

## ANSWERS TO BAR EXAMINATION QUESTIONS FOR 1957

### CIVIL LAW

*Answered by the Editorial Board in consultation with Prof. Eduardo P. Caguioa.*

#### I.

- (a) Give the exact date the Civil Code of 1889 was repealed.
- (b) Who was Mucius Scaevola?
- (c) In general legal parlance, what is the difference between "legacy" and "devise"?
- (d) Define "Parens Patriae".
- (a) August 30, 1950 (Lara vs. Del Risario, 50 O.G. 1975; Cachero vs. Manila Yellow Taxicab. G.R.L. No. 8721, May 23, 1957)
- (b) A Spanish author who wrote a commentary on the Spanish Civil Code.
- (c) A "legacy" is a gift of personal property given by virtue of a will and a "devise" is a gift of real property also given by virtue of a will (Art. 782, Civil Code of the Philippines).
- (d) "Parens Patriae" is a term used to describe the condition in which the State acts as guardian of persons under its protection, such as incompetents.

#### II.

*H has died survived only by his parents, F and M, and by his pregnant widow, W. His posthumous child, C, was born alive, but it died within 24 hours after complete delivery from the maternal womb. After the death of C, who will succeed to or acquire the property of H? Briefly explain your answer.*

W will succeed to the entire property of H, unless C had an intra-uterine life of less than seven months, in which case, W, F and M will succeed to the entire estate, W to one-half and F and M to the other half. Under normal conditions, the law only requires the foetus to be born alive (Art. 41, Civil Code of the Philippines) in order to have personality. Hence W and C are the heirs of H to the exclusion of F and M (Art. 978 and 985, Civil Code of the Philippines) and on the death of C, his whole estate passed to W (Art. 985 Civil Code of the Philippines). However, in case the foetus had an intra-uterine life of less than seven months, the law requires it to live for 24 hours after complete delivery from the maternal womb in order to have personality (Art. 41, Civil Code of the Philippines). In this case, on the death of H, and C not having personality, W and F and M will be the concurrent heirs in the proportion above stated (Art. 997 Civil Code of the Philippines).

#### III.

*In 1952, H, a widower with a son, S, married a widow, W, with a daughter, D. In 1955, S and D were married and they subsequently had a child, C.*

*Explain the nature of C's filiation (whether legitimate, illegitimate, etc.).*

C is a natural child by legal fiction and hence an illegitimate child (Art. 89 Civil Code of the Philippines). D being the stepsister of C, their marriage is prohibited and void from the very beginning (Art. 80 No. 7, Civil Code of the Philippines). Hence C is illegitimate.

#### IV.

*O, the owner of a residential house and lot in Manila, leased the property to L for 10 years. There was no stipulation between the parties as to improvements. The property had a driveway for cars, but it had no garage. L built a garage.*

- (1) What is the legal nature of the garage as an improvement?
- (2) Can O retain the garage after the expiration of the lease?
- (3) Can O require L to remove the garage after the expiration of the lease?
- (1) The garage is a useful improvement because it resulted in an improvement of utility to every and all possessors. (5 Manresa, 5th ed. 242).
- (2) O may retain the garage after the expiration of the lease by paying to the lessee one half of the value of the garage at that time (Art. 1678 Civil Code of the Philippines; Lapena vs. Morfe, G.R. No. L-10089, July 31, 1957)
- (3) O may not require L to remove the garage after the expiration of the lease as this right of removal is potestative with the lessee (Art. 1678, Civil Code of the Philippines).

#### V.

*(a) B, in good faith, has purchased a diamond ring from C, a friend of his. C gave B a bill of sale. Later on, O identified the ring as one she had lost about a year ago. There is no question as to veracity of O's claim. In the meantime, C has disappeared. What advice you give B in reference to O's demand that the ring be returned or surrendered to her? Explain your answer.*

*(b) in a 10-year lease of a store space in the Escolta, to be dated today, may the parties stipulate that the rental shall be, for every month, the equivalent in pesos, during the preceding month, of \$500.00? Briefly explain your answer.*

(a) I would advise B to return the ring to O, unless C sold the ring under a statutory power of sale or by order of a competent court. O has a right to the ring under Art. 559, Civil Code of the Philippines. However, B can retain the ring under the two conditions above stated by virtue of Art. 1505 No. 2, Civil Code of the Philippines.

(b) The parties may not so stipulate as it will be violative of R.A. No. 259 which provides that "every provision contained in, or made with respect to, any obligation which provision purports to give the obligee the right to require payment in gold or in a particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, be as it is hereby declared against public policy, and null, void and of no effect..."

#### VI.

*Your client has a wife, three legitimate children by a previous marriage, and a protegee. He asks you whether or not he can will his property equally to all five of them. Explain the answer you will give your client.*

I will tell my client that he can will his property equally to all five since he is allowed to dispose of his property in any manner he pleases provided

he does not impair the legitimes of the compulsory heirs (Art. 842 par. 2, Civil Code of the Philippines). My client having three legitimate children, the legitime of each child is 1/6 of the estate (Art. 888 Civil Code of the Philippines) and that of the wife is likewise 1/6 of the estate (Art. 892 par. 2, Civil Code of the Philippines). The rest of the estate or 2/6 is free portion. To divide therefore the whole estate between the wife, the three legitimate children and the protege will be to give each 1/5 of the estate which is more than the legitime of each of the compulsory heirs.

## VII.

(a) Give an example of a divisible obligation and an example of an indivisible obligation.

(b) X acquired a booklet of 10 sweepstakes tickets directly from the Office of the Philippine Charity Sweepstakes. X paid P40.00 for the booklet, less the customary discount. What was the legal nature of X's act in acquiring the tickets? Did he enter into a contract of purchase and sale? Briefly explain your answer.

(a) An obligation to deliver 100 sacks of rice in four installments is divisible; an obligation to deliver a car is indivisible.

(b) X acquired the tickets by purchase. He entered into a contract of sale since all the elements of the contract are present. The purpose of the agreement is to transfer ownership of the tickets, the consideration is the P40.00 less the discount, the parties are X and the Sweepstakes Office and the object is either the tickets if X intends to resell them or the hope of the prizes in case he bought them for himself. In the first case the contract is commutative and in the second the contract is aleatory.

## VIII.

(a) A has sold a piano to B, by private instrument, for P1,000.00. In that contract of sale, which is the object and which is the cause?

