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Land Reform

SECTION 4 OF THE AGRICULTURAL LAND REFORM CODE

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One of the most controversial sections of the Agricultural Land Reform Code is Section 4 thereof, the first section of the chapter on *Agricultural Leasehold System*. It is the section that provides for the much-vaunted "abolition of tenancy". And of all the provisions of the Code, it poises to create the most immediate impact of great significance among the people in agriculture. The section was so controversial during the Senate deliberations on the bill that discussions thereon were put off repeatedly, and it was only after a compromise version of the section was agreed upon that most people began to feel that the Agricultural Land Reform Bill after all would be passed.

Even so, the section as it is finally worded is very likely to cause much divergence of opinion and a great number of suits. The section reads as follows:

> SEC. 4. *Abolition of Agricultural Share Tenancy.* — Agricultural share tenancy, as herein defined, is hereby declared to be contrary to public policy and shall be abolished: *Provided*, That existing share tenancy contracts may continue in force and effect in any region or locality, to be governed in the meantime by the pertinent provisions of Republic Act Numbered Eleven hundred and ninety-nine, as amended, until the end of the agricultural year when the National Land Reform Council proclaims that all the government machineries and agencies in that region or locality relating to leasehold envisioned in this Code are operating, unless such contracts provide for a shorter period or the tenant sooner exercises his option to elect the leasehold system: *Provided, further*, That in order not to jeopardize international commitments, lands devoted to crops covered by marketing

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allotments shall be made the subject of a separate proclamation that adequate provisions, such as the organization of cooperatives, marketing agreements, or other similar workable arrangements, have been made to insure efficient management on all matters requiring synchronization of the agricultural with the processing phases of such crops: *Provided, furthermore,* That where the agricultural share tenancy contract has ceased to be operative by virtue of this Code, or where such a tenancy contract has been entered into in violation of the provisions of this Code and is, therefore, null and void, and the tenant continues in possession of the land for cultivation, there shall be presumed to exist a leasehold relationship under the provisions of this Code, without prejudice to the right of the landowner and the former tenant to enter into any other lawful contract in relation to the land formerly under tenancy contract, as long as in the interim the security of tenure of the former tenant under Republic Act Numbered Eleven hundred and ninety-nine, as amended, and as provided in this Code, is not impaired: *Provided, finally,* That if a lawful leasehold tenancy contract was entered into prior to the effectivity of this Code, the rights and obligations arising therefrom shall continue to subsist until modified by the parties in accordance with the provisions of this Code.

While the title of the Act[1] speaks of the *abolition of tenancy*, Section 4 thereof merely provides for the abolition of *agricultural share tenancy*. As a matter of fact, while it is the policy of the law to promote owner-cultivatorship to eventually replace all forms of tenancy, the Code does not intend to abolish leasehold tenancy automatically. This is evident from the following excerpts of the floor debates in the House of Representatives on May 7, 1963, on H. No. 5222, (which together with S. No. 542, became the Agricultural Land Reform Code) wherein Rep. Rodolfo Ganzon interpellated Rep. Juanita Nepomuceno, principal sponsor and chairwoman of the Committee on Agrarian and Social Welfare which reported out the bill:

> MR. GANZON. Now, is it also the position of the Congresswoman from Pampanga to abolish eventually the leasehold tenancy? Because what we are abolishing now is the "kasama". Your plan is cultivator-owner. It is also your position that eventually because of this bill you are going to abolish the leasehold or the "inquilino?" And do you think you can realize that within one hundred years?
>
> MRS. NEPOMUCENO. Let us cross our bridges when we reach them.
>
> MR. GANZON. No. Considering the proposed retention area now of 24 hectares, do you think you can abolish the leasehold tenancy with that limit?

[1] Rep. Act. No. 3844 (Agricultural Land Reform Code).

> MRS. NEPOMUCENO. *Leasehold tenancy will not be eliminated or abolished at once with respect to the legal retention area.*
>
> MR. GANZON. I want to call your attention that even in America, in Europe and in almost all countries of the world, leasehold cannot be abolished; they have succeeded in abolishing the "kasama" but they were not able to abolish completely the "inquilino" system. Japan has the "inquilino" system, as well as Taiwan, America and Europe. You cannot abolish leasehold tenancy. You can only abolish share-tenancy but not the leasehold tenancy. Is it your position that eventually there will be no more tenants, whether leasehold or "kasama"?
>
> MRS. NEPOMUCENO. We are not abolishing leasehold tenancy, we are abolishing share-tenancy only.
>
> MR. GANZON. *Good. So that your bill should have been entitled "An Act to Abolish Share Tenancy Only" but not tenancy of all kinds. Your bill is very confusing, distinguished colleague from Pampanga. It says, An Act to Abolish Tenancy. If you admit now that you do not abolish leasehold tenancy, therefore, the bill should have been entitled, An Act to Abolish Share Tenancy Only.*
>
> MRS. NEPOMUCENO. *Yes.* (Underscoring author's).

In defining "share tenancy"[2] the Code adopts the definition in Section 4 of Rep. Act No. 1199, as amended, with the omission of the last phrase "in proportion to their respective contributions". A reading of the whole chapter on "Agricultural Leasehold System" of the Code immediately shows that most of the provisions and terms were lifted from Rep. Act No. 1199, as amended.

