# ANSWERS TO BAR EXAMINATION QUESTIONS FOR 1960

## LAND REGISTRATION AND MORTGAGES

*(Answered by Professor Antonio H. Noblejas)*

### I

**(a) What do you understand by Judicial Confirmation of an imperfect title?**

**(b) Is there at present a law fixing the date when an application of this kind can be filed? If so, what is the deadline?**

(a) Judicial confirmation of an imperfect title is the method by which occupants of Public agricultural lands who having acquired no title from the government, whose possession thereof, as well as of his predecessors in interest, had been open, continuous, exclusive, and notorious under a bona fide claim of ownership, for at least thirty (30) years immediately preceding the filing of the application pursuant to Republic Act No. 1942, may apply for the registration of the land under voluntary judicial proceeding in accordance with Section 50 of the Public Land Law in connection with the Cadastral Law and Land Registration Law.

(b) Yes, Republic Act No. 2061 sets a new time limit not to exceed beyond December 31, 1968 within which to file an application for the judicial confirmation of imperfect or incomplete titles. (See Sec. 47, Com. Act 141, as amended by Rep. Act No. 2061, approved June 13, 1958).

### II

**(a) In voluntary dealing with registered lands, what is the operative act that conveys or binds the land? What documents are required to be presented in the Office of the Register of Deeds?**

**(b) When is a voluntary deed considered registered?**

**(c) In involuntary dealings, what documents are required to be presented for registration in order to convey and bind the property? State briefly the difference in the registration proceedings of a voluntary dealing from one that is involuntary.**

(a) In voluntary dealings with registered lands, section 50 of Act No. 496 provides that "the act of registration is the operative act to convey and affect the land". Section 55 of Act No. 496 requires the presentation of the voluntary deed and the owner's duplicate certificate to the Register of Deeds. Only public documents, however, can be registered.

(b) A voluntary deed is considered registered upon entry in the primary entry book, provided that the owner's duplicate certificate of title is presented and the registration fees have been fully paid for. (Potenciano vs. Dineros, 54 O.G. p. 1811, March 31, 1958.) Evidence of payment of real estate taxes or of certificate of non-delinquency is also required by Rep. Act 456.

(c) In involuntary dealings, only the involuntary deed need be presented and the entry fee duly paid, in order to convey and bind the property, provided there is nothing left for the registrant to do and everything is left in the hands of the Register of Deeds to complete the registration.

With respect to voluntary conveyances, Section 50 of Act 496 expressly provides that the act of registration shall be the operative act to convey and affect the land; but Section 55 requires the presentation of the owner's duplicate certificate for the registration of any deed or voluntary instrument. With respect to involuntary instrument like attachments, executions or adverse claims, section 72 allows registration even without the presentation of the duplicate certificate of title. As expressly indicated in said section, all involuntary deeds need presentation only, and it is the register of deeds who completes registration by requiring the production of certificate from the owner so that the proper attachment, execution, lien or adverse claim may be noted thereon. Upon failure of the holder to surrender the owner's duplicate certificate after due notice from the Register of Deeds, the latter should report the same to the court so that the court may order its production

### III

**(a) The Register of Deeds doubts if a document you have presented is acceptable for registration. To whom should the Register of Deeds refer the matter for consultation? In the event the resolution is against the registration, can you appeal? State briefly the steps you should follow.**

**(b) Is a lease contract in favor of an alien for 25 years of a titled land acceptable for registration? Is it not covered by the constitutional prohibition regarding acquisition of real property by aliens?**

(a) Doubtful matters should be referred to the Commissioner of Land Registration either upon the certification of the Register of Deeds, stating the question upon which he is in doubt, or upon the suggestion in writing by the party in interest; and thereupon the Commissioner, after consideration of the matter shown by the records certified to him, and in case of registered lands, after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His decision in such cases shall be conclusive and binding upon all Registers of Deeds. (Sec. 4, Republic Act No. 1151.) In the event that the resolution is against registration, and the issue involves a question of law, said ruling may be appealed to the Supreme Court within thirty days from and after receipt of the notice thereof. (Sec. 4, Republic Act No. 1151.)

Appeal from the ruling of the Land Registration Commission may be made to the Supreme Court within thirty days from and after notice thereof, in the same manner as those provided for in the Rules of Court, Rule 42.