(b) Who had the ownership of the piano at the moment next after B had paid the P1,000.00 to A? Explain your answer.

(a) It depends: As to A, the vendor, the object is the piano and the consideration the P1,000.00; as to B, the vendee, the object is the P1,000.00 and the consideration the piano.

(b) A is still the owner of the piano since in sale ownership is not transferred by the agreement alone nor the payment of the consideration but by delivery. In the above case, there is no actual delivery and the execution of the private document is not constructive delivery. (Arts. 1477 and 1498 Civil Code of the Philippines.)

## IX.

(a) A client requests you to file suit on a demand note, dated August 4, 1956, in the amount of P100,000.00, with interest thereon at 12% per annum. Disregarding attorney's fees, moral damages, costs, and general relief, state the amounts you will pray for in the corresponding complaint.

(b) A was killed, and B was severely injured, while they were passengers in a TPU truck which fell into a ditch due to a mechanical defect. In a suit against the owner of the truck for breach of the contract of carriage, may B and the heirs of A claim moral damages?

(a) The amount of P100,000.00, the principal obligation; 12% interest on the

amount of P100,000.00 from August 4, 1956 to the time of payment and 6% interest on the 12% interest due and unpaid at the time of the filing of the complaint and up to the time of payment (Art. 2212 Civil Code of the Philippines.)

(b) It depends: As to B, the claim for moral damages will not prosper since in culpa contractual such as the breach of contract of carriage in the present case, moral damages are not available for physical injuries. (Cachero vs. Manila Yellow Taxicab, G.R. No. L-8721, May 23, 1957). As to the heirs of A, the claim for moral damages will prosper since in case of death the carrier is liable for moral damages (Art. 1764 in connection with Art. 2206 par. 3, Civil Code of the Philippines.)

## X.

O employs a driver, D, for an automobile which he uses for private purposes. While D was driving the car without any passenger at all, he negligently caused injury to P, a pedestrian.

(a) Is the source of D's obligation in favor of P a delict or a quasi-delict? Briefly explain your answer.

(b) Can O have any obligation in favor of P based either on delict or quasi-delict?

(a) D's obligation in favor of P may arise both from delict and quasi-delict because the same negligent act may give rise to both liabilities (Barredo vs. Almario, 73 Phil. 611). However, the offended party cannot recover twice. (Art. 2177 Civil Code of the Philippines.)

(b) O has an obligation in favor of P based on quasi-delict but not on delict since the subsidiary civil liability under the Revised Penal Code is only applicable to an employer engaged in an industry. However under Art. 2180 of the Civil Code of the Philippines, O is liable to P even though he is not engaged in an industry and even though he was not in the car at the time, provided D was acting within the scope of his assigned tasks. (Campo vs. Camarote, G.R. No. L-9147, Nov. 29, 1956). O however, can interpose the defense of a good father of the family to prevent the damage (Art. 2180, last par. Civil Code of the Philippines.)

## LAND REGISTRATION AND MORTGAGES

Answered by the Editorial Board in consultation with Commissioner Antonio H. Noblejas, Reviewer at the Ateneo College of Law.

## I.

Who are the person or persons authorized to file an application for registration of title to whom the law alludes as "claiming, singly or collectively, to have the power of disposing of the legal in fee simple"?

The persons referred to in this question are those authorized, whether singly or collectively, to represent the owner of the legal estate in fee simple in a land, as in the case of attorneys-in-fact or agents authorized to represent another. Such persons may apply for registration by virtue of a general power of attorney or a special power, but the application must be in the name of their principals. These are the persons alluded to as "claiming, singly or collectively, to have the power of disposing of the legal estate in fee simple" under paragraph 2 of section 19 of Act 496.

## II.

(1) *How may a portion of public land be acquired and converted into private land?*

(2) *Under what circumstances may occupancy of a portion of public land vest title registrable under the Land Registration Act?*

A portion of public land may be acquired and converted into private land through any of the modes of concession recognized under the present Public Land Act (Commonwealth Act 141, as amended). Qualified persons after compliance with the minimum legal requirements may obtain homestead patents, sales patents, free patents, or such other forms of public land grants as are recognized by our Public Land Laws. When patents or grants are issued, the same are by mandate of the law (Sec. 122, Act 496) required to be registered in the office of the Register of Deeds of the province or city where the lands covered therein lie. It is this registration that operates to legally divest the state of its title to such public lands and converts the same into private within the contemplation of the Torrens System.

Occupancy of a portion of public land may vest title registrable under the Land Registration Act, when such occupancy had been made under circumstances contemplated under paragraphs (a) and (b) of section 48 of the Public Land Act (Commonwealth Act 141), the latter paragraph having been amended lately by Republic Act 1942, approved June 22, 1957. Under the provisions of said law as amended the possession and occupancy of a public land must have been open, continuous, exclusive, notorious and under a bona fide claim of ownership for at least thirty (30) years immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure.

## III.

(1) *Distinguish the manner of registering a voluntary document affecting registered real property from that of an involuntary one.*

(2) *When is registration considered effective as to each kind of instrument?*

Voluntary documents like sales, mortgages, donations or leases affecting registered real estate under the Torrens system, are registered by presenting said instruments in the primary entry book in the Office of the Register of Deeds of the place where the lands affected are located, accompanied by the corresponding owner's duplicate certificates of title. In accordance with section 55 of Act 496 as amended, the production of the owner's duplicate certificate whenever a voluntary document is presented for registration shall be the authority to the register of deeds to enter a new certificate or make a memorandum of registration in accordance with such instrument. In the case however of involuntary documents such as attachments, levies on execution, notices of *lis pendens*, adverse claims and other liens pursuant to court order, the surrender of the owner's duplicate certificate of title is not an indispensable requisite for the registration of the lien on the original certificate of title, but the law (Section 72 of Act 496) provides that the register of deeds must, within twenty-four (24) hours after such registration, request the registered owner to surrender his duplicate in order that a memorandum of such lien may be made therein, reporting the matter to the court should the owner refuse to comply with the request of the register of deeds, and the court after notice, shall enter an order for the production of such duplicate and may enforce the order by suitable process.