It may be safely stated, therefore, that while the Code abolishes agricultural *share* tenancy, it still recognizes and still regulates, with a few changes, agricultural leasehold tenancy as substantially understood under Rep. Act No. 1199, as amended.

Basic Provisions on Tenancy

For a full and clear understanding of the provisions of the chapter on *Agricultural Leasehold System*, it will be necessary to discuss the basic concepts and principles on tenancy as embodied in the provisions of Rep. Act No. 1199, as amended.

Republic Act No. 1199, as amended, defines "tenancy", "share tenancy", "leasehold tenancy", "tenant", "tenancy relationship" and tenancy "contracts", thus:

[2] Sec. 166(25).

SEC. 3. *Agricultural Tenancy Defined.* — Agricultural tenancy is the physical possession by a person of land devoted to agriculture belonging to, or legally possessed by, another for the purpose of production through the labor of the former and of the members of his immediate farm household, in consideration of which the former agrees to share the harvest with the latter, or to pay a price certain or ascertainable, either in produce or in money, or in both.

SEC. 4. *Systems of Agricultural Tenancy; Their Definitions.* — Agricultural tenancy is classified into leasehold tenancy and share tenancy.

Share tenancy exists whenever two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor with either or both contributing any one or several of the items of production, the tenant cultivating the land personally with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant in proportion to their respective contributions.

Leasehold tenancy exists when a person who, either personally or with the aid of labor available from members of his immediate farm household, undertakes to cultivate a piece of agricultural land susceptible of cultivation by a single person together with members of his immediate farm household, belonging to or legally possessed by, another in consideration of a fixed amount in money or in produce or in both.

SEC. 5. *Definitions of Terms.* — As used in this Act:

(a) A *tenant* shall mean a person who, himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by, another, with the latter's consent for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or in money or both, under the leasehold tenancy system.

(b) A *landholder* shall mean a person, natural or juridical, who, either as owner, lessee, usufructuary, or legal possessor, lets or grants to another the use or cultivation of his land for a consideration either in shares under the share tenancy system, or a price certain or ascertainable under the leasehold tenancy system.

SEC. 6. *Tenancy Relationship; Its Definition.* — Tenancy relationship is a juridical tie which arises between a landholder and a tenant once they agree, expressly or impliedly, to undertake jointly the cultivation of land belonging to the former, either under the share tenancy or leasehold tenancy system, as a result of which relationship the tenant acquires the right to continue working on and cultivating the land, until and unless he is dispossessed of his holdings for any of the just causes enumerated in Section fifty or the relationship is terminated in accordance with Section nine.

SEC. 10. *Contracts; Nature and Continuity of Conditions.* — The terms and conditions of tenancy contracts, as stipulated by the parties or as provided by law, shall be understood to continue until modified by the parties. Modifications of the terms and conditions of contracts shall not prejudice the right of the tenant to the security of his tenure on the land as determined in Sections six and forty-nine.

On the other hand, the Code defines "share tenancy" in Section 166 (25) thereof, as follows:

> "Share tenancy" as used in this Code means the relationship which exists whenever two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land personally with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant.

The Code contains no definition of the "agricultural leasehold system", but almost all of its provisions governing the same were lifted or adopted from Rep. Act No. 1199, as amended.

From all the foregoing, it appears that Rep. Act No. 1199, as amended, defines or explains separately three aspects of tenancy: tenancy as a fact or condition[3], tenancy as a relationship[4], and tenancy as a *contract*[5]. Analogously, the Code generally uses the terms "agricultural leasehold contract"[6] and sometimes casually uses the simple word "leasehold".[7]

Under the three aspects, the essential elements remain the same, namely, (1) the parties, (2) the subject matter, (3) consent, (4) purpose and (5) consideration. However, tenancy as a *fact or condition* stresses the *physical possession* of the land by the tenant. Under the aspect of *relationship*, on the other hand, the law forges between the landholder and the tenant a juridical tie or *vinculum juris* with certain important juridical consequences. Finally, under the aspect of contract the law refers to the *specific terms and conditions* which the landholder and the tenant may agree upon within the limits set by the nature of tenancy and the important provisions with which the law regulates it as a juridical institution.

[3] Secs. 3 and 4.
[4] Sec. 6.
[5] Secs. 10 and 11.
[6] Secs. 15-19.
[7] Secs. 28 and 35.

Essential Elements of Tenancy

Whether tenancy is considered as a fact, relationship or contract, its essential elements are:

1. *As to parties.* — A landholder, a natural or a juridical person who is the owner, lessee, usufructuary or legal possessor of agricultural land; and a *tenant* who himself and with the aid available from within his immediate farm household, cultivates the land which is the subject matter of the tenancy.