(b) Yes. (Smith, Bell & Co., Ltd. vs. Register of Deeds of Davao, G.R. No. L-7084, prom. Oct. 27, 1954.) According to law, even 99 years is permissible. (Art. 1643, new C.C.) It is not covered by the constitutional prohibition regarding acquisition of real property by aliens.

IV

**(a) A property was wrongfully or erroneously registered in another person's name. Two years after the entry of the decree, the rightful owner discovered the registration. What is the remedy of the owner? Is the action subject to prescription? If so, what is the period of prescription?**

**(b) Distinguish briefly constructive fraud from actual fraud. In an action for reconveyance or damages on the ground that the property was erroneously registered in the name of the defendant, what kind of fraud should be proven in order that the action may prosper?**

(a) The remedy is to bring an ordinary action in the ordinary courts of justice of competent jurisdiction for reconveyance, or for damages if the property has passed into the hands of an innocent purchaser for value. (Urbano Casillan vs. Francisca Vda. de Espartero, et al., 50 O.G., No. 9, Sept., 1954.) Reconveyance is always available as a remedy as long as the property has not passed into the hands of an innocent purchaser for value. An ordinary action for reconveyance and/or damages is subject to the general rules on limitations of actions, that is, four (4) years from discovery of fraud. (Llanera vs. Lopos, et al. L-12588, Aug. 25, 1959)

(b) Actual fraud is that intentional omission of a fact required by law to be stated in the application or a willful statement of a claim against the truth. It consists of specific acts intended to deceive and deprive another of his right as distinguished from that of constructive fraud. The difference between actual fraud and constructive fraud lies in the intention: if there is a dishonest intent, the fraud is actual; if there is no dishonest intent but a false statement of fact, on which the other party acts to his injury, the fraud is constructive. (Words and Phrases, Perm. Ed. 8-A, p. 538.) Actual or constructive fraud may be availed of as a ground for reconveyance. (Manotoc vs. Choco, 30 Phil. 628; Sumira vs. Vistan, 74 Phil. 138)

V

**"A", "B" and "C" are co-owners of a titled land in the proportion of 1/3 each. "A" died. Juan Gomez, posing as his only heir, sold the particiation of "A" to Guillermo Perez, who in turn sold the same portion to Enrique Fajardo. The sales to Perez and Fajardo were registered and noted on the title and duplicate, but no new titles were issued to Perez and Fajardo. Two years after the sale to Fajardo, Francisco Heredia, the rightful heir of "A", filed an action against Perez and Fajardo seeking the annulment of the deeds of sale. Perez and Fajardo claim that they are innocent purchasers for value. The evidence is clear that Gomez was an impostor. Is the defense of Perez and Fajardo tenable? Why?**

The certificate of title is in the name of "A", "B" and "C" as equal co-owners. When "A" died, Juan Gomez, who allegedly was the only heir should have first executed an affidavit of self-adjudication under Sec. 1 of Rule 74 of the Rules of Court and thereby, ask for a new transfer certificate of title in the names of "A", "B" and himself. On the other hand, Juan Gomez, sold "A"'s 1/3 portion when the title was not in his name. The buyers, Perez, and subsequently Fajardo, could not, therefore, claim to have been innocent purchasers for value because they were charged with the duty of verifying whether vendor was a registered owner or not. The



second purchaser only stepped into the shoes of the first. Hence, their defense is not tenable. (De Lara & De Guzman vs. Ayroso, 50 O.G. L-4838, Oct. 1, 1954.)

VI

**Pedro Reyes, registered owner of a parcel of land, sold one-half (1/2) of the immovable property to "B." The deed was not registered. Reyes died leaving three sons: Juan, Marcos and Antonio. Upon the death of Reyes, his sons instituted intestate proceeding for the settlement and distribution of his estate including the titled land one-half of which had been sold to "B." The entire parcel of land was adjudicated to the three brothers. Later, Marcos and Antonio sold their share to their brother Juan , and a new certificate of title was issued to Juan as the sole owner of the whole land. "B" filed an action for reconveyance of the one-half (1/2) of the property. Is the action of "B" tenable? Explain your answer briefly.**

Yes. An action for reconveyance may be filed by "B" as long as the property has not passed to an innocent purchaser for value. The three sons may not be considered innocent purchasers for value because they are the juridical continuation of the personality of their father, and the property obviously has not passed to them for a valuable consideration. They have been subrogated by virtue of the right of succession to all his rights and obligations, (Vide, Barrios vs. Dolor, 2 Phil. 44; Mojica vs. Fernandez, 9 Phil., 403; Consunji vs. Tizon, 15 Phil. 61), and as such heirs they hold the property subject to the equities in favor of defendant and her heirs in whose favor reconveyance of the disputed property may be decreed since no rights of innocent third parties are herein involved. (Marcela Brizuela, Josefina Brizuela and Socorro Brizuela vs. Ciriaca Vda. de Vargas, 53 O.G., p. 2822, May 15, 1957; Noblejas, Bar Examination Questions and Answers on Land Registration and Mortgages, 1960 ed.)