Mention likewise be made of the provisions of Republic Act 456 which pertinently provide "no voluntary document by which real property or an interest therein is sold, transferred, assigned, mortgaged or leased shall be registered in the registry of property, unless the real estate taxes levied and actually due thereon shall have been duly paid". If evidence of such payment is not presented within fifteen (15) days from the date of entry of said document in the primary entry book of the register of deeds, the entry shall be deemed cancelled. This evidence of payment of taxes is required to be presented before registration of voluntary instruments but not of involuntary ones.

In the case of voluntary dealings in registered land, entry in the day book is sufficient registration to afford the innocent purchaser for value the full protection of law, provided that he presents and files a duly notarized and lawful deed, together with the owner's duplicate certificate of title to the property affected, and paid all the registration fees due within fifteen (15) days after the entry. In the case of involuntary dealings, the requirements are the same except that the surrender of the owner's duplicate is not necessary. This is so because after compliance with the above requirements by the person seeking registration, and after entry in the day book, he has nothing left to be done, the rest of the process remaining with the government to perform and accomplish through the register of deeds (Levin vs. Bass, 49 Off. Gaz. 4, p. 1444, April 1953; Villazor vs. Camon et al., G.R. No. L-8551, June 29, 1951; Potenciano vs. Dineros, G.R. No. L-7614, promulgated May 31, 1955; Barretto vs. Arevalo et al.; 52 O.G. 13 p. 5818, October 16, 1956).

## IV.

(1) *Under what circumstances is the assurance fund answerable for the loss of, or damage to, a registered real property?*

(2) *When does registration of title to real property become compulsory?*

(3) *State the essentials of a valid voluntary mortgage.*

The Assurance Fund is answerable for the loss of, or damage to, a registered real property under the Torrens system under the following circumstances:

(1) That the claimant must have suffered actual loss or damage by reason of the operation of the Torrens system;

(2) That there was no negligence on his part;

(3) That he is barred or otherwise precluded from recovering the land or interest therein lost;

(4) That the loss or damage was not occasioned by breach of trust or by an improper exercise of sale in a mortgage foreclosure proceeding;

(5) That the action was instituted within six (6) years from the time the right to bring the action accrued, provided that in case the person entitled to bring the action is a minor or in prison or insane, such disabled person shall be permitted to bring the action even beyond six (6) years so long as it is within two (2) years after the removal of such legal disability.

Registration of title to real property becomes compulsory when the Director of Lands (on behalf of the government, represented by the Solicitor General) files a petition for settlement and adjudication of titles to lands under Act No. 2259 (the Cadastral Act), as amended. All owners of lands included in the cadastral survey are by mandate of the law compelled to go to court, assert

their rights and prove their respective ownership, lest the court declare such lands as public. To these persons, the registration of their titles becomes compulsory.

Registration of titles acquired through administrative proceedings under the Public Land Act affecting disposable public agricultural lands may likewise be considered as compulsory inasmuch as patents issued are not deemed registered unless the same are entered in the register of deeds' office and owner's duplicate certificates of Torrens titles are issued to the patentees upon payment of the necessary fees in accordance with section 107 of Act 141 in connection with section 122 of Act 496, as amended.

The essentials of a valid voluntary mortgage affecting real property are:

- (1) That it is constituted to secure the fulfillment of a principal obligation;
- (2) That the mortgagor be the absolute owner of the thing mortgaged;
- (3) That the persons constituting the mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose;
- (4) That only immovables and alienable real rights in accordance with law, imposed upon immovables, may be the object of the contract;
- (5) That the mortgage appears in a public document and recorded in the registry of property;
- (6) That it is also of the essence of the contract that when the principal obligation becomes due, the property in which the mortgage consists may not be appropriated by the creditor, but must be sold at public auction in accordance with the procedure prescribed by law for the satisfaction of the obligation;
- (7) That when the instrument consists of two (2) or more pages, each page which is to be recorded be signed by the persons and witnesses executing the same.

If a valid voluntary mortgage refers to chattels, it is essential that an affidavit of good faith be appended to the instrument, and that the chattel mortgage be registered in the Office of the Register of Deeds concerned where the mortgagor resides and where the property is situated. In case however of a chattel mortgage of a *vessel*, the registration required is in the office of the Collector of Customs at the port of entry. A chattel mortgage of *automobiles* should also be recorded in the Motor Vehicles Office so that the mortgagee's failure to report the mortgage executed in his favor renders it ineffective against a purchaser who registers his sale in the Motor Vehicles Office (*Borlough vs. Fortune Enterprises, Inc.*, G.R. No. L-9451, promulgated March 29, 1957).

#### V.

*State the elements required by law to make a document showing a valid agreement regarding unregistered real property inscribable in the office of the register of deeds.*

In order that a document showing a valid agreement regarding unregistered real property may be inscribed, entered and registered in the Office of the Register of Deeds, the following are required:

The names, ages, civil status, and the residences of the parties interested in the act or contract registered and in case of marriage, the name of the wife, or husband, as the case may be, the character of the contract and its conditions, the nature of each piece of land and its improvements only, and not any other kind of real estate or properties, its situation,

boundaries, area in square meters, whether or not the boundaries of the property are visible on the land by means of monuments or otherwise, and in the affirmative case, in what they consist; the permanent improvements existing on the property; the page number of the assessment of each property in the year when the entry is made, and the assessed value of the property for that year; the notary or the officer who acknowledged, issued, or certified the instrument or deed; the name of the person or persons who, according to the instrument, are in actual possession of each property; a note that the land has not been registered under Act numbered four hundred and ninety-six nor under the Spanish Mortgage Law; that the parties have agreed to register said instrument under the provisions of Act 3344.

#### VI.

*"A" delivered to "B", a friend, his owner's duplicate certificate to show to a prospective buyer. "B", with the help of two confederates, posed himself as "A" and sold the land involved in the certificate of title to "C". The deed of sale was presented for registration together with the owner's duplicate certificate and, as a result, a transfer certificate of title was issued to "C". After sometime, "A" discovered the fraud.*

(1) *Under the given facts, can "A" successfully sue for the annulment of the deed of sale and transfer certificate of title? Give your reasons.*

(2) *Against whom may "A" institute action to recover damages for the loss of his proprietary rights should he fail in the action indicated in the question immediately preceding?*

Under the given facts, "A" can successfully sue for the annulment of the deed of sale and the transfer certificate of title for the reason that such title issued to "C" was based on a deed of sale executed by an impostor and therefore void. Under section 55 of Act 496, registration procured by the presentation of a forged deed is null and void. A deed which is void and therefore cannot transfer a valid title, could not be validated by the mere fact that it was successfully registered. Although the underlying purpose of the Land Registration Act is to impart stability and conclusiveness to transactions that have been placed within its operations, still that law does not permit its provisions to be used as a shield for the commission of fraud (*De Lara and De Guzman vs. Ayroso*, 50 O.G. 10, p. 4838, October 1954). In this connection it may not be amiss to state that the situation might be different if the certificate of title was already in the name of the forger when the land was sold to an innocent purchaser for value.