2. *As to subject matter — Agricultural land.* As used in the Agricultural Tenancy Act (and Chapter 1 of the Code), "agricultural land", though narrower in extent than in the Constitutional Law sense, has a fairly broad scope. It covers rice lands, lands devoted to crops other than rice[8], lands grown to fruit trees, crops and plants,[9] specifically including "coconuts, citrus, coffee, ramie and other crops where more than one harvest is obtained from one planting",[10] fishponds, saltbeds, land devoted to the raising of livestock,[11] land used for raising ducks,[12] in fact, all kinds of agricultural lands, whatever may be their nature or character, whether rice, sugar, corn or coconut, may be the subject matter of tenancy relations.[13]

3. *As to consent.* — Under the Agricultural Tenancy Act, there must be an agreement between the parties before the tenancy contract and relationship can begin to exist. The agreement may be oral or written, expressed or implied. Chapter I of the Code contains the same provisions. However, it also provides that the agricultural leasehold relation may be established by operation of law in accordance with Sec. 4 of the Code. But even in the latter case, consent would have been necessary at the beginning before the Code took effect for the start of the tenancy relationship.

4. *As to purpose.* — The purpose of tenancy is agricultural production.

5. *As to consideration.* — Share or rental. Under sharehold tenancy, the landholder and the tenant divide the produce between themselves in proportion to their respective contributions. Under leasehold tenancy, the tenant pays the landholder a fixed amount in money or in produce or in both.

[8] Sec. 41, Rep. Act No. 1199, as amended.
[9] Sec. 46(b), *ibid.*
[10] Sec. 5(c), *id.*
[11] Sec. 46(c), *id.*
[12] Villaluz v. Apolinario, CA-G.R. No. 18458-R, Mar. 27, 1958.
[13] Mendoza v. Manguiat, L-1373, Dec. 22, 1954.

Juridical Nature of Tenancy

The only provisions of the Civil Code that refer to tenancy are those contained in Articles 1684, 1685 and 1673.

> ART. 1684. — Land tenancy on shares shall be governed by special laws, the stipulations of the parties, the provisions on partnership and by the customs of the place.
>
> ART. 1965. — The tenant on shares cannot be ejected except in cases specified by law.
>
> ART. 1673. — . . . The ejectment of tenants of agricultural land is governed by special laws.

The last paragraph of Art. 1673, and Art. 1685 are new provisions added to the provisions of the Spanish Civil Code. Art. 1684, however, has been adopted from Art. 1579 of the Spanish Civil Code. It will be noted that the tenancy referred to is share tenancy (*aparceria*). What is the juridical nature of share tenancy? The term used by the Spanish Civil Code is *"el arrendamiento por aparceria de tierras de labor"*. Our Civil Code reads: "land tenancy on share". The Spanish term "arrendamiento" is more accurately translated into our English legal terminology as "lease". And Manresa astutely observes that the Article[14] starts by designating *"el arrendamiento por aparceria"* as *"arrendamiento"* or lease (tenancy) on shares, expressly recognizing that it is a lease, but immediately provides that the same shall be governed by the corresponding provisions on the contract of partnership by the stipulations of the parties and, in their absence, by the customs of the place. In other words, the law classifies tenancy as lease but governs it by various rules other than those pertaining to the contract of lease.

Indeed, the provisions reproduced above are denominated by the Civil Code as "Special Provisions for Leases of Rural Lands". Some writers have considered land tenancy as a pure contract of lease of rural lands. Others, however, have maintained that while land tenancy on shares is closely related to lease, it is more of the nature of partnership. Manresa concludes that land tenancy on shares is fundamentally a contract of lease but of a special and unique kind.

[14] Art. 1579 in the Spanish Civil Code, Art. 1684 in our Civil Code.

Under our present laws, the opinion of Manresa on the juridical nature of tenancy would be most appropriate. The most qualifying character of the contract of lease is the grant of the temporary use and possession of a thing by one person to another. This grant of use and possession is actually the basic element in tenancy under the Agricultural Tenancy Act, which is the possession, use and enjoyment of agricultural land through personal cultivation by a tenant of land owned or legally possessed by another. The only elements that make it a unique kind of lease are (1) that the possession and use by the tenant should be through personal cultivation, and (2) that the undertaking may be joint and the "rental" in the form of shares (under share tenancy).

When the tenancy system is that of sharehold the contract departs somewhat from the concept of lease and assumes some affinity to partnership, principally because of its joint and aleatory character. Even the Agricultural Tenancy Act defines share tenancy as a "joint undertaking" between landholder and tenant.

However, tenancy cannot really be a contract of partnership because of the absence of the element of juridical personality separate and distinct from that of the tenant and landholder, as well as the absence of the element of common fund owned by the partnership — both of which elements are essential to partnership.

Distinction Between Share Tenancy and Leasehold Tenancy

Republic Act No. 1199, as amended, lays down a clear and explicit distinction between share tenancy and leasehold tenancy. The distinction is even more pronounced under the Agricultural Land Reform Code. The essential points of difference between the two are:

1. *As to contributions.* — Under sharehold tenancy, the tenant may choose to shoulder, in addition to labor, any one or more of the other items of production except the land,[15] while under leasehold tenancy or agricultural leasehold, the tenant or lessee always shoulders all the items of production except the land.[16]

[15] Secs. 22(2), 14, 32, Rep. Act No. 1199, as amended; and sec. 166 (25), Rep. Act No. 3844.

[16] Secs. 42, 43, Rep. Act No. 1199, as amended; and Secs. 23, 26 and 34, Rep. Act No. 3844.

