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BOOK NOTE

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ATENEO LAW JOURNAL

THE CIVIL CODE'S TITLE ON SALES: A CONFLICTING HODGEPODGE OF CIVIL AND ANGLO-AMERICAN LAW

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It is generally conceded by the Philippine bench and bar that the Philippine Civil Code stands out as an achievement in itself, and in the main, a definite improvement over the Civil Code of Spain of 1889. But it should be admitted that like other codes, it, too, has its weak parts. One of these happens to be its Title on Sales. No one can sincerely dispute the fact that the Code's provisions on Sales are a mess caused partly by hasty copying of the provisions of an American statute and their attempted integration with the bulk of the Civil Law provisions of the Code. One of the objectives of the Commission was to produce a Code which would conform with "modern trends in legislation and the progressive principles of law."¹ If the Commission thought that the Uniform Sales Act would measure up to this objective, it certainly chose the wrong piece of legislation. It is foolhardy to equate the supposed progressiveness of a law with its country's economic strength and progress. The Uniform Sales Act is neither modern nor progressive. It is as old as the English Sales of Goods Act on which it is based and as impractical as its "title" concept. It was this concept pervading the entire Act that made Learned Hand throw up his hands in frustration and declare: "Title" is a formal word for a purely conceptual notion; I do not know what it means and I question whether anybody does, except perhaps legal historians.² This oft-quoted statement probably epitomizes the considerable amount of criticism that has been levelled against the Uniform Sales Act.

A whole volume can probably be written on the legal consequences flowing from the adoption in the Philippine Civil Code of a majority

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¹ Executive Order No. 48 (Philippines, March 20, 1947).

² *In re Lake's Laundry, Inc.*, 79 F. 2d. 326, 328-329 (2d. Cir. 1935).

of the provisions of the Uniform Sales Act, but for purposes of this paper, we have deliberately chosen one specific topic the better to illustrate whether or not the Philippine Code Commission succeeded in its attempt to integrate in the Philippine Civil Code the provisions of the Uniform Sales Act with the Civil Law provisions on the contract of Purchase and Sale reproduced from the Civil Code of Spain. The topic chosen is buyer's and seller's remedies, and will be discussed under the Civil Code of Spain, under the Spanish Code of Commerce, and under the Philippine Civil Code. Although the sales provisions of the Spanish Code of Commerce have been totally and absolutely repealed in the Philippines, their discussion is here included to give the reader a good view of the sales law as it stood prior to the effectivity of the Philippine Civil Code.

At the outset, it is well to point out that this discussion is by no means a complete analysis of all the remedies of buyer and seller. For the purposes of this paper certain specific situations have been picked out with a view of high-lighting the conflicts that were bound to arise in the Philippine Civil Code. These specific situations are: (1) the seller's wrongful refusal or failure to make delivery; (2) the buyer's wrongful failure or refusal to take delivery; (3) his delay in taking delivery, and (4) his insolvency.

I. UNDER THE SPANISH CIVIL CODE

It should also be pointed out that unlike the Uniform Sales Act of the United States, the Title on Sales of the Civil Code of Spain does not spell out all the remedies available to buyer and seller. Indeed the remedies most often resorted to — specific performance or rescission with indemnity for damages in either case — are derived from a general principle of obligations as stated in Article 1124 of the Code.

(a) Buyer's Remedies

(1) Seller's wrongful refusal or failure to deliver.

The seller under the Spanish Civil Code has two principal obligations: (a) to deliver the thing sold, and (b) to warrant the thing which is the subject-matter of the sale.

The vendor is bound to deliver and warrant the thing which is the subject-matter of the sale.³

³ Article 1461, CIVIL CODE OF SPAIN. (All citations of the provisions of the Civil Code of Spain herein made are reproduced from the English translation of that Code by Mr. Justice Fisher in his work *Civil Code of Spain with Philippine Notes* VI (4th ed. 1930).

Under the Civil Code, delivery may either be actual or constructive. In either case the buyer must be placed in the control and possession of the subject-matter of the sale to make the delivery effective.

The thing sold shall be deemed delivered when the vendee is placed in the control and possession thereof.⁴

Constructive delivery may take on several forms. There is the so-called symbolic delivery of the keys to the place or depository where the goods are stored or kept. Where the thing sold cannot be transferred to the possession of the buyer at the time of the sale and by agreement of the parties, delivery is effected by the seller merely pointing out the thing to the buyer; this form of delivery is known as "traditio longa manu." So also, where the buyer is already in possession, for example, in such capacity as a lessee, the buyer need not deliver the possession to the seller for the latter to re-deliver to the former. By agreement of the parties, delivery may be effected by the buyer continuing in possession. This form of constructive delivery is known as "traditio brevi manu." Where it is the seller who is to continue in possession as where A sells his house to B, but A continues in possession as lessee, by agreement of the parties delivery has been effected to B by what is labelled as "constitutum possessorium." Under the 2nd paragraph of Article 1462,

If the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the subject-matter of the contract unless the contrary appears or is clearly to be inferred from such instrument.

Art. 1464. With respect to incorporeal things, the provisions of the paragraph of Article 1462 shall govern. In any other case in which these provisions cannot be applied, the placing of the muniments of title in the possession of the vendee or the exercise by him of his rights, with the consent of the vendor, shall be deemed a delivery.

Under Article 1468 of the Code, the seller must deliver not only the thing sold but all its fruits from the day the contract was perfected. In addition he must deliver the thing sold in its condition at the time the contract was perfected.

Where is delivery to take place? To answer this question we have to turn to the articles of the Code governing obligations in general. We find that, under Article 1157, delivery is denominated a form of payment.

A debt shall not be deemed paid unless there has been a complete delivery of the thing or a performance of the undertaking which constitutes the subject-matter of the obligation.

⁴ Article 1462, 1st par., CIVIL CODE OF SPAIN.

Article 1171 answers our question squarely:

Payment shall be made at the place designated in the obligation.

Should it not have been designated, and when a determinate thing is to be delivered, the payment shall be made at the place where the thing was at the time the obligation was created.

In any other case the place of payment shall be the domicile of the debtor.

The debtor referred to in the above provision of law is the seller whose obligation it is to deliver the thing sold. The terms of the contract are controlling in the first instance as to the place of delivery. Where no agreement is had on the point, the place of delivery is either the place where the thing sold was at the time of contracting if it should be determinate or if it is not, and in any other case, the place of delivery is the domicile of the seller. The term "determinate" as used in this provision of law seems to be used in the risk-of-loss sense, that is to say, that it has been actually and physically segregated as the subject matter of the contract of sale.