"A" may institute a personal action to recover damages for the loss of his proprietary rights against "B" and his two confederates. Should he likewise fail in this action to recover damages, the Assurance Fund can not be proceeded against for the reason that the Assurance Fund maintained by the government is not liable for loss or damage suffered by reason of a breach of trust.

#### VII.

*Visiting the parcel of land he wanted to buy, "X" found a house thereon. The dweller, "W", informed him that he had erected the house two years ago, on a ten-year contract of lease. Seeing that the lease was not registered, "X" bought the land and was issued a transfer certificate of title therefore clear*

of any encumbrance. Can "X" eject "W" before the expiration of the term of the lease? State your reasons.

"X" having had prior actual knowledge of the existing contract of lease and the term thereof which is ten (10) years, I believe he cannot eject "W" before the expiration of the term of the contract even though said contract of lease was not registered. Actual knowledge of a prior unregistered interest is equivalent to registration; thus, although the lease contract was not registered, it is nevertheless binding upon "X", because his actual knowledge thereof is equivalent to registration.

#### VIII.

(1) *May a judgment in a registration proceeding be reopened after thirty days from its promulgation, in the absence of an appeal or a motion for a new trial filed in due time?*

(2) *When may such judgment become unassailable?*

In the absence of an appeal or a motion for new trial filed in due time, a judgment in a registration proceeding may be reopened after thirty (30) days from its promulgation upon proper petition by the aggrieved party on the ground of *actual fraud*. This remedy may be availed of on the exclusive ground of actual fraud, after the finality of the judgment but before the issuance of the decree of registration by the Commissioner of Land Registration (Rivera vs. Moran, 48 Phil., 836).

Such judgment may become unassailable after the expiration of one year from the date of entry or issuance of the decree of registration by the Commissioner of Land Registration or, even earlier than said period if the property has passed to an innocent purchaser for value in accordance with section 38 of Act 496.

#### IX.

"X" bought an unregistered parcel of land from "A" but failed to have the deed of sale inscribed in the office of the register of deeds in accordance with Act No. 3344. He later sold the same land to "Y" and then, without the latter's knowledge, mortgaged it to "Z". When "X" failed to settle his indebtedness, "Z" foreclosed the mortgaged property and bought it in the ensuing sale at public auction, following which he registered the corresponding deed of sale in the office of the register of deeds. Granting that the sale was regular, did "Z" acquire the property validly to the prejudice of "X"?

Registration under Act 3344 shall be without prejudice to third persons with better rights. Thus, "Z" could not acquire the property validly to the prejudice of "Y", because the registration of such deed of sale under Act 3344 could only affect third persons who might deal with the property subsequent thereto, but not "Y" who had a preexisting right over the same.

#### X.

"A" erected a house on the parcel of land he was holding on lease. Later on, "B", the lessor, secured the registration of the land and was issued an original certificate of title for it and all the improvements thereon. Can "A" successfully seek the annotation of his proprietary right to the house on the certificate of title so issued? State your reasons.

I believe that "A" can successfully seek the annotation of his proprietary

right to the house on the certificate of title issued to "B". From the facts of the case, it appears that the title to the land and the improvements thereon still stands in the name of "B" there having been no transfer to an innocent purchaser for value, and under the principle that the provisions of the Torrens system should not be used as a shield for the commission of fraud, it would seem that "B" cannot or should not deny "A" the right to seek the annotation of his proprietary right to the house on the corresponding certificate of title. To accomplish this, a petition for annotation of the improvements, after notice and hearing, may be filed under Section 112, of Act 496. Likewise, if the period of one year has not as yet expired from the date of the decree of registration and title in favor of "B", "A" I believe would not be precluded from filing a petition for the reopening of the decree in order that his ownership of the house may accordingly be noted on the decree of registration and this.

#### CRIMINAL LAW

*Answered by the Editorial Board in consultation with Judge Ruperto Kapunan, Jr., Professor and Reviewer at the Ateneo College of Law.*

#### I.

(a) *With reference to penalties for offenses punishable under the Revised Penal Code, what is meant by degree and what is meant by period?*

(b) *Give (1) an instance when degree is affected by mitigating circumstances, and (2) two instances when degree is affected by a privileged mitigating circumstance.*

(c) *State the rules for the application of the Indeterminate Sentence Law: (1) If the offense is punishable under the Revised Penal Code or its amendments; and (2) if the offense is punishable under any other law.*

(a) With reference to penalties under the Revised Penal Code, a *period* is a fraction of a given penalty, for instance, the minimum, or medium or maximum period of reclusion temporal. A *degree* is the penalty itself prescribed by law and which would constitute the basis for the reduction or increase of the penalty imposable to the offender in accordance with the rules prescribed by the Code, such as reclusion temporal or prison mayor.

(b) An instance where a *degree* is affected by mitigating circumstances is the case of homicide where the penalty of reclusion temporal has to be imposed in its minimum period because of the attendance of a mitigating circumstance. Two instances where *degree* is affected by a privileged mitigating circumstance: (a) incomplete self-defense in homicide and (b) where the offender is over 9 years but under 16 years of age.

If the offense is punishable under the Revised Penal Code, the court must fix an indeterminate sentence the maximum of which shall be that which could properly be imposed in accordance with the rules prescribed by the Revised Penal Code, taking into consideration the attending circumstances, and the minimum shall be within the range of the penalty next lower in degree to the penalty prescribed by law for the offense.

If the offense is punishable under a special law, the maximum of the sentence shall not exceed the maximum of the penalty prescribed for the offense, and the minimum not lower than the minimum prescribed by law.

## II.

(a) Who are criminally liable for light felonies?