2. *As to management of the farm.* — Under the sharehold tenancy, the tenant and the landholder are co-managers of the farm;[17] under leasehold tenancy or agricultural leasehold, the tenant is the sole manager.[18]

3. *As to consideration.* — Under sharehold tenancy, the tenant and the landholder divide the harvest in proportion to their contributions;[19] under leasehold tenancy or agricultural leasehold, the tenant or lessee gets the whole produce with obligation merely to pay a fixed rental.[20]

Sec. 4 of the Code Dissected

Agricultural share tenancy, as herein defined, is hereby declared to be contrary to public policy and shall be abolished.

The Code itself defines share tenancy in Sec. 166 (25) thereof, thus:

> "Share tenancy" as used in this Code means the relationship which exists whenever two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land personally with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant.

The above definition is almost an exact reproduction of the definition of share tenancy contained in Section 4 of Republic Act No. 1199, as amended, otherwise known as the Agricultural Tenancy Act. The only significant difference is the omission of the phrase "in proportion to their respective contributions", which appears at the end of the definition in Rep. Act No. 1199. This phrase was deleted, because otherwise, the "bill would be punishing only that form of share tenancy where, by agreement of the parties, the produce of the land will be divided between the landowner and the tenant in proportion to their respective contributions when the intention and purpose of the bill is to outlaw and

[17] Secs. 22, 23, 25, 26, 27, 29 Rep. Act No. 1199, as amended; and Sec. 166(25) of Rep. Act. No. 3849.

[18] Secs. 42, 43, 44, Rep. Act No. 1199, as amended; and Secs. 23, 26, 29 and 30, 31, Rep. Act No. 3844.

[19] Secs. 32, Rep. Act No. 1199, as amended; and Sec. 166(25), Rep. Act No. 3844.

[20] Secs. 42 and 47, Rep. Act No. 1199, as amended; and Sec. 34, Rep. Act No. 3844.

punish all forms of agricultural share tenancy whether their terms are reasonable or not."[21]

Constitutionality of Provision

The above clause is one of the most important provisions in the entire Code. Its violation is penalized under Section 167 (2) of the Code. However, the proscription of share tenancy has been attacked as unreasonable and unconstitutional on various grounds.

It is claimed, for instance, that it constitutes an imposition on the landholder and the tenant and, therefore, impairs the obligation of contract and constitutes an undue deprivation of liberty and property. It is pointed out that there is nothing inherently wrong in a contract or relationship whereby "two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land personally with the aid of labor from members of his immediate farm household and the produce thereof to be divided between the landholder and the tenant." It is claimed that there is nothing in share tenancy that is against health, morals and public safety.

In reply to these objections, Senator Raul S. Manglapus said on the Senate Floor on June 14, 1963:

> . . . The first answer to this challenge of unconstitutionality is that every contract written in this Republic contains in its provisions the unwritten reservation of police power of the State. But the distinguished gentleman from Quezon proceeded to criticize the bill also on other grounds; for instance, on the grounds of the deprivation of property or liberty without due process because the leasehold relationship in this bill is imposed upon the tenant and the landlord.
>
> Mr. President, permit me to say first in answer to this criticism that this is not the first time that a relationship is being imposed on the landlord and the tenant by legislation in this Republic. Republic Act 1199 imposes the relationship of leasehold on the tenant and landlord upon choice of the tenant, but it is an imposition nonetheless even if there is an intervention of the will of the tenant. If the tenant under Republic Act 1199 should choose to be a lessee, the landlord has no other choice but to permit him to be a lessee. This is an imposition on the landlord. He has no choice.
>
> Now, we go to more fundamental questions on Constitutional Law.

[21] Speech explaining vote of abstention by Senator Lorenzo Tañada, July 9, 1963.

> I am wondering whether when this distinguished body passed the bill creating the Social Security System, it discussed the question of compulsion or the imposition of relationship. When this Body passed the SSS Law under the Nacionalista Administration of President Magsaysay, did it consider that it was imposing the relationship of employer-beneficiary on the employer and the employee when it required that the employer should contribute to the insurance of his employees against his will? Was this not an imposition over the objections even of religious bodies which complained that, perhaps, their system of private insurance was better than the SSS, and yet they have been required to enter into this relationship against their will?
>
> But charges have been made that the means adopted are reasonable because there is nothing in share tenancy against "health, morals and public safety." Permit me, Mr. President, to call the attention of this distinguished Body to the fact that, while traditionally this phrase, "health, morals and public safety" has been used in Constitutional Law to circumscribe the scope of police power there is jurisprudence to show that it is not just "health, morals and public safety" but other considerations, such as economic needs, that may be taken into consideration by the courts of this land in determining the scope of police power. I would refer, Mr. President, to the case, for instance, of *Veix vs. Sixth Ward Building & Loan Association*, 310 US, 32, where the following words are found:
>
> "The authority which a State has in the interest of the public over private contracts is not limited to matters of health, morals and safety, but extends to economic needs as well."
>
> This, I think, is the very philosophy that has been used here in many instances by our own Legislature when by legislative fiat it converted something that is not *malum per se* into a *malum prohibitum*.
>
> I have said it before, and I will say it again tonight, that at one point in our legislative history overnight and all of a sudden, contracts of loans which provided that the loans then bearing interest at 15 per cent on unsecured loans suddenly became illegal and punishable as a crime. May I ask Mr. President, what power did the Legislature at that time have to declare all of a sudden that 15 per cent was illegal and 14 percent was legal? What was the criterion that they used? There is nothing in the Ten Commandments that says, for instance: "Thou shalt not loan at 15 per cent." But the Legislature of this country, having in mind the public interest, overnight declared that a relationship between borrower and lender paying 15 per cent interest was illegal and that participants in this relationship should be punished for having committed a crime.
>
> We have other instances: The Child Labor Law, the law on company unions, the Blue Sunday Law — *malum non per se* but made *malum prohibitum, malum per accidens*.
>
> What is wrong with driving on the left side of the street? But all of a sudden, the Philippine Government under the American Ad-