When is the seller obliged to deliver the thing sold? The contract of purchase and sale in the Civil Law being bilateral and reciprocal, that is to say, the promise of the seller to deliver the thing sold and the promise of the buyer to pay the price, being each a consideration for the other, the seller is obliged to deliver the thing sold only when the buyer pays the price unless a term for payment has been agreed upon or the seller has extended credit to the buyer. Theoretically, delivery of the thing sold and payment of the price should be simultaneous acts.

Art. 1466. The vendor shall not be bound to deliver the thing sold if the vendee should not have paid him the price, or if no term for the payment has been fixed in the contract.

In *Warner, Barnes & Co. vs. Inza*,⁵ the Philippine Supreme Court re-affirmed that delivery and payment are contemporaneous acts. Now then, if the buyer is ready and willing to pay the purchase price and the seller wrongfully refuses or fails to deliver the thing sold, what remedies are open to the buyer?

As already adverted to earlier, Article 1124 of the Code, which is a general principle of obligations, spells out the buyer's remedies in this situation:

The right to resolve reciprocal obligations, in case one of the obligors should fail to comply with that which is incumbent upon him, is deemed to be implied.

⁵ 43 Phil. 505, 508-509 (1922).

The person prejudiced may choose between exacting the fulfillment of the obligation or its resolution with indemnity for losses and payment of interest in either case. He may also demand the resolution of the obligation even after having elected its fulfillment, should the latter be found impossible.

The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation.

In civil law, there is a distinction between resolution and rescission. The former presupposes a perfectly valid contract which is rendered null by a subsequent cause. The latter term is applied to contracts defective "ab initio" and is voidable at the instance of the person injured.⁶ A familiar example of a rescindible contract is one entered into in fraud of creditors. Before an action for rescission can lie it must be shown that the party enforcing the remedy is able on his part to restore the status quo and that the things which are the subject-matter of the contract are not in the possession of third persons who have acted in good faith. The second requirement is also a requisite for maintaining an action for resolution.

In actual practice the legal distinction between resolution and rescission is more apparent than real and Philippine courts have been prone to use one term for the other with the same legal consequences. We will see that the Philippine Civil Code has done away with the term "resolution."⁷

Supposing the seller instead of failing or refusing to deliver makes delivery of non-conforming goods, what remedies are open to the buyer? Although, in view of space limitations, we have decided not to enter into a discussion of warranties, the answer to the foregoing question will necessitate a reference to the warranty articles of the Spanish Civil Code. Restating the question, "apart from the stock remedies of rescission and specified performance with damages in either case, (always available to injured parties in reciprocal obligations) may the buyer in case the seller delivers non-conforming or defective goods elect to keep the goods and sue for damages, as under the Uniform Sales Act?"⁸ The answer is, "Yes, he may." The authority for this is Article 1486 which is found in the warranty section of the Title on Sales of the Code:

In cases falling within the two articles next preceding the vendee may elect to withdraw from the contract, the expenses which he may have incurred being returned to him, or demand a proportional reduction of the price, according to the judgment of experts.

⁶ FISHER, *op. cit. supra* note 3 at 375 citing Bouvier.

⁷ Article 1191, PHILIPPINE CIVIL CODE.

⁸ Section 69 (a).

If the vendor was aware of the latent faults or defects in the thing sold and did not give notice thereof to the vendee, the latter shall have the same option, and shall also be entitled to recover his damages, should he elect to rescind.

The buyer under the foregoing article may elect to keep the goods and demand a proportionate reduction of the price in an independent action for damages or he may set it up as a counterclaim by way of damages should the seller demand payment of the entire purchase price.⁹ Numerous cases decided by the Philippine Supreme Court can be cited in which this remedy was availed of by the buyer.¹⁰

The two articles next preceding Article 1486 are as follows:

Art. 1484. The vendor is liable for any hidden defects which the (thing) sold may have should they render it unfit for the use for which it was intended, or if they should diminish its adaptability to such use to such an extent that had the vendee had knowledge thereof he would not have bought it or would have given a lower price for it; but such vendor shall not be liable for patent or visible defects, or for those which are not visible, if the vendee should be an expert who by reason of his trade or profession ought easily to become aware of them.

Art. 1485. The vendor is liable to the vendee for any latent faults or defects in the thing sold, even if they were unknown to him.

This provision shall not apply if the contrary has been stipulated and the vendor was not aware of such latent defects.

It will thus be seen from the above articles that the Civil Code of Spain (and this goes for the Spanish Code of Commerce, too) echoes the traditional Civil Law concept that in every sale of personal property there is an implied warranty that the thing sold should be fit for the use for which it was intended unless such implied warranty has been bargained away coupled with the fact that the seller had no knowledge of existing latent defects or faults in the thing sold or if the buyer is an expert who by reason of his trade or profession ought easily to become aware of them. The Anglo-American concept originally recognized the doctrine of *caveat emptor*.¹¹ Although the Uniform Sales Act has, to a

⁹ Prof. Williston says: "It seems probable that the doctrine of recoupment was borrowed from the Civil Law; at least it is true that both in the classical Roman Law and in modern Civil Law the remedy is a recognized one for defendant thus to reduce the damages for which he was liable, called in classical Roman Law the *actio aestimatoria* or *quantum minoris*" (citing Hunter, Roman Law, 505; Sal-kowski, Roman Law, 602; Moyle, Sale in Civil Law, 194, 210-212.).

¹⁰ *Palanca v. Wilson & Co.*, 37 Phil. 506 (1918); *Phil. Manufacturing Co. v. Go Jocco*, 48 Phil. 62 (1926); *Pacific Commercial Co. v. Ermita Market & Cold Stores*, 56 Phil. 619 (1932).

¹¹ VOLD, Sales 443 (Hornbook Series, 1931).

large extent, watered down that doctrine, it can still safely be said that under Anglo-American law, by comparison with the Civil Law, much of the risk of hidden faults or defects in things sold is thrown on the buyer.¹²

(b) Seller's Remedies

(1) Buyer's Wrongful Failure or Refusal to Take Delivery.

It cannot be overemphasized that the stock remedies for non-performance in reciprocal obligations are those provided for in Article 1124 above-cited — a choice between specific performance or resolution with damages in either case.