(b) B assaults C who sustains physical injuries which heal in five days. D hides B in his house to prevent his arrest, knowing that he is wanted by the authorities for the assault on C. What is D's criminal liability for hiding B? Reason out your answer.

(a) Only the principals and accomplices are liable for light felonies.

(b) D is not criminally liable for hiding B in his house even if D knew that B is wanted by the authorities for attacking C, for the reason that the crime committed by B is a light felony — slight physical injuries, — for which only the principals and accomplices are liable.

## III.

(a) Bigamy is punishable with *prision mayor* in its full extent. Tried for bigamy in the proper court, A is found guilty of the crime charged. Applying the Indeterminate Sentence Law, within what penalty or penalties (not period or periods) should the minimum and the maximum of the sentence to be imposed on him be? (It is sufficient that you state the penalty or penalties without giving the periods thereof.) Explain your answer.

(b) Possession of a revolver or a pistol is punishable with imprisonment of from one year and one day to five years, according to Section 2692 of the Revised Administrative Code, as last amended by Republic Act No. 4. After trial, B is found guilty of illegal possession of a pistol and is sentenced to three years of imprisonment as maximum. Applying the Indeterminate Sentence Law, what is the minimum of the sentence that should be imposed on him?

(a) If a person is convicted of bigamy, the maximum of his indeterminate sentence should be within the range of the prescribed penalty of *prision mayor* and the minimum should be within the range of the penalty next lower or *prision correccional*.

(b) The court having filed the maximum sentence at 3 years, the minimum of the indeterminate penalty could be any penalty under 3 years and not less than 1 year and 1 day, which is the minimum of the penalty prescribed, in the discretion of the court.

## IV.

(a) L is prosecuted for homicide, with no aggravating circumstance being alleged in the information. Upon arraignment he pleads guilty as charged. The fiscal concedes voluntary surrender to an agent of a person in authority as a mitigating circumstance in addition to the voluntary plea of guilty. Taking into consideration the presence of two mitigating circumstances, and bearing in mind that homicide is punishable with *reclusion temporal* in its full extent, within what penalty should the maximum of the sentence to be imposed on him be? Explain your answer.

(b) Charged with and convicted of theft after a regular trial in the Municipal Court following his plea of not guilty, H appeals to the Court of First Instance of this city. Upon arraignment in the latter court, he pleads guilty as charged. Is he entitled to the mitigating circumstance of voluntary plea of guilty? Reason out your answer.

(a) Considering the presence of two mitigating circumstances with no aggravating circumstance, the maximum sentence of the offender should be within the range of *prision mayor*, for the reason that in accordance with Rule

5 of Article 64 of the Revised Penal Code, when there are two or more mitigating circumstances and no aggravating circumstance, the penalty imposable shall be the penalty next lower in degree to that prescribed by law for the offense.

(b) H is not entitled to the mitigating circumstance of voluntary plea of guilty, the same having been given in the court of first instance on appeal after having been tried and convicted by the Municipal Court. The law requires that the plea of guilty to be considered as a mitigating circumstance must be given prior to the presentation of the evidence for the prosecution; and while by the appeal the case will be tried *de novo* by the court of first instance, a trial *de novo* presupposes that there had been a previous trial. Considering that the reason for the mitigating circumstance is that the accused, by his voluntary plea of guilty, indicates repentance and moral disposition to reform and submission to the law, such plea must be given at the first opportunity, that is, before the court where the case is originally tried and not on appeal after the accused had gambled on his plea of not guilty.

## V.

C is accused of homicide under the following information:

"That on or about the 15th day of March, 1957, in the municipality of Malolos, Province of Bulacan, and within the jurisdiction of this court, the above named accused, with intent to kill, did then and there wilfully, unlawfully and feloniously assault M by stabbing the latter on the chest with a dagger, thus inflicting upon him physical injuries which were the direct and immediate cause of his death."

At the trial, the fiscal proved, without objection of the defense, that the killing was attended by evident premeditation.

(a) Of what offense should the court sentence C?

(b) In what period (minimum, medium or maximum) of the penalty for that offense should the court impose on C? Explain your answers.

(a) Since the information did not allege the circumstance of evident premeditation proven during the trial, the accused C can only be convicted of homicide. To qualify the killing into murder, the circumstance of evident premeditation should have been alleged in the information as an essential element of the crime of murder.

(b) The penalty prescribed for the offense must be imposed in its maximum period, it not appearing that the circumstance of evident premeditation which can only be considered as a generic aggravating circumstance, is not offset by any mitigating circumstance.

## VI.

(a) Distinguish instigation from entrapment.

(b) H is the owner and operator of a drug store. Suspecting that she sells her medicines at prices above the ceiling prices fixed by the government, government agents buy medicines from her at her drug store and pay with marked paper money. The prices at which she sells the medicines to the agents are higher than the ceiling prices and the agents apprehend her for violation of the Price Control Law. Accused of profiteering by the fiscal, she moves to quash the information on the ground that she was induced by the agents to commit the act for which she is being prosecuted. Assuming that the Price Control Law is still in force, how should the court resolve her motion to quash? Explain your answer.

Instigation is differentiated from entrapment in that in the former the instigator induces the offender to commit the crime in order to catch him; the instigator becomes a party to the crime. In entrapment, the officer does not induce the offender to commit the crime, but merely allows him to proceed with his criminal design in order to catch him in act of commission. In entrapment, the officer does not become a party to the crime.

The court should deny the motion to quash. The government agents did not in any way induce the owner of the store to sell medicines over the ceiling price fixed by the government. The officers went to the store as mere customers to verify their suspicions and found them to be true. In a case similar to the problem given the appellate court ruled that there was not even an entrapment.

#### VII.

(a) *The Spanish and the English texts of Article 157 of the Revised Penal Code are in part respectively worded as follows:*

"Será castigado con prisión correccional en sus grados medio y máximo el sentenciado que quebrantare su condena, fugándose mientras estuviere sufriendo privación de libertad por sentencia firme; x x x."

"The penalty of prisión correccional in its medium and maximum periods shall be imposed upon any convict who shall evade service of his sentence by escaping during the term of his imprisonment by reason of a final judgment. x x x."