ministration ordered us to drive on the right side of the street. There is nothing against "health, morals and safety," or even economics, about driving on the left side of the street. But it was found within the power of the legislature and the delegated power of the city councils to decide for the people that for its common good, everyone should drive on the right side instead of on the left side.

It is true, as the gentleman from Rizal has said, that we have lifted the definition of share tenancy from R. A. 1199 and we found no reason to change it. But I would like to disagree with the gentleman from Rizal when he said that just because share tenancy was defined in Republic Act 1199, it was the objective of that law to keep it legal and to perpetuate its legality. On the contrary, the provisions of Republic Act 1199 show that it was intended to veer away our agricultural economy from share tenancy. That is why it gave the tenant the power of choice, to go to the landlord and say: "I would like to choose to be a lessee and you cannot stop me."

This is the policy of R.A. 1199. Yes, share tenancy is defined in R.A. 1199, but it is defined precisely because the law wants to show what the law wanted to run away from and not what it wanted to perpetuate.

x x x x

But if share tenancy is not *malum per se*, certainly it must be very close to it, otherwise there would have been no land reform movements, abolishing tenancy in other countries. I am sure that it is not histrionics that moved the Indians to institute land reform in the vastness of the Indian continent, or Chen Cheng to institute it in Taiwan, or the United States to institute it in the southern states, or Rizal to think about it as early as 1888.

Senator Francisco Rodrigo, during the floor debates in the Senate, explained that share tenancy is being proscribed by the law not because of its intrinsic nature but because of the abuses and oppressive practices that have been inextricably bound with it.

. . .Provided that existing share tenancy contracts may continue in force and effect in any region or locality, to be governed in the meantime by the pertinent provisions of Republic Act Numbered Eleven hundred and ninety-nine, as amended.

Existing Share Tenancy Contracts May Continue

By virtue of the first clause of the section, share tenancy is abolished and outlawed. But this provision is qualified by the provisos that follow. The first qualification is made in deference to *already existing share tenancy contracts*. These contracts may

continue to exist and will be governed by the Agricultural Tenancy Act.

It will be seen from the above clause that R. A. 1199, as amended, otherwise known as the Agricultural Tenancy Act, has not been repealed by the Agricultural Land Reform Code. According to the provisions of the Agricultural Land Reform Code, the Agricultural Tenancy Act will continue to govern:

1. Existing share tenancy contracts until the same are terminated either by the proclamation of the National Land Reform Council (starting at the end of the agricultural year in which the proclamation is promulgated), or by the expiration of the period provided by the share tenancy contract, or by the exercise by the tenant of his option to elect the leasehold system, or by the landowner and the tenant entering into any other lawful contract in relation to the land;[22]

2. Leasehold tenancy contracts entered into under the Agricultural Tenancy Act, prior to the effectivity of the Agricultural Land Reform Code insofar as the contract and the provisions of the Agricultural Tenancy Act are not inconsistent with the provisions of the Agricultural Land Reform Code;[23] and

3. Tenancy under any system on fishponds, saltbeds, and lands principally planted to citrus, coconut, cacao, coffee, durian, and other similar permanent trees at the time of the approval of the Agricultural Land Reform Code, insofar as the consideration and the prevailing tenancy system are concerned.[24]

. . . until the end of the agricultural year when the National Reform Council proclaims that all the government machineries and agencies in that region or locality relating to leasehold envisioned in this Code are operating.

The Land Reform Council

The Land Reform Council, created under Chapter VII of the Code, is intended as a unified and coordinating body for the formulation and implementation of land reform projects. It is composed of the Governor of the Land Authority, Chairman,

[22] Sec 4, Rep. Act No. 3844.
[23] *Id.*
[24] Sec. 35, Rep. Act No. 3844.

and the Administrator of the Agricultural Credit Administration, the Chairman of the Board of Trustees of the Land Bank, the Commissioner of the Agricultural Productivity Commission, and another member appointed by the President upon recommendation of the minority party receiving the second largest number of votes in the last presidential election, Members, and the Agrarian Counsel as Legal Counsel.[25]

Among the functions of the Council is to select and designate certain areas as land reform districts, constituting one or more land reform projects. In selecting these districts, the Council considers certain factors affecting the feasibility of acquiring the aeras within the district for distribution to the tenants.[26]

Under the National Land Reform Council are Regional Land Reform Committees, and under the latter are Land Reform Project Teams which help on their own respective levels in gathering and appraising data, conducting investigations, formulating plans and implementing projects and policies.[27]

After considering the factors affecting feasibility, farm requirements and other factors, the Land Reform Council makes the proclamation that all the government machineries and agencies in the region or locality relating to leasehold envisioned in the Code are operating.[28] These machineries and agencies are principally those of the Agricultural Credit Administration for the extension of credit to the farmers, and of the Agricultural Productivity Commission for the extension of marketing, management and other technical services to the farmers.