It is to be noted, however, that under this article of the Code, the right to resolve is not absolute, the court retaining the power to deny resolution under certain circumstances. So it was held in the case of *Ocejo, Perez & Co. vs. International Bank*.¹³ Furthermore, as a general rule, the parties, alone or by themselves, cannot declare a resolution of the contract. Court application is necessary and judicial sanction essential to give validity to the resolution. Article 1505 of the Code makes specific provision for the situation where the buyer fails or refuses to take delivery or fails to pay the price at the time of delivery and no term for payment has been agreed upon:

With respect to personal property, the resolution of the sale shall take place *ipso facto* for the benefit of the vendor if the vendee, before the lapse of the period fixed for the delivery of the thing, does not appear to take delivery thereof, or if having appeared he should not have tendered the price at the same time, unless a longer period has been stipulated for the payment thereof.

The foregoing is a translation from the original by Mr. Justice Fisher. Whether under this provision the injured seller may effect resolution or rescission without court application is not certain since there is no reported Philippine case which has applied this article of the Code. In a case decided by Mr. Justice Fisher,¹⁴ the plaintiff had sold and delivered sugar to the defendant, no term of payment having been agreed upon. Subsequently the defendant became insolvent. Plaintiff tried to replevy the sugar. The receiver defended on the ground that since the plaintiff had not elected to rescind the contract, it was still valid and subsisting and he, as receiver, was entitled to the possession of the sugar. Plaintiff in effect argued that an action for replevin implies that an elec-

¹² *Id.*, at 444-446.

¹³ 37 Phil. 631, 643 (1918).

¹⁴ *Ibid.*

tion to rescind has already been made. Here, in the present writer's opinion, was a perfect situation for the application of Article 1505. Mr. Justice Fisher, surprisingly enough, without even referring to this provision, skipped the issue and decided the case on other grounds.

(2) *Delay in Taking Delivery and Payment of the Price.*

Art. 1500. The vendee is obligated to pay the price of the thing sold at the time and place stipulated in the contract.

In the absence of an agreement with respect thereto, the payment must be made at the time and place at which the thing sold is delivered.

The foregoing provision was applied in the above-mentioned case of *Ocejo, Perez & Co. vs. International Bank*.¹⁵ The court said, "On the day following the latter failed and refused to make payment. We agree with the seller's contention that he was entitled to demand payment of the sugar at any time after its delivery. No term having been stipulated within which the payment should be made, payment was demandable at the time and place of the delivery of the thing sold (Civil Code, Art. 1500). The seller did not avail himself of his right to demand payment as soon as the right to such payment arose, but as no term for payment was stipulated, he was entitled to require payment to be made at any time after delivery and it was the duty of the buyer to pay the price immediately upon demand."

Instead of suing for the price, the seller may also ask for rescission of the contract under Article 1124 of the Code with the additional right to indemnity for damages he may have suffered by the wrongful delay. It would seem, however, that where the buyer has been granted a fixed term of payment and he fails to pay within the period stipulated, the courts are slow to granting the unpaid seller the remedy of resolution or rescission. Thus in *Song Fo & Co. vs. Hawaiian-Philippine Company*¹⁶ the court said, "Contracts may not be resolved for slight or casual breaches, but only such as are so substantial and fundamental as to defeat the object of the parties in making the agreement; therefore, while time is usually of the essence of the contract, a slight delay in a partial payment will not warrant the resolution of a contract of sale." So also, in *Warner, Barnes, & Co. vs. Inza*,¹⁷ it was held that mere failure on the part of the buyer to pay the price within the period stipulated is not ground for the resolution of the sale, in the absence of a condition that such default should operate to resolve the contract.

¹⁵ *Id.* at 636.

¹⁶ 47 Phil. 821 (1925).

¹⁷ 43 Phil. 505 (1922).

(3) *Buyer's Insolvency.*

The unpaid seller upon learning of the buyer's insolvency may refuse to deliver and may hold on to the thing sold unless the buyer gives adequate security for the price.

Art. 1467. Neither shall the vendor be obliged to deliver the thing sold, when a postponement or a term for the payment has been agreed upon, should it be discovered after the sale that the vendee is insolvent, so that the vendor is in imminent danger of losing the price.

From this rule is excepted the case in which the vendee gives security for payment within the time agreed upon.

In this situation it would seem that the best remedy available to the seller would be to ask for rescission under Article 1124 with damages. In the recent case of *Distributors, Inc. vs. Flores*,¹⁸ the court laid down the rule that the insolvency of the buyer should be judicially declared to excuse the seller from his obligation to deliver. It said: "The insolvency referred to by the law may be before or after the sale, provided it is discovered after the perfection of the contract. It must be a judicially declared insolvency, or one inferred from such acts as petitioning for suspension of payments, or as a result of all his properties having been attached in a civil or criminal proceeding. Anything short of this will not be sufficient to exempt the vendor from making the delivery of the thing."

II. UNDER THE SPANISH CODE OF COMMERCE

(a) *Buyer's Remedies*

(1) *Wrongful Failure or Refusal to Deliver.*

Under Article 337 of the Code of Commerce, if the period for the delivery of the merchandise sold has not been stipulated, the vendor must place it at the disposal of the purchaser within twenty-four hours after contract. If the seller does not deliver the goods sold at the time stipulated, or within twenty-four hours after the contract if no period for delivery has been stipulated, the buyer may either demand specific performance or the rescission of the contract with damages in either case.¹⁹

It is immaterial that the reason for the seller's failure to deliver is the loss or deterioration of the goods without any fault on his part or is caused by unforeseen accidents. In either case the buyer shall be en-

¹⁸ 48 O.G. 4784.

¹⁹ SPANISH CODE OF COMMERCE, Article 329. (All citations of the provisions of the Spanish Code of Commerce herein are reproduced from the English translation of that Code by Espiritu and Alvendia, Philippine Commercial Laws (1st ed. 1947).

titled to rescind the contract.²⁰ If the buyer has already paid the whole or part of the purchase price, he may recover whatever amount he has paid.²¹ So also under Article 334,

The damages and deterioration suffered by the merchandise, even if caused by fortuitous event, shall be for the account of the vendor in the following cases:

(1) If the sale took place by number, weight, or measure, or if the article sold is not fixed and determined, with marks and signs which identify it.

(2) If by express agreement or the usages of commerce, in view of the nature of the article sold, the purchaser has the privilege to previously examine and investigate it.