VII

**(a) On July 1, 1942, Marcos Heras sold his agricultural land to Juan Go, a Chinese. On September 4, 1942, during the enemy occupation, the Government of the Philippines approved a law prohibiting the acquisition of lands by aliens. In 1946, Juan Go filed a petition for registration. The Director of Lands opposed the petition on the ground that the constitution of the Philippines does not allow aliens to acquire agricultural land. Is the opposition tenable? Give your reasons for your answer.**

**(b) A titled owner is desirous of mortgaging his land to an alien. May the alien accept a mortgage on the land? Are there any limitations imposed by law on his right as mortgagee?**

(a) No, the ground of opposition of the Director of Lands is not tenable. The Constitution of the Philippines, being political in nature, was not in force when the sale was effected, and cannot, therefore, be invoked as a valid ground to oppose registration. (Trinidad Gonzaga de Cabauatan, et al., vs. Uy Hoo, et al., G.R. No. 2207, Jan. 23, 1951.) Neither can he validly oppose the same on the ground that there was a law passed on September 4, 1942, prohibiting the acquisition of lands by aliens, since the sale took place prior to the passage of said law.

(b) Yes, an alien may accept a mortgage on a titled property. Under Republic Act No. 133, private real property may be mortgaged in favor of any individual, corporation, or association, for a period not exceeding five years, renewable for another five years. The only limitation imposed by law on the right of an alien mortgagee is that he cannot bid or take part in any sale of such real property as consequence of the mortgage.

VIII

**As a result of a previous ordinary registration proceeding, a lot was registered in the name of "A" who is described as a widower. In a cadastral proceeding instituted subsequently, can "A" ask the cadastral court that his title be cancelled, and, in lieu thereof, another title be issued in his name and that of his children? Suppose the land is mortgaged to "C" and the deed is noted in the title of "A", can "A" ask the Cadastral court to issue the title without the encumbrance on the ground that the obligation is already paid? In case an opposition is filed by the mortgagee who alleges that the obligation has not been paid, has the cadastral court jurisdiction to decide the issue?**

No. "A" cannot ask the cadastral court that his title be cancelled and a new one be issued in his name and that of his children. The jurisdiction of the court in cadastral cases over lands already registered is limited to the necessary correction of technical errors in the description of the lands. (Pamintuan vs. San Agustin, 43 Phil. 558). "A" cannot ask the cadastral court to issue the title without the encumbrance because the cadastral court has no jurisdiction to alter or amend anything on an already existing title except the technical descriptions, and if, as already stated, it cannot issue another title, much less could it issue one without carrying over an annotated encumbrance. Besides, the cadastral court is without authority in law to entertain the question of whether an obligation has already been settled or not — that is a question for the court to decide in an ordinary civil action.

IX

**(a) In a mortgage contract it is stated that the immovable property mortgaged consists of a parcel of land with a three door "accesoria." Before the obligation became due, the owner added two doors to his "accesoria." On account of the owner's failure to pay his obligation, foreclosure proceeding was instituted against him. The mortgagor in his answer claimed that the two doors should be excluded from the proceeding. Is the claim tenable. Why?**

**(b) In 1930 "A" mortgaged his titled land to "B" to secure a loan payable within four (4) years. The deed was properly registered. In 1948 "B" filed foreclosure proceeding for failure of "A" to pay his obligation. "A" asked for the dismissal of the complaint on the ground that the action has prescribed. "B" countered that, according to law, "no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession" and since the mortgage is noted in the title, the action is not subject to prescription. Is this contention tenable? Why?**

(a) No. It is a rule established by the Civil Code and also by the Mortgage Law, with which the decisions of the courts of the United States are in accord, that in a mortgage of real estate the improvements on the same are included; therefore, all objects permanently attached to a mortgaged building or land, although they may have been placed there after the mortgage was constituted, are also included. (Art. 2127, Civil Code of the Philippines; Royal Insurance Co. vs. R. Millner, et al., 26 Supp. Ct. Rep. 46; 199 U.S. 353; Bischoff vs. Pomar, 21 Phil. 690; Noblejas, Land Titles and Deeds, p. 337)



A mortgage of real estate includes improvements and fixtures; to exclude the improvements and fixtures it is indispensable that the exclusion thereof be stipulated between the contracting parties (Bischoff vs. Pomar et al., 12 Phil. 690). A mortgage of estate includes improvements subsequently built or made (Philippine Sugar Estate Development Co. vs. Camps, 36 Phil. 85).