Reason for the Provision

Originally, the Land Reform Bill did not have this provision requiring a proclamation before the share tenancy system could be automatically changed to leasehold for all tenants and landlords. But some voiced the fear that unless provisions are first made to insure the availability of sufficient credit and other services to tenants, the change might only result in a decrease in production and to great suffering on the part of the tenants themselves. It was claimed that the vast majority of tenants depend on their landlords for credit, that an automatic change to leasehold would impel the landholders to desist from continuing to extend credit to their tenants, and that this will either compel most of the tenants to submit to loan sharks or seriously disrupt their production. Thus, the already difficult situation of the tenants would further be aggravated. Hence, the Code as approved requires first a proclamation by the National Land Reform Council that all the agencies relating to leasehold are operating before the share tenancy contracts in general can be replaced by the leasehold system by operation of law.

[25] Sec. 126, Rep. Act No. 3844.
[26] Sec. 129, Rep. Act 3844.
[27] Secs. 103 and 131, *ibid.*
[28] Sec. 128(5), *ibid.*

But even with the proclamation, the change is not automatic. The change becomes effective only beginning with the next succeeding agricultural year after the *promulgation* of the proclamation, and the proclamation is deemed promulgated only after three successive weekly publication in at least two newspapers of general circulation in the region or locality affected by the proclamation.[29]

...unless such contracts provide for a shorter period.

Exception to the Need of Proclamation

When the existing share tenancy provides for a shorter period, the tenancy system changes to agricultural leasehold by operation of law at the end of said period, even before the proclamation by the National Land Reform Council.

What is the scope of the phrase "provide for a shorter period"? When the shorter period is provided expressly, whether orally or in writing, there is no question but that the clause applies. But suppose the provision for a shorter period is implied — will the clause still apply? It seems that it would, because the clause does not distinguish whether the provision for the shorter period is express or implied.

But suppose the share tenancy contract contains neither an express nor an implied period — will the clause apply? It seems that it would not because then the contract could not then be said to "provide for a shorter period."

But does not an agricultural share tenancy contract, in the absence of express stipulation, always contain an implied period — namely, one agricultural year? According to the Civil Code:

[29] *Id.*

ART. 1684. Land tenancy on shares shall be governed by special laws, the stipulation of the parties, the provisions on partnership and by the customs of the place.

The Agricultural Tenancy Act, which is the special law that governs share tenancy, does not contain any provision on the period of tenancy contracts in the absence of any stipulation. As a matter of fact, said Act seems to impose an indefinite period on tenancy contracts. Thus, it provides:

SEC. 10 *Contracts; Nature and Continuity of Conditions.* — The terms and conditions of tenancy contracts, as stipulated by the parties or as provided by law, shall be understood to continue until modified by the parties. x x x"

On the other hand, the Agricultural Tenancy Act also provides:

SEC. 55. *Applicability of General Laws.* — The provisions of existing laws which are not inconsistent herewith shall apply to the contracts governed by this Act as well as to acts or omissions by either party against each other during, and in connection with, their relationship.

Applying the above provision with Art. 1684 of the Civil Code, let us take recourse to the provisions on Partnership. However, there does not seem to be any applicable provision on the point in the contract of Partnership, except perhaps Article 1830 which is not very helpful either.

ART. 1830. Dissolution is caused:

(1) Without violation of the agreement between the partners:

(a) By the termination of the definite term or particular undertaking specified in the agreement;

(b) By the express will of any partner, who must act in good faith, when no definite term or particular undertaking is specified;

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking;

(d) By the expulsion of any partner from the business *bona fide* in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners where the circumstances do not permit a dissolution under any other provision of this article, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) When a specific thing, which a partner had promised to contribute to the partnership, perishes before the delivery; in any case by the loss of the thing, when the partner who contributed it having reserved the ownership thereof, has only transferred to the partnership the use or enjoyment of the same; but the partnership shall not be dissolved by the loss of the thing when it occurs after the partnership has acquired the ownership thereof;

(5) By the death of any partner;

(6) By the insolvency of any partner or the partnership;

(7) By the civil interdiction of any partner;

(8) By decree of court under the following article.

There is, however, the following provision of the Civil Code on Leases of Rural Lands:

ART. 1682. The lease of a piece of rural land, when its duration has not been fixed, is understood to have been made for all the time necessary for the gathering of the fruits which the whole estate leased may yield in one year, or which it may yield once, although two or more years may have to elapse for the purpose.

It will be noticed from the above provision that the first presumption is "one year" which seems to refer to a calendar year, specially when taken in reference to the word "years" in the next following clause. But in agricultural tenancy, an agricultural year may be less, much less, or more, than a calendar year.[30] The first agricultural year for coconuts is about seven (7) years, and after the first harvest, the subsequent agricultural year is every 45 days thereafter. Again, what would be the effect of the above Article on Sec. 10 of the Agricultural Tenancy Act?