(3) If the contract contains an agreement to the effect that the delivery shall not be made until the article sold shall have acquired the conditions stipulated.

It will be recalled that in a commercial sale, risk of loss as a general rule passes to the buyer only when the seller has placed in each particular case the goods at his disposal and the buyer has manifested his satisfaction. The provision cited above is in accordance with this rule. It will be noted that in the situations enumerated in the aforecited provision, either the thing sold is not determinate or the contract is conditional. *A fortiori* risk of loss remains with the seller. If the thing sold in these situations is lost or deteriorates, the seller is not entitled to the price and the buyer may sue for specific performance or rescission with damages in either case.

Under Article 333 of the Code, even after the goods have been placed at the disposal of the buyer, if they should be damaged or should they deteriorate by reason of fraud or negligence on the part of the seller, the buyer may demand indemnity to the extent of the damage.

(b) Seller's Remedies

(1) Wrongful Refusal or Failure to Take Delivery.

By Article 328 of the Code, if the thing sold cannot be seen and cannot be classified by a fixed and known quality in commerce, it is an implied right of the buyer to examine them and to freely rescind the contract if the goods do not satisfy him. So also, if the trial of the goods has been expressly reserved to him by the seller.

²⁰ *Ibid.*, Article 331.

²¹ *Ibid.*, Article 335.

Where, however, the sale is by sample or by a fixed quality known in commerce, and the goods delivered are in accordance with the sample or the quality agreed upon, the buyer is bound to take delivery. If he refuses, both parties are by the Code directed to appoint experts who shall decide whether the goods are to be received or not. If the experts decide that the goods conform to the sample or to the quality specified in the contract, the sale is considered consummated. In a contrary case, the contract shall be rescinded, without prejudice to the indemnification to which the purchaser may be entitled.²²

If despite the decision of the experts as to the fact of the conformity of the goods, the buyer persists in refusing to take delivery, the seller may either bring an action for the price or demand rescission of the contract. Under Article 332 of the Code, an action for the price in this situation should be accompanied with a petition to deposit the goods into the custody of the court. In *Matute vs. Cheong Boo*,²³ the court applying this article said, "Under the present procedure the seller, upon electing to enforce compliance with a contract for the sale of merchandise under this article of the Code of Commerce, should in his complaint offer to surrender the goods into the custody of the court, and if thought desirable, ask for the appointment of a receiver."

(2) *Delay in Taking Delivery.* If the buyer wrongfully delays taking delivery, the injured seller is by Article 332 given the remedy of judicially depositing the goods and bringing an action for the price, the same remedy open to him in the situation where the buyer unjustly refuses to take delivery.

(3) *Vendor's Lien.* By Article 340, during the time that the merchandise is still in the possession of the seller, even if in the nature of a deposit, the latter shall have preference to said merchandise over any other creditor to obtain payment of the price with the interest occasioned by the delay.

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III. UNDER THE PHILIPPINE CIVIL CODE

(a) Buyer's Remedies

(1) Wrongful Refusal or Failure to Deliver.

The pertinent provisions of the Spanish Civil Code mentioned in the discussion of the buyer's remedies under that Code have all been retained in the Philippine Civil Code. Article 1124 of the Spanish Code is now Article 1191 of the Philippine Code with this amendment — the term

²² *Ibid.*, Article 327.

²³ 37 Phil. 372, 377 (1918).

"resolution" is discarded for "rescission." As was said earlier, Philippine courts tend to indiscriminately use one term for the other. Hence, the Code Commission struck out "resolution" and substituted "rescission."

Article 1461 of the Spanish Code which lays down the two main obligations of the seller — delivery and warranty of the thing sold — is now Article 1495 of the Philippine Code with a substantial amendment. A third obligation is imposed on the seller — he is bound to transfer the ownership of the thing sold. Says the Commission:²⁴ "It is required in the proposed Code that the seller transfer the ownership of the thing sold (Arts. 1478, 1479, 1515, 1567). In the present Code (Art. 1445), his obligation is merely to deliver the thing, so that even if the seller is not the owner, he may validly sell, subject to the warranty (Art. 1474) to maintain the buyer in the legal and peaceful possession of the thing sold. The Commission considers the theory of the present law unsatisfactory from the moral point of view." The Philippine Code thus departs from the classical Civil Law concept that the seller was not necessarily bound to transfer ownership to the buyer. "Being bound to give only undisturbed possession of the property, the vendor is under no obligation to give a title as owner; the purchaser cannot refuse to take the goods on discovering that they are not his, nor may he sue him, or claim to rescind the contract, merely because the property has not become his, though, as has been observed, he can do so if he is rightfully deprived of possession by some other person having superior title '*qui vendidit, necesse non habet fundum emptoria facere, ut cogitur qui fundum stipulanti apopondit*' and a purchaser to whom the goods had been delivered had no remedy against his vendor on discovering that he had no right to sell them until the true owner had proved his title: '*qui rem emit et possidet, quam diu evicta non est, auctorem suum propterea, quo aliena vel obligata res dicatur, convenire non potest*, (Cod. 8, 44. 3.). No doubt the intention of the parties almost invariably is that the property shall pass, and delivery of possession will *ipso facto* pass it if the vendor as a fact is owner, or has authority to sell; indeed, if there were an agreement that property should not vest in the purchaser at all, the contract could not be sale. So strong, however, is the rule that the vendor's obligation is to give undisturbed possession only, that, according to Colsus, if one party gave money as the consideration for the vesting of ownership in him by the other, the agreement was to be deemed not sale, but exchange. In effect, the law said that the object of a purchase was to vest the enjoyment and use of the goods in the purchaser, and that therefore until he was disturbed by someone having a better title he could do nothing to the vendor; it protected him against all substantial loss or injustice, while at the same time it prevented litigation and removed the obstacles

²⁴ REPORT OF THE CODE COMMISSION, p. 141 (1948).

which the opposite rule must have placed in the way of free and ready trading. By the rule which the Romans actually followed commerce was no doubt helped forward and facilitated.²⁵

With the retention of all the pertinent articles of the Spanish Civil Code, the buyer under the Philippine Code is assured of the same remedies should the seller refuse or fail to make delivery: "The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period."²⁶ The Code Commission was not satisfied with the remedies granted by the foregoing provision. It lifted almost verbatim Section 68 of the Uniform Sales Act and inserted it as Article 1598 in the Philippine Code:

Sec. 68. *Specific Performance*
(U.S.A.)

Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of returning the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as the court may deem just.

Art. 1598, *Phil. Civ. Code*

Where the seller has broken a contract to deliver specific or ascertained goods, a court may, on the application of the buyer, direct that the contract shall be performed specifically without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as the court may deem just.

Now under the Uniform Sales Act, it is well-settled that "if damages are an adequate remedy, a court of equity will never grant specific performance, and it has been held, with perhaps too great stringency, that for breach of contracts for the sale of goods damages are, as a rule, an adequate remedy. Where, however, a chattel is unique or not purchasable in the market, specific performance has been granted, as for slaves, works of art, heirlooms and property valuable for sentimental reasons, vessels, valuable documents of various kinds."²⁷ We saw that under Article

²⁵ MOLYE, CONTRACT OF SALE IN THE CIVIL LAW, 102-104 (1st ed., 1891).

²⁶ Article 1191, PHILIPPINE CIVIL CODE.

²⁷ II WILLISTON, *op. cit. supra* note 9 at Sec. 602, p. 328.

1124 of the Spanish Code reproduced as Article 1191 of the Philippine Code the injured buyer may demand fulfillment (often termed specific performance by Philippine courts) or rescission with indemnity for damages in either case. The only limitation on his right to demand fulfillment or specific performance is that the same should not be impossible. And whether the subject matter of the sale is unique or not or whether damages are an adequate remedy or not is immaterial. The buyer may absolutely demand that the seller deliver the thing sold if it is at all possible, with indemnity for damages he may have suffered. Thus in *Gutierrez Repide vs. Afzelius*,²⁸ the Supreme Court pointed out, "The vendee is entitled to specific performance essentially as a matter of course. Philippine cases have so held. (*Irureta Goyena vs. Tambuting* (1902), 1 Phil. 490; *Thunga Chui vs. Que Bentec* (1903), 2 Phil., 561; *Conto Soriano vs. Cortes* (1907), 8 Phil., 459; *Dievas vs. Co Chongco* (1910), 16 Phil., 447.)"

Now then, it may be asked, what was the intention of the Code Commission in inserting Section 68 of the Uniform Sales Act in the Philippine Code? The Commission unfortunately says nothing whatsoever about this in its Report. The present writer believes that the only way to reconcile this obvious conflict is to apply a general rule of statutory construction — a specific provision is deemed to qualify a general provision of law. Although Article 1124 of the Spanish Code, now Article 1191 of the Philippine Code, has been invariably resorted to in granting remedies to injured buyers or sellers, since it is a general principle of obligations, it should now be deemed qualified by Article 1598 which is exclusively a buyer's remedy. The indiscriminate engraftment of so many provisions of the Uniform Sales Act into the Philippine Code without any apparent effort to harmonize them with the traditional philosophy of the Civil Law provisions would seem to make this view unintended. But can any one think of a better rationale? It is worthwhile to note that while all the traditional remedies of the seller under the Uniform Sales Act have been borrowed by the Philippine Code, two principal remedies of the buyer are left out — action for conversion or detention of goods where title has passed and action for damages for breach of contract where title has not passed.

(b) Seller's Remedies

(1) *Wrongful Refusal or Failure to Take Delivery.* With the retention, as aforesaid, of Article 1124 of the Spanish Code, now Article 1191 of the Philippine Code, the seller is afforded the same remedies — a

²⁸ 39 Phil. 190, 195 (1918).

choice between compelling fulfillment of the buyer's obligation to take delivery and pay the price or to ask for rescission of the contract.

The Code Commission in its Report says:²⁹ "The present Code (Spanish Civil Code) does not solve questions arising from certain present-day business practices. Among them are..." It then proceeded to lift bodily Sections 52 to 65, inclusive, of the Uniform Sales Act and interspersed them among the Civil Law provisions reproduced from the Spanish Code. It will be noted that Sections 52 to 62 constitute the entire Part IV of the Uniform Sales Act entitled, "Rights of Unpaid Seller Against The Goods" and Sections 63 to 65 come under the heading, "Remedies of the Seller" under Part V entitled "Action for Breach of the Contract." With the exception of some negligible amendments to introductory clauses, the only change made in the copied provisions of the Uniform Sales Act is the substitution of the word "ownership" for "property" wherever the latter term occurs. This rather bold act of the Code Commission throws together in one law the traditional remedies of the seller against the defaulting buyer under the Spanish Civil Code and under the Uniform Sales Act. It would seem sound policy to give as many remedies as are available to an injured seller. But the good intentions of the Commission seem to be nullified by a lack of any apparent effort on its part to harmonize the Anglo-American with the Civil Law remedies. It is elementary that under the Uniform Sales Act, the seller's remedies are primarily based on whether or not title or property or ownership has passed to the buyer. Thus where title has passed, the seller may sue for the purchase price.³⁰ Or by "foreclosing" his lien, where he is in possession or has properly stopped the goods in transit, he may either resell the goods applying the proceeds to the contract price and charging the buyer for the deficiency or he may rescind transfer of title, resume ownership and sue for damages.³¹ Where title has not passed, the seller, as a general rule subject to exceptions, may not bring an action for the price; he is only entitled to recover damages for the buyer's failure or refusal to take delivery.³² Finally, whether title has or has not passed, where the goods have not been delivered, the seller may totally rescind the contract of sale.³³

Now the idea of classifying the seller's remedies on the basis of whether title has or has not passed is peculiar to the Uniform Sales Act and the English law on which it is based. It is a concept not recognized

²⁹ REPORT OF THE CODE COMMISSION, 60-61 (1948).

³⁰ UNIFORM SALES ACT, Section 63.

³¹ *Ibid.*, Sections 60 and 61.

³² *Ibid.*, Section 64.