Where a parcel of land, together with the accesoria thereon erected has been mortgaged, and where after execution of the mortgage but before the expiration of the mortgage period, the debtor adds two doors to the accesoria, no stipulation whatever being contained in the mortgage deed that the additional doors should be expressly excluded from the mortgage encumbering the land and the construction thereon, it is unquestionable that the mortgage actually includes the additional doors which forms one indivisible whole with the land or lot on which it was erected (See Philippine Sugar Estate Development Co. vs. Camps, 36 Phil. 85).

(b) Title to registered land does not stand on the same footing as right to a registered mortgage, in the sense that while title to registered land under the Torrens system does not prescribe even for a hundred years, the right of action to foreclose a mortgage affecting registered land prescribes after ten years according to article 1142 of the new Civil Code. Section 46 of the Land Registration Act providing that "No title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession," is not applicable inasmuch as the citation only speaks of the title of the "registered owner" and refers to prescription or adverse possession as a mode of acquiring ownership, which goes to show that the whole philosophy of the law is merely to make a Torrens title indefeasible and surely not to cause a registered lien or encumbrance such as a mortgage — and the right of action to enforce it—imprescriptible as against the registered owner. The important effect of the registration of a mortgage is obviously to bind third parties; it does not go further as to make the action to foreclose it imprescriptible. (Buhat v. Besana, 50 O.G. 9, 4215, Sept. 1954.)

X

**(a) What is the concept embodied in the new civil code with regard to chattel mortgage?**

**(b) Can a house of strong materials constructed on rented land be the subject of a chattel mortgage?**

**(c) A house constructed on rented land was considered by the parties in a chattel mortgage contract as personal property. In case of foreclosure, can the sheriff sell the house as personal property at the auction sale?**

(a) The concept of chattel mortgage as embodied in the new Civil Code is as follows: "By a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obli-

gation. If the movable, instead of being recorded, is delivered to the creditor or a third person, the contract is a pledge and not a chattel mortgage." (Art. 2140, Civil Code.)

(b) No. A house of strong materials constructed on rented land cannot be the subject of a chattel mortgage because only personal properties can be the subject of a chattel mortgage (Sec. 1, Act 3952), and "a building cannot be divested of its character of a realty by the fact that the land on which it is constructed belongs to another. To hold it the other way, the possibility is not remote that it would result in confusion, for to cloak the building with an uncertain status dependent on the ownership of the land, would create a situation where a permanent fixture changes its nature or character as the ownership of the land changes hands." (Isabel Iya vs. Valino and Associated Insurance & Surety Co., Inc., G.R. No. L-10838, May 30, 1958.) (Also Lopez vs. Orosa, G.R. L-10817, Feb. 28, 1958).

(c) No. In case of foreclosure, where a house constructed on rented land was considered by the parties in a chattel mortgage contract as personal property, the sheriff cannot sell the house as personal property at the auction sale because the chattel mortgage is void insofar as the building is concerned, it being real property and hence not the proper subject of a chattel mortgage. In this connection the Supreme Court said, "a mortgage creditor who purchases real properties at an extrajudicial foreclosure sale thereof by virtue of a chattel mortgage constituted in his favor, which mortgage has been declared null and void with respect to said real properties, acquires no right thereto by virtue of said sale." (De la Riva vs. Ah Kee, 60 Phil. 899).

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| Publisher: Ateneo de Manila | Padre Faura, Manila |
| Printer: U.S.T. Press | U.S.T., España, Manila |
| Office of Publication: College of Law, Ateneo de Manila | Padre Faura, Manila |

In case of publication other than daily, total number of copies printed and circulated of the last issue dated March, 1960;

1. Sent to paid subscribers ..... 1,000
2. Sent to others than paid subscribers .....

TOTAL ..... 1,000

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