*A is the accused in a criminal case in the Municipal Court of Manila. After trial, he is sentenced to the penalty of destierro and is ordered for the duration of his sentence not to enter any place within a radius of 100 kilometers from said city. He disobeys the order and comes back to live in Manila before his sentence expires. Prosecuted for a violation of Article 157 of the Revised Penal Code, he contends that he should be acquitted because the sentence which he evaded is not imprisonment but destierro. How should the court decide the case? Explain your answer.*

(b) *Article 159 of the Revised Penal Code provides:*

"The penalty of prisión correccional in its minimum period shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence." F is convicted of homicide and sentenced to 12 years and one day of reclusión temporal as maximum. After serving eight of the twelve years in prison, he is pardoned by the President of the Philippines, on condition that he shall not again violate any penal law of the Philippines. He accepts the condition and is forthwith released from jail. Five years after his release, he assaults another and is convicted of slight physical injuries by the proper court after trial. May he be convicted of a violation of Article 159 of the Revised Penal Code? Reason out your answer.

(a) A should be convicted of evasion of sentence. While the English text of Article 157 of the Revised Penal Code speaks of evasion during the term of imprisonment, the Spanish text speaks of evasion while the convict is suffering "privación de libertad" which is broader in significance and includes the penalty of destierro because a person so sentenced is deprived of his liberty,

although in a limited way, because he cannot enter the prohibited area. Since it is the Spanish text that controls in the interpretation of the provisions of the Revised Penal Code because the latter was enacted in that language, the convict who violates his sentence of destierro by entering the prohibited area commits evasion of his sentence.

(b) F cannot be convicted of a violation of Article 159 of the Revised Penal Code. While F violated the conditions of his pardon by committing slight physical injuries of which he was convicted, nevertheless, at the time of the commission of the slight physical injuries the conditions of the pardon were no longer in force. According to the Supreme Court in the case of Infante vs. The Provincial Warden of Negros Occidental, unless otherwise stated in the pardon, the duration of the conditions set forth therein shall be co-extensive with the maximum term of the sentence imposed upon the convict. The violation of the conditions of the pardon took place one year after the expiration of the maximum penalty of 12 years and 1 day imposed upon F.

#### VIII.

(a) *Distinguish violation of domicile from trespass to dwelling.*

(b) *When may a public officer or employee commit violation of domicile although that public officer or employee is provided with a search warrant?*

(a) Violation of domicile is committed by a public officer or employee who enters the dwelling of another without judicial authority and against the will of the owner. Trespass to dwelling is committed by a private individual who enters the dwelling of another against the latter's will. Generally, violation of domicile is committed for the purpose of making search or seizure, while trespass to dwelling is for any other purpose.

(b) The crime of violation of domicile (Art. 128 of the Revised Penal Code) can only be committed in three ways and requires as one of its essential elements that the officer be without judicial authority. A public officer who is provided with a search warrant cannot commit a violation of domicile unless the warrant has already expired. However, if violation of domicile is to be taken in its broadest sense, an officer provided with a warrant may commit such a violation if he serves the warrant with abuse of authority or uses undue severity in the service thereof, or makes search without the presence of the owner or a member of his family, or the presence of at least two witnesses residing in the same locality.

#### IX.

(a) *How is parricide committed?*

(b) *P and G are husband and wife. They have had a stormy marital life because P has had one concubine after and often beats G. Unable to stand her husband longer, G hires B to kill him, promising to pay B the sum of ₱1,000 as reward for the job. B agrees to the proposal and receives part of the reward in advance from G. So B enters P's house one night and shoots the latter to death.*

*Of what offense or offenses are G and B guilty? Explain your answer.*

(a) Parricide is committed by any person who shall kill his father, mother or child, whether legitimate or illegitimate, or any of his ascendants, descendants, or his spouse.

(b) G, the wife is guilty of parricide, she being the wife. B, being a stranger,

is guilty of murder having committed the crime in consideration of a reward. He cannot be held guilty of parricide because this crime requires relationship as an essential element and, according to Article 2 of the R.P.C., circumstances arising from the personal relation between the offender and the offended party shall be taken into consideration only against the person in whom such circumstance is attendant, i.e., the wife.

## X.

(a) A falsifies a private document for the purpose of defrauding B, his brother with whom he is living, in the sum of P1,000. A succeeds in obtaining the P1,000, to the prejudice of B, by means of the falsified document. What crime or crimes has A committed? Reason out your answer.

(b) In case of prosecution, would the fact that B is his brother be available to A as defense? Why?

(a) A committed two crimes, namely: falsification and estafa. When A falsified a private document with the intention of causing prejudice to his brother B, he committed the crime of falsification of private document. When A obtained P1,000 from his brother B on the strength of the falsified document, he defrauded his brother by means of false representations or deceit. A however cannot be convicted of a complex crime — estafa thru falsification of a private document — for the reason that the prejudice caused on B and which is the essence of the crime of estafa, is the very same prejudice that constitutes an essential element of the crime of falsification of private document. A may be prosecuted of either falsification or estafa.

(b) The circumstance of being the brother of B may be availed of by A as a defense if A is prosecuted for estafa because the law exempts brothers and sisters from criminal liability arising from the commission of theft, estafa and malicious mischief if they are living together. However, such relationship cannot be invoked by A as a defense if he is prosecuted for falsification of a private document.

## INTERNATIONAL LAW

Answered by the Editorial Board in consultation with Prof. Luis D. Panlilio.

## I.

What is meant by Comity? What are the recognized exceptions thereto?

In the case of *Hilton vs. Guyot*, 159 U.S. 113, the Supreme Court of the United States, speaking through Justice Gray, said: "Comity is neither a matter of absolute obligation nor of mere courtesy and good will. It is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of the law." Comity was introduced into the science of Conflict of Laws by the Dutch Statutists, who referred to it as "comitas gentium."

Heretofore the exceptions to Comity were grouped into six, namely:

1. Where the enforcement of the foreign law would contravene some established and important policy of the forum.

2. Where the enforcement of the foreign law will involve or work injury and injustice to the people of the forum.
3. Where the enforcement of the foreign law would contravene the canons of morality established by civilized society, that is, contra bonus mores.
4. Where the foreign law is penal in nature.
5. Where the foreign law relates to immovable property.
6. Where the foreign law is procedural in nature. (Minor, Conflict of Laws, p. 4).

Modern writers however, like Ernest Rabel and Martin Wolff, group the six exceptions only into two, and these are:

1. Where the enforcement of the foreign law would contravene public order and public policy.
2. Where the foreign law is penal in nature, is a revenue law, or is an administrative law.