³³ *Ibid.*, Section 65.

in the Civil Law or in the Spanish Civil Code for that matter. At the risk of repetition, it must be emphasized that under the Spanish Code the agreed terms of performance determine the remedies apart from whether ownership has or has not passed to the buyer. Thus where no term for payment has been stipulated or credit has not been extended to the buyer, delivery on the part of the seller and payment on the part of the buyer are deemed to be contemporaneous acts. Where the seller is ready, willing, and able to deliver the goods and the buyer refuses to take delivery or pay the price therefor, the seller may maintain an action for the price with indemnity for damages he may have suffered. In such a case, since he is still in possession of the goods, by the Civil Law, ownership could not pass to the buyer (unless he has made constructive delivery) yet he is permitted to sue for the price. Where a fixed term for payment has been stipulated or credit extended to the buyer, the seller must first make delivery and wait for the buyer's default before he can sue for the price. Thus in *Warner, Barnes & Co. vs. Inza*³⁴ the court said, "As to whether or not the delivery of the thing sold was a condition precedent to the payment of the price, it must not be overlooked that, even if we regard the sale as of a civil and not of a mercantile nature a period was stipulated for the making of payment and this brings the case within the exception provided in Article 1466 of the Civil Code, that is that the sugar should have been delivered even before its price was paid." Under a general principle of civil law obligations embodied in article 1129 of the Spanish Code reproduced as Article 1198 of the Philippine Code, the buyer shall forfeit all right to the benefit of the term: (1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt; (2) When he does not furnish to the creditor the guaranties or securities which he has promised; (3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory; (4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period; (5) When the debtor attempts to abscond." Paragraphs 4 and 5 were added by the Code Commission.

The Philippine Code follows up the aforementioned provision by Article 1536 which is substantially a reproduction of Article 1467 of the Spanish Code,

The vendor is not bound to deliver the thing sold in case the vendee should lose the right to make use of the term as provided in Article 1198.

³⁴ 43 Phil. 505 (1922).

Now then, supposing no fixed term for payment has been stipulated or no credit has been extended to the buyer, if the latter wrongfully refuses to take delivery and pay the price, may the seller under the Philippine Civil Code maintain an action for the price as he could without any doubt under the Spanish Code? The question is asked because, although the provisions of the Spanish Code on this point were entirely preserved, at the same time Section 63 of the Uniform Sales Act was copied verbatim as Article 1595. The latter provision of law is authority for the general rule that only when ownership or title has passed to the buyer may the seller sue for the price. It will be recalled that under the Civil Law only delivery, actual or constructive, can transfer ownership. Since the seller in our case is in possession of the goods either because he is holding on to them or because the buyer refuses to take delivery, ownership or title cannot pass to the buyer. If the Spanish Code provisions reproduced in the Philippine Code are to be followed, our seller may maintain an action for the price. If Section 63 of the Uniform Sales Act (Art. 1595 of the Phil. Code) is to govern, the seller as a general rule may not. Which then is to prevail? This and many other conflicts in the Title on Sales of the Philippine Code arise from a clash of elementary principles of the Civil and Anglo-American law betraying "sloppy" draftsmanship and the lack of any real effort on the part of the Commission to blend the American with the Spanish provisions of law, if that were at all possible. The idea in the American Act that remedies may be classified on the basis of title-passing is predicated on a recognition of situations where title may pass to the buyer irrespective of delivery. It cannot be overemphasized that the Philippine Code is committed to the principle that ownership may pass to the buyer only by delivery. To limit the injured seller's remedy to maintain an action for the price only after he has transferred ownership to the buyer by delivery is a construction which in the writer's opinion was unintended by the Commission.

Instead of maintaining an action for the price, the injured seller under the Spanish Code, as we have already seen, may elect to rescind the contract and ask for damages. The concept of rescission under the Spanish Code, which is presumed to have been carried over into the Philippine Code by its reproduction of the provisions of the Spanish Code on this point, is similar in a few respects to the American version of rescission. Both remedies may lie only for material breaches of the contract. Both require that the parties be placed in status quo. The most significant distinction however lies in the fact that rescission as an injured party's remedy in a reciprocal obligation under the Spanish and Philippine Codes may be effected as a general rule only with judicial approval:

The court shall decree the rescission claimed, unless there be just cause authorising the fixing of a period.³⁵

In the American version, rescission may be effected by the will of the parties without court intervention.³⁶ It will be recalled that under the Spanish Code it seems the only instance in a contract of purchase and sale when rescission may be effected without court application is that provided for in Article 1505. This provision as reproduced in the Philippine Code as Article 1593 now reads:

With respect to movable property, the rescission of the sale shall of right take place in the interest of the vendor . . .

It will be noted that the term "ipso facto" is gone, substituted by the phrase "of right." As we said before there are no decided cases on this point and whether court application is or is not necessary is hard to say. The fact that Spanish-Philippine rescission as a general rule requires court intervention and its American counterpart does not is consequential enough to have made the Code Commission think twice before engraving verbatim in the Philippine Code provisions of the Uniform Sales Act containing this term. Mr. Williston³⁷ says this of the meaning of rescission under Section 65 of the Uniform Sales Act, now Article 1597 of the Philippine Code: "There are two distinct remedies at law possible for one who is injured by breach of contract: (1) an action on the contract for damages which shall so far as possible put the plaintiff in as good a position as if the contract had been performed; (2) rescission coupled with a quasi-contractual right to recover whatever the plaintiff has parted with. The object of this second remedy is to put the injured person in as good a position as if the contract had never been made. Considerable confusion has been caused in the law of contracts by the misuse of the word 'rescission.' By a long line of decisions usually re-

³⁵ Civil Code of Spain, Article 1124; Philippine Civil Code, Article 1191; in the Ocejó, Pérez case (note 13, supra) the Supreme Court said: "But the intervener, adopting the argument of the bank, contends that the party to whom article 1124 of the Civil Code grants the right to rescind 'must apply to the court for a decree for the rescission of the contract. . . .' (Scaevola, vol. 19, p. 673); and this conclusion is supported by the last paragraph of the article cited. Of course, if the action of the court is necessary in order to effectuate the rescission of the sale, such rescission does not follow *ipso jure* by reason of non-payment and the determination of the seller to elect to rescind. Consequently, the action of replevin cannot be maintained. The right to rescind a sale, established by article 1506, in no wise differs from that which is established, in general terms, with respect to reciprocal obligations, by article 1124 in the event that one of the obligors fails to perform the obligation incumbent upon him." But the right so conferred is not an absolute one. The same article provides that "the court shall decree the rescission demanded, unless there are causes which justify him in allowing a term."

³⁶ III WILLISTON *op. cit.* supra note 9 at Secs. 554-556, pp. 183-187.

