of Graduate Studies, UP Law Center, and UST Graduate School of Law, editorial board chair of *Law Review*, judicial staff head of the Supreme Court, and main drafter of the Safeguards (Implementing Rules and Regulations) of the Intellectual Property Rights Law on Copyright. Dr. Paras recently took post-doctoral studies in law at the famed Harvard University, and post-graduate studies in financial economics at the National University of Singapore.

Grateful acknowledgment is likewise made to the other equally distinguished members of the Justice Edgardo L. Paras family — his beloved wife Gloria (who died last Jan. 3, 2001), a retired justice of the Court of Appeals and Executive Director for judicial reforms of the Philippine Judicial Academy, and sons Emmanuel (senior partner of Asia's giant Sycip Salazar Hernandez & Gatmaitan law firm) and Eugene (MTC Judge of Hagonoy, Bulacan and law professor) — for additional research and advice.

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