(The rest of the six exceptions have all been made a part of the 1st. exception as they involve public order and public policy.)

## II.

*John Doe, a U.S. Navy serviceman stationed at Sangley Point, was accused before the Court of First Instance of Cavite for homicide through reckless imprudence, he having run over a child on the highway to Tagaytay City. Before trial, however, his tour of duty here terminated and he left for the U.S. Months later, the Philippine authorities learned of this and demanded of the U.S. for the return of the said accused to face trial. The U.S. refused for want of extradition treaty between the Philippines and the U.S. Now, discuss the merits of the U.S. position in the light of existing U.S.-Philippine relations.*

In extradition cases, the established and accepted rule is that in the absence of an extradition treaty between the States concerned, no extradition proceedings will issue, although in the past some States, among them the United States, at times gave up in extradition a fugitive from justice even in the absence of an extradition treaty. It is doubtful nowadays whether any State will permit extradition in the absence of an extradition treaty with the demanding State, particularly where the person sought to be extradited is a citizen of the State of refuge. Under the circumstances, it is believed the United States is within her rights in refusing to extradite the wanted service man, because of the non-existence of an extradition treaty between the Philippines and the United States.

However, in view of the provisions of par. 5, Art. XIII, of the so-called Base Treaty Agreement of March 14, 1947, between the Philippines and the United States, which provides as follows:

"5. In all cases over which the Philippines exercises jurisdiction, the custody of the accused, pending trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base, who shall acknowledge in writing that such accused has been delivered to him for custody pending trial in a competent court of the Philippines and that he will be held ready to appear and will be produced before said court when required by it. The commanding officer shall be furnished by the fiscal (prosecuting attorney) with a copy of the information against the accused upon filing of the original in the competent court."

In case the above requirements were complied with, it is a treaty-obligation



of the United States "to produce before said court when required by it", the person of the accused serviceman.

### III.

*Discuss the principle of postliminy (postliminium) in international law as applied to judicial acts and proceedings of the Courts of justice set up by the enemy over occupied territories after such territories have been liberated.*

Under the principle of Jus postliminii or postliminium, which principle is derived from Roman law, "When property captured by the enemy is recaptured, it is generally restored to the original owners". (Lawrence, Principles of International Law, p. 448) Jus postliminium has no effect upon such acts of the military occupant in occupied territory which are within its competency to perform under International Law. The State into whose possession such occupied territory has reverted must recognize these legitimate acts of the former occupant. On the other hand if the military occupant performed acts which, according to International Law, he was not competent to perform, Jus postliminium makes the invalidity of these legitimate acts apparent. (Oppenheim, International Law, Vol. II, pp. 618-619, 7th Ed.)

Invariably the acts of the military occupant during such occupation which are tainted with political complexion are set aside and rendered of no force and effect after the liberation from the military occupant. But those acts which are not tainted with political complexion, will have to be respected, as they are the acts of a de facto government.

### IV.

*Discuss the rights of American citizens as well as corporations owned by such citizens in the Philippines including in your discussion the legal inhibitions, if any, against them, under existing law.*

The Philippine Constitution limits to Filipino citizens and corporations certain rights and privileges which are denied to alien individuals and corporations. But by the so-called "Parity Amendment" appended as an Ordinance to the Phil. Constitution, and effective for a period of 27 years, American citizens and corporations were granted the same civil rights as Filipino citizens. However, no political rights in the Philippines have been granted to said American citizens.

### V.

*In a decision handed down by the Court of First Instance of Manila, certain 100,000 shares of Benguet Gold were declared of the conjugal ownership of A and B, although registered under the name of the wife B. As the certificates of stock were deposited with a certain bank in New York, A filed another action before the N.Y. Court against B and the said bank, for the recovery of possession of the stock certificates, pleading as ground therefor the said decision of our Court. The N.Y. Court, however, denied the petition and upheld the contention of B that the shares of stock were of her exclusive ownership. Later on, A filed a third action before the C.F.I. of the Manila, against B and the Benguet Gold, claiming the dividends due on the shares in question. B pleaded as a bar thereto the N.Y. Court decision, but A contended that the said decision has no force and effect in this jurisdiction. Decide, discussing the merits of A's contention.*

In this case, B, the wife pleads as a bar to the complaint filed against her

by her husband A, the decision rendered in her favor by the N. Y. Court. The only question at issue under the facts of the case, is the force and effect in this jurisdiction of the decision or judgment of the N. Y. Court.

As to the effect and conclusiveness of a foreign judgment in this jurisdiction, Sec. 48, Rule 39 of the Rules of Court provides as follows:

"Effect of foreign judgments. — The effect of a judgment or a tribunal of a foreign country, having jurisdiction to pronounce the judgment, is as follows:

(a) In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing;

(b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact."

The husband, A, having appeared in the New York case, and the subject matter of the suit being within New York, the New York Court had jurisdiction to render its judgment in the case.

### VI.

*What are the basic purposes and principles behind the establishment of the United Nations Organization?*

The basic purposes of the United Nations as enumerated in Article I, of the Charter, are:

1. To maintain peace and security through collective security, and to settle disputes by peaceful means;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and the respect for human rights and fundamental freedom;
4. To be a center for harmonization for the attainment of these common ends.

The basic principles to be followed in carrying out the declared purposes are, under Article II of the Charter:

1. The Organization is based on the sovereign equality of its members.
2. All members will carry out obligations assumed under the Charter;
3. All members will settle their disputes by peaceful means;
4. Not to use force against the territorial integrity and political independence of any State;
5. To give all assistance to the United Nations in any action taken by it under the Charter; and to refrain from giving any assistance to any State against which enforcement measures are being undertaken;
6. To see to it that non-member States act in accordance with these principles;
7. Nothing in the Charter authorizes the Organization to intervene in matters which essentially are internal or domestic in character.