Then, again, there is the following provision of the Civil Code:

ART. 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for one year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

[30] See Sec. 5(c), Rep. Act No. 1199, as amended.

But then, the above article specifically refers to lease of urban lands. Be that as it may, the custom prevailing in each locality may somtime help.

...or (unless) the tenant sooner exercises his option to elect the leasehold system.

Another Exception to the Need of a Proclamation

Again, there is no need to wait for the proclamation by the National Land Reform Council if the tenant should want to exercise his option to elect the leasehold system. What is the "option to elect the leasehold system" referred to in the above clause?

What Option Referred To

Does it refer to the option provided for in Section 14 of the Agricultural Tenancy Act? Said Section 14 reads as follows:

> Sec. 14. *Change of System.*—The tenant shall have the right to change the tenancy contract from one of share tenancy to leasehold tenancy and vice versa and from one crop sharing arrangement to another of the share tenancy. If the share tenancy contract is in writing and duly registered, the right to change from one crop sharing arrangement to another or from one tenancy system to another may be exercised at least one month before the beginning of the next agricultural year after the expiration of the period of the contract. In the absence of any registered written contract, the right may be exercised at least one month before the agricultural year when the change shall be effected.

It will be noted that Section 14 refers to the right of the tenant:

1. To adopt the *sharing system* that will govern his tenancy relationship with the landholder. Substantially, this means that the tenant has the right to pick the items of contribution that he will shoulder and to get the corresponding percentage of the harvest which the law allots to them.

2. To change the *tenancy system* from share to leasehold, or from leasehold to share, and back.

The section requires, however, that if the tenant wants to exercise this right, he should exercise it at least one month before the agricultural year when the change shall be effected; but if the tenancy contract is in writing and duly registered, the right may

be exercised at least one month before the beginning of the next agricultural year after the expiration of the period of the contract.

Since Section 14 refers to the right of the tenant to change not only the tenancy system but also the sharing arrangement and grants the right to change the system not only from share to leasehold but also from leasehold to share, there is some doubt as to whether the "option to elect the leasehold system" referred to in the above-cited clause is the same as the right of option provided for in said Section 14.

Again, it will be noted that said Section 14 gives the tenant the right to change the system from share tenancy to *leasehold tenancy*. Chapter I of the Agricultural Land Reform Code governs the *agricultural leasehold system*. What, then, can the tenant opt to elect — the leasehold tenancy system under the Agricultural Tenancy Law as indicated by Section 14 thereof, or the agricultural leasehold system under Chapter I of the Agricultural Land Code? Apparently, upon the effectivity of the Agricultural Land Reform Code, the share tenant can opt to elect only the agricultural leasehold system under Chapter I of the Code, for that is what the above-cited clause says: leasehold system, not leasehold tenancy system — except in the case of fishponds, saltbeds, and lands principally planted to permanent trees, which, as provided in Section 35 of the Code, continue to be governed by the Agricultural Tenancy Act. Substantially, however, the leasehold tenancy system under the Agricultural Tenancy Act is the same as the agricultural leasehold system under Chapter I of the Agritural Land Reform Code, although these laws differ in some of their provisions.

The foregoing considerations seem to indicate that the "option to elect the leasehold system" in Section 4 of the Agricultural Land Reform Code is not exactly the option referred to in Section 14 of the Agricultural Tenancy Act. But if this is so, how will the right of option under the above-cited clause be exercised? The law does not specify.

. . . Provided, further, That in order not to jeopardize international commitments, lands devoted to crops covered by marketing allotments shall be made the subject of a separate proclamation that adequate provisions, such as the organization of cooperatives, marketing agreements, or other similar workable

arrangements have been made to insure efficient management on all matters requiring synchronization of the agricultural with the processing phases of such crops.

SEPARATE PROCLAMATION

An example of a crop covered by marketing allotments (quota) is sugar. The clause states that such crops shall be made the subject of a separate proclamation, evidently also by the National Land Reform Council.

The reason behind this requirement of a special proclamation is that the crops referred to involve international commitments and usually require complicated operations and arrangements in their production, processing and marketing. A sudden nation-wide change without special precautions might disrupt production and other operations. Thus, for large-scale conversions, sugar tenants must learn to act in a cooperative way with their fellow tenants in order that when they come to manage their farms as lessees, they will be able to maintain modern methods in their farms and be able to deal with the sugar mills or centrals and sugar dealers.

What would be the effect of the special proclamation? Impliedly, it will have the same effect as the proclamation referred to in the first proviso; namely, the share-tenants in the lands affected will become agricultural lessees under the Agricultural Land Reform Code at the beginning of the agricultural year next succeeding the year in which the proclamation is made.

However, the change to leasehold need not wait for the special proclamation when the share tenancy contract provides for a shorter period or the tenant sooner exercises his option to elect the leasehold system.

. . . *Provided, furthermore, That where the agricultural share tenancy contract has ceased to be operative by virtue of this Code, or where such a tenancy contract has been entered into in violation of the provisions of this Code and, therefore, null and void, and the tenant continues in possession of the land for cultivation, there shall be presumed to exist a leasehold relationship under the provisions of this Code.*

An existing agricultural share tenancy contract ceases to be operative by virtue of the Agricultural Land Reform Code in any of the following cases, whichever occurs earlier:

1) When the period provided in the share tenancy contract expires;

2) When the share tenant exercises his option to elect the leasehold system;

3) At the end of the agricultural year when the National Land Reform Council makes the necessary proclamation.