³⁷ *Id.*, at Sec. 591, pp. 276-277.

ferred to under the heading of implied conditions, it became established that generally where one party to a contract was in default in the performance of his obligation, he could not recover from the other party if the latter failed to perform his obligations, though the injured person might maintain an action for damages on the contract. This right of an injured party to refuse to go on while still retaining a right of action on the contract has frequently but improperly been called 'rescission,' a word that should be reserved for cases where all rights on the contract are given up. One danger of the misuse of the word is that it leads to the inference that wherever an injured party is excused from performing, the contract has ceased to exist, and neither party can sue upon it. Another danger is the converse — that where rescission is correctly used it may be supposed that the injured party has nevertheless a right to sue upon the contract, not merely to be restored to his original position. It is important, therefore, to distinguish the rescission of the contract from the excuse of one party or the other from the performance of his obligations."

Another American author³⁸ has this to say of rescission under Section 65 of the Uniform Sales Act: "This remedy enables the seller to close out the transaction with the defaulting buyer without the necessity of either writing the performance off as a total loss or sustaining the troublesome burden of proof on the often uncertain and elusive elements involved in ascertaining the damages. In rescinding the entire transaction, the seller can get rid of the troublesome relations with an unsatisfactory defaulting customer by the convenient alternative of securing a restoration of the status quo before the deal was made waiving the advantage he was entitled to under the bargain, and devoting his attention and resources thereafter to other dealings which are more advantageous."

The above interpretation of the term "rescission" as used in Section 65 of the Uniform Sales Act, now Article 1597 of the Philippine Civil Code, is in conflict with the connotation of the term "rescission" as used in Article 1191 of the same Code. By the latter article, when an injured party rescinds, he does not lose his rights on the contract. He is not merely restored to the status quo; he is also allowed to demand indemnity for damages he may have suffered.

Another concept of rescission is used in Section 61 (1) of the Uniform Sales Act copied verbatim as Article 1534, first paragraph, of the Philippine Civil Code:

An unpaid seller having the right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume ownership in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price for an unreasonable time. The seller shall not there-

³⁸ VOLD *op. cit.* supra note 11 at 485.

after be liable to the buyer upon the contract of sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract.

In the foregoing provision of law, rescission is with respect to the transfer of title or ownership only as distinguished from rescission of the entire contract as used in Section 65 of the Uniform Sales Act, now Article 1595 of the Philippine Civil Code. In the Civil Law, it is well to reiterate, where the seller is in the exercise of his lien because his agent or he himself is in possession of the goods, no title or property can pass to the buyer except in the rare case where he has made constructive delivery and is merely acting as agent or bailee of the buyer. The above provision of law, therefore, if construed according to the Civil Law, becomes a mere superfluity since it would apply to cases which are the exception rather than the rule — which again was most probably not the intention of the Code Commission.

In recapitulation then we find that the term "rescission" as a seller's remedy is susceptible of at least four interpretations in the Philippine Civil Code: (a) under Article 1191 (reproduced from Article 1124 of the Spanish Civil Code) requiring judicial approval, which effects a restoration to the status quo and permits the seller to recover damages. (b) under Article 1593 (copied from Article 1505 of the Spanish Civil Code) which is termed "as of right." Whether or not this form of rescission requires judicial approval is not yet settled but it seems certain that the seller is also allowed to recover damages; (c) Under Article 1534 (copied verbatim from Section 61 of the Uniform Sales Act) which refers to a rescission of title only and permits the seller to recover damages for breach of contract; in the United States an injured seller may avail himself of this form of rescission on his own accord without judicial approval; (d) under Article 1597 (copied verbatim from Section 65 of the Uniform Sales Act) which in the United States refers to a rescission of the contract and does not permit the seller to sue for damages. No court application is necessary.

Now then, it may be asked again, against the Civil Law background of the Code, how should Articles 1534 and 1597 be applied? Should they be applied as American courts traditionally have? Or would court intervention be necessary in either case? Could an injured seller applying Article 1597 be allowed to recover damages? Did the Code Commission really intend or foresee all these distinctions? In one part of its Report³⁹ the Commission said: "English is the language of the proposed Civil Code. The commission translated from the original in Spanish those articles or parts of articles of the present Code that are preserved. The

³⁹ REPORT OF THE CODE COMMISSION, p. 8 (1948).

translation of Spanish legal terms needs some clarification. As examples, let us take the words 'bienes inmuebles,' 'bienes muebles,' 'servidumbres,' 'obligaciones mancomunadas,' 'pena,' 'pago,' 'deudor' 'acreedor,' and 'cuasi-contratos.' In rendering these and other terms into English, the nearest equivalents in English have been used. Thus, the Spanish words just mentioned have been respectively translated into real property (in a penal clause), personal property, payment, debtor, creditor, and quasi-contracts. It is well known that these English terms do not have exactly the same meaning in Anglo-American law as their counterparts in Spanish-Philippine Law. The result is that while the form is English, the substance is Spanish and Filipino. In other words, the receptacle is English, but the content is Spanish-Philippine Law. Therefore, these translated words should be understood, not in the light of the Anglo-American law but in that of the Spanish-Philippine law as embodied in the Project of Civil Code."

It is clear therefore that the term "rescission" as used in Article 1191 and 1593 should be construed according to Spanish Civil Law concepts since these articles were copied and translated from the Civil Code of Spain. The problem is with Articles 1534 and 1597, which, as has been said, are reproductions of Sections 61 and 65 of the Uniform Sales Act. The Commission in another part of its Report⁴⁰ says: "This incorporation of a goodly number of the American rules on sale of goods has been prompted by these reasons... (3) It is probable that a considerable portion of the foreign trade of the Philippines will continue for many years to be with the United States. In order to lessen misunderstanding between the merchants on both sides of the Pacific, their transactions should, as far as possible, be governed by the same rules." It seems then that the intention of the Commission was to apply the borrowed provisions of the Uniform Sales Act according as they have been construed by American courts. But why retain the Spanish provisions in the first place and make a mess of the Code? Was not the Code Commission aware of the mass of jurisprudence that has grown around the provisions of the Uniform Sales Act as to more or less fix their interpretation?

(2) *Delay in Payment of Price.* In discussing this situation under the Spanish Code, we saw that where no term for payment has been agreed upon or no credit has been extended to the buyer, the latter is bound to make payment at the time and place agreed at which the thing sold is delivered. In other words, delivery and payment are concurrent acts. If the buyer defaults, the seller has always his alternative remedies of action for the price and rescission with damages in either case, regardless of whether ownership or title has or has not passed.

⁴⁰ *Id.*, at 60-61.

Where a term of payment has been stipulated, we saw that Philippine courts are hesitant to give the injured seller the remedy of rescission for wrongful delay in payment and have been prone to give the defaulting buyer more time to fulfill his obligation. The same conflicts arising from the incorporation of the American remedies in the Philippine Code are bound to arise in this situation.