### VII.

*A and B, Filipino citizens, married in Manila in 1955. Soon thereafter, B, the wife, committed an act of adultery, in view of which A abandoned her. The wife then went to Reno, Nevada, and there obtained a final decree of*

divorce on the ground of abandonment on the part of A, and immediately thereafter, married C, an American. A having learned of the Reno divorce decree and of the marriage of B to C, thereafter courted D, a Filipina, and subsequently married her in Hongkong, and thereafter cohabited with her in Manila. Two years later, B divorced her American husband and returned to the Philippines. She then learned of the marriage of A to D, whereupon she immediately instituted an action for concubinage against the latter. Decide, touching particularly on: (a) The validity of the Reno divorce decree in this jurisdiction and (b) The force and effect here of the marriage of A to D in Hongkong.

a) The absolute divorce obtained by the Filipino wife against her Filipino husband, in Reno, Nevada, sometime after 1955, is not entitled to recognition in this jurisdiction because only relative divorce (legal separation) is now recognized here, since the effectivity of the new Civil Code in 1950. No form of absolute divorce secured on any ground anywhere, will now be respected in the Philippines. Moreover, Art. 17, par. 3, of the new Civil Code provides as follows:

"Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country."

And Article 15 of the same new Civil Code provides:

"Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

b) The marriage of A to D, in Hongkong, subsequent to the N. Y. divorce decree obtained by B against A, even assuming that said marriage is valid in Hongkong, is not valid in the Philippines because of the provisions of Art. 71, of the new Civil Code, which reads as follows:

"All marriages performed outside the Philippines in accordance with the laws in force in the country where they were performed, and valid there as such, shall also be valid in this country, except bigamous, polygamous, or incestuous marriages as determined by Philippine law."

The New York divorce decree not being valid in the Philippines, the Hongkong marriage is therefore bigamous according Philippine laws, hence not valid in the Philippines even if valid in Hongkong.

#### VIII.

About 500 Huks, fully armed, were caught inside Clark Field Air Base, Pampanaga, one of the areas covered by the P.I.-U.S. Military Bases Agreement. As they were pursued, they killed about 30 members of the U.S. security force there. The top Huk leader caught admitted that it was their sole purpose to overthrow the Philippine Government and that they were just seeking cover inside the Base. This confession was resented by his men and the latter killed him outright inside the Base Command. The U.S. Government claimed absolute jurisdiction alleging that the crimes were committed within a U.S. Air Base, while the Philippine authorities contended, among others, that as the Huk movement affected the security of the Philippines, it had jurisdiction. Decide.

In such case, may the Philippines, or the U.S., as the case may be, waive jurisdiction in favor of the other? Discuss.

a) Article XIII, par. 1, sub-par. (a), of the so-called Base Treaty Agree-

ment concluded between the Philippines and the United States, May 17, 1947, provide as follows:

"1. The Philippines consent that the United States shall have the right to exercise jurisdiction over the following offenses:

(a) Any offense committed by any persons within any base except where the offender and offended parties are both Philippine citizens (not members of the armed forces of the United States on active duty) or the offense is against the security of the Philippines."

Premised on the above agreement, for the killing of the Huk Commander by his followers within Clark Field Air Base, Philippine Courts have jurisdiction as both the offenders and the offended parties are all Filipino citizens, not members of the armed forces of the U.S.

But for the killing of about 30 members of the U.S. security force by the Huks, within the Air Base, said Huks can be tried by the U.S. Military Courts, as the offended parties are members of the security forces of the U.S., and were killed within the Air Base. The killing of the about 30 members of the U.S. security force, was not an offense against the security of the Philippines, although the Huk movement is against the security of the Philippines.

b) For offenses over which the Philippines or the U.S. Military Courts may have jurisdiction as the case may be, either can waive jurisdiction in favor of the other, under the provisions of paragraphs 3 and 4, of the aforesaid Article XIII of the so-called Base Treaty Agreement, which read as follows:

"3. Whenever for special reasons the United States may not desire to exercise the jurisdiction reserved to it in the paragraphs 1 and 6 of this Article, the officer holding the offender in custody shall so notify the fiscal (prosecuting attorney) of the city or province in which the offense has been committed within ten days after his arrest, and in such a case the Philippines shall exercise jurisdiction.

"4. Whenever for special reasons the Philippines may desire not to exercise the jurisdiction reserved to it in paragraph 2 of this Article, the fiscal (prosecuting attorney) of the city or province where the offense has been committed shall so notify the officer holding the offender in custody within ten days after his arrest, and in such a case the United States shall be free to exercise jurisdiction, etc."

#### IX.

*What are the conditions or requisites for the validity of a treaty?*

Text writers and publicists do not categorically state conditions or requisites for the validity of a treaty. Ordinarily, however, among the requisites for the validity of a treaty, a treaty being contract, there must be mutual consent; no intimidation or coercion exercised personally against the representatives; there must be absence of fraud; the obligation or obligations imposed under the treaty must not be immoral, or against the provisions of the Charter of the United Nations.

The plenipotentiaries concluding the treaty must be invested with "full powers" and the scope of the treaty must be within the "full powers" of the plenipotentiary. Invariably treaties concluded to become effective and binding, must also be ratified as provided in the treaty, and the ratification communicated expressly or impliedly to the other party or parties. And as required by the Charter of the United Nations, a treaty concluded must be registered with the Secretariat of the United Nations otherwise none of the

parties may invoke the provisions of the same before any of the Organs or Agencies of the United Nations Organization.

X.

*X was the owner of a motor vessel which the Japanese Army confiscated during the occupation of the Philippines. After the liberation, the U.S. Armed Forces found the said vessel and sold it as enemy property to Y. An action is now filed by X against Y for the recovery of the vessel, plus damages. Will the action prosper? State reasons for your answer.*

The vessel in question was *confiscated* by the Japanese Army during the occupation, from its rightful owner, X. As a result of the liberation from the military occupation, the American army as it were, recaptured the same vessel from the enemy, and sold it to Y, believing the vessel to be enemy property. It is respectfully submitted that in a subsequent lawsuit over the ownership of the vessel, the principle of *jus postliminium* which is derived from Roman law will apply. Modern International Law and Municipal Law have adopted *jus postliminium*, to indicate the fact that territory, individuals and property, after having come in times of war under the authority of the enemy, is returned, either during the war or at its end, under the sway of their original sovereign. The practice of most States nowadays is to return to the original owner the vessel recaptured from the enemy, specially when said vessel was *confiscated* from its private owner by the military occupant. Confiscation of private property of private individuals by the military occupant is even prohibited by the laws of war. The confiscated vessel should therefore be returned to the pre-war owner, but no damages can be collected from the post-war purchaser if he was a purchaser in good faith. The Philippine Supreme Court has a decision on this very same case involving a vessel in Cebu or Negros province.