When the share tenancy contract ceases to be operative, or when a share tenancy contract is attempted during the effectivity of the Code and against its provisions, there is, as it were, a hiatus, which, if recognized as such, is prejudicial to the tenant. Hence, the law declares that if the tenant in such a situation continues in possession of the land for cultivation, there shall be presumed to exist a leasehold relationship under the provisions of the Agricultural Land Reform Code. But can the tenant insist, in such a situation, to continue in possession of the land for cultivation in the face of the landholder's objection? It seems that he can, because the law anchors the presumption of the existence of a leasehold relationship upon the unilateral act of the tenant continuing to be in possession of the land for cultivation.

Suppose, in the same situation being considered, the landholder forcibly ejects the tenant, claiming that at the time of ejectment there is no valid, legal relationship, whether tenancy or agriculutral leasehold, between them? Can the tenant seek reinstatement? It seems he can, both from the spirit and the letter of the law? Chapter I of the Code is aimed to give further protection and better standing to the tenants. Hence, its provisions cannot be interpreted to facilitate the loss of his means of livelihood. Moreover, as already stated, the law anchors the presumption of the existence of a leasehold relationship upon the unilateral act of the tenant continuing in possession of the land.

It will be noted that the law merely presumes the existence of a leasehold relationship when the tenant continues in possession of the land. Hence, the presumption can be rebutted.

. . . *without prejudice to the right of the landowner and the former tenant to enter into any other lawful contract in relation to the land formerly under tenancy contract, as long as in the interim the security of tenure of the former tenant under*

Republic Act Numbered Eleven hundred and ninety-nine, as amended, and as provided in this Code, is not impaired.

At the moment when the share tenancy contract terminates, or in the instance when there is entered into an illegal, and therefore void, share tenancy contract, the tenant and the landholder are free to enter into any other lawful contract in relation to the land. Such contract may be a contract of employer-employee or labor administration. But until such contract is entered into, the security of tenure of the tenant is protected.

Security of Tenure

The security of tenure referred to is that provided under the Agricultural Tenancy Act and the Agricultural Land Reform Code. Principally, the security of tenure of the tenant under the Agricultural Tenancy Act is provided for in Section 9 and Sections 49 to 51 thereof; and under the Agricultural Land Reform Code, in Sections 8 to 10 and Sections 36 and 37 thereof. Under both laws, the security of tenure of the tenant has two aspects: the *continuance of the relation* in spite of death, permanent incapacity, and transfer of the land, and the *protection of the tenant from dispossession*, except for any of the lawful causes recognized by law and with the approval of the Court. Thus, the agricultural lessee or the tenant ceases to be such, when he abandons or surrenders the landholding. In such a case, there is no need of court action. But when the landholder wants to dispossess the tenant, who insists on continuing in possession of the land, the landholder must first get the approval of the Court.

The clause provides that "in the interim" the security of tenure of the tenant should not be impaired. The "terminal points" of the interim period referred to seems to be (1) the moment when the share-tenancy contract ceases to be operative or is entered into illegally and is therefore void, and (2) the moment when the tenant and the landholder enters into "lawful contract". What is the specification of the security of tenure of the tenant during the interim period? More specifically, can the landholder ask the share tenant to agree, for instance, that henceforth the tenant will be a laborer in the farm, without the landholder first going through the formalities of ejectment under Sections 49 to 51 of the Agricultural Tenancy Act?

It may be argued that when the tenant and the landholder enter freely into a contract of employer-and-employee or labor administration, the tenant may be deemed to have surrendered voluntarily the landholding which, under the Agriculutral Tenancy Act and under the Agricultural Land Reform Code, constitutes an extinguishment of the relation without the intervention of the Court. On the other hand, it may be claimed, that to do away with the formalities of ejectment and to give the landholder a very easy way of "convincing" the tenant to become a laborer virtually destroys the so called security of tenure of the tenant. It is claimed by some that on the practical level, it will be very difficult to persuade a tenant to voluntarily "surrender" his landholding, but it would be extremely easy to convince him to sign a piece of paper ostensibly to improve his relation with his landholder but which in fact makes him a laborer.

. . . Provided, finally, That if a lawful leasehold tenancy contract was entered into prior to the effectivity of this Code, the rights and the obligations arising therefrom shall continue to subsist until modified by the parties in accordance with the provisions of this Code.

This clause envisions the case wherein the landholder and the tenant had entered into a leasehold tenancy contract in accordance with the Agricultural Tenancy Act before the Agricultural Land Reform Code took effect. In such a case, the rights and obligations arising from the contract shall continue to subsist until modified by the parties in accordance with the provisions of the Code. This clause respects a lawful leasehold tenancy contract already entered into under the Agricultural Tenancy Act before the Code took effect. But since the Code modified some of the provisions of the Agricultural Tenancy Act, some of the rights and obligations arising from an old leasehold tenancy contract may not be fully in accord with the provisions of the Agricultural Land Reform Code. Would they continue to be in effect? It seems that they would, but future modifications by the parties must be in accord with the provisions of the Code.