(3) *Buyer's Insolvency.* Article 1467 of the Spanish Code, which was cited in discussing this situation, has been reproduced in the Philippine Code as Article 1536:

The vendor is not bound to deliver the thing sold in case the vendee should lose the right to make use of the term as provided in article 1198.

Article 1198 (reproduced from Article 1129 of the Spanish Code) cited elsewhere in this work is again quoted for purposes of comparison:

The debtor shall lose very right to make use of the period:

- (1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;
- (2) When he does not furnish to the creditor the guaranties or securities which he has promised;
- (3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;
- (4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;
- (5) When the debtor attempts to abscond.

Compare the two articles cited above with Article 1527 of the Code, a verbatim reproduction of Section 54. of the Uniform Sales Act:

Subject to the provisions of this Title, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

- (1) When the goods have been sold without any stipulation as to credit;
- (2) Where the goods have been sold on credit, but the term of credit has expired;
- (3) Where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

It is clearly evident that the American provision is a superfluity, a poor duplication of two Spanish provisions of law covering the same situa-

tion. Moreover the last paragraph of the American provision (cognizant of the situation where title has passed prior to delivery) expresses the exception rather than the rule from a Civil Law point of view. A Civil Law seller in possession is generally the owner of the goods except in the rare case where he has made constructive delivery and is acting merely as agent or bailee for the buyer.

CONCLUSIONS AND OBSERVATIONS

It should be clear at this time that the Code Commission has failed to attain its objective of approximating a uniform sales law for Philippine and American merchants. The Code retains all the traditional remedies of buyer and seller under the Civil Code of Spain and at the same time incorporates a majority of the provisions of the Uniform Sales Act on remedies of buyer and seller. The American can hardly be expected to be familiar with the nature of the remedies taken over from the Spanish Code. Neither can the Filipino be with the American remedies.

The net consequence of giving the provisions adopted from the Uniform Sales Act a Civil Law interpretation, besides defeating the Commission's objective of uniformity, would be that these provisions are bound to become mere superfluities or surplusage since they would be made to govern matters already covered by the articles reproduced from the Civil Code of Spain. And some of the American provisions, regardless of the interpretation given them, are really surplusage. For example, although there is no specific provision in the Title on Sales of the Spanish Civil Code giving the injured seller the right to resell the goods, such a remedy has been recognized by Philippine Courts⁴¹ without any consideration of whether title has or has not passed, a circumstance which oftentimes makes the remedy under the Uniform Sales Act illusory. Thus in *Hanlon vs. Haussermann and Beam*,⁴² the court said: "In the present case the contract between Hanlon and the mining company was executory as to both parties and the obligation of the company to deliver the shares could not arise until Hanlon should pay or tender payment of the money. The situation is similar to that which arises everyday in business transactions in which the purchaser of goods upon an executory contract fails to take delivery and pay the purchase price. The vendor in such case is entitled to resell the goods. If he is obliged to sell for less than the contract price, he holds the buyer for the difference; if he sells for as much as or more than the contract price, the breach of the contract by the original buyer is *damnum absque injuria*."

⁴¹ *Hanlon v. Haussermann and Beam*, 40 Phil. 796 (1920); *H.B. Mills v. Pue*, (C.A.) 48 O.C. 3918.

⁴² *Ibid.*

dig below the surface that you strike trouble and confusion; and the further you dig the greater the confusion; and while I cannot claim where you end when you 'exhaust' the explorations, I venture that the more you explore the more you become willing to take either side on an alleged title-passing question in most cases."

By adopting the entire Uniform Sales Act, there is also the problem of harmonizing its provisions with the Philippine Civil Code's provisions on obligations and contracts in general, which were reproduced from the Civil Code of Spain. Of course there is always the alternative of adopting the entire American Restatement of Contract Law. But it would be well for the Commission to ponder this problem before choosing the alternative.

The Article on Sales of the proposed Uniform Commercial Code of the United States has much to commend itself. It is said that under this Code, "legal consequences are stated as following directly from the contract and action taken under it without resorting to the idea of when property or title passed or was to pass as being the determining factor. The purpose is to avoid practical issues between practical men turn upon the location of an intangible something, the passing of which no man can prove by evidence and to substitute for such abstractions proof of words and actions of a tangible character."⁴⁶ This code is also functional in so far as it classified sales transactions into those to which both parties are professionals or merchants, those to which both are non-professionals or non-merchants, and those to which one party is a professional or merchant attributing to each class of transaction different legal consequences. The biggest deterrent to choosing this alternative at the present time is the fact that the Code has not yet been unanimously adopted which would not fulfill the objective of uniformity with the United States. Another deterrent would be the presence in the Code of many unlitigated novel terms which would require a revision of many well-settled sales concepts in the Philippines. Finally, it may not be advisable to adopt just the Code's Article on Sales alone as the various Articles of the Code were designed to complement each other.⁴⁷

The present writer is inclined to choose the fourth alternative — to revive the sales provisions of the Spanish Code of Commerce and integrate them with those of the Civil Code into one compact law. In the process of integration, anachronistic provisions should be junked and the law itself made to fit domestic trade conditions. This alternative has the advantage that a majority of the provisions of both Spanish Codes

⁴⁶ Proposed Uniform Commercial Code, Comment on Section 2-101, Article 2, Sales, Part I, p. 43 (1952).

⁴⁷ *Id.*, Comment on Title, p. 2; "The concept of the present Act is that 'commercial transactions is a single subject of law, notwithstanding its many faults.'"

have been litigated and therefore have well-established meanings. The proposed Uniform Commercial Code of the United States may very well serve as a model for the purpose of drafting rules applicable to merchants and non-merchants. As for foreign trade with the United States over which the Code Commission was so concerned, instead of indiscriminately lifting so many provisions from the Uniform Sales Act, it could very well have made provisions for C.I.F. and F.O.B. contracts and their variations. The great bulk of sales transactions between Philippine and American merchants are governed by either C.I.F. or F.O.B. contracts or their variations and litigation often arise as to the rights of the parties thereon. On this point, the Uniform Commercial Code comes in as a handy model since it makes specific provision for these types of sales contracts.

The Code Commission may reject all these alternatives but the proposition still remains that a drastic revision of the Title on Sales of the Philippine Civil Code is imperative, for a law such as this — half-civil, half-common — will not serve its purpose.