

Lost in Neverland: Establishing Liability for the Unlawful “Taking” of Virtual Commodities in Online Games

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I. INTRODUCTION

A. Background of the Study

Technology is evolving at an exponential rate.¹ It seems that, every year, something innovative is introduced to the consuming public, whether it be a new model of a car,² a cellphone,³ a laptop,⁴ or even a new game.⁵ In 2016, for example, the newest gadgets and tech products were showcased in the Consumer Electronics Show (CES) 2016.⁶ It started in 1967 and involves

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1. Big Idea: Technology Grows Exponentially, *available at* <http://bigthink.com/thinktank/big-idea-technology-grows-exponentially> (last accessed May 5, 2019). *See also* Chris Cooper, *Is Technology Evolving Faster Than Our Ability to Adapt?*, *available at* <https://www.linkedin.com/pulse/technology-evolving-faster-than-our-ability-adapt-chris-hooper> (last accessed May 5, 2019).
 2. *See* Motor Trend Staff, *2019 New Cars: The Ultimate Buyer's Guide*, *available at* <https://www.motortrend.com/news/2019-new-cars-ultimate-buyers-guide/> (last accessed May 5, 2019).
 3. *See* Henry Burrell, *Best smartphone 2019: Find the best phone for you*, *available at* <https://www.techadvisor.co.uk/test-centre/mobile-phone/best-smartphone-3677861> (last accessed May 5, 2019).
 4. *See* Matt Hanson, *The best laptop 2019: our pick of the 15 best laptops you can buy this year*, *available at* <https://www.techradar.com/news/mobile-computing/laptops/best-laptops-1304361> (last accessed May 5, 2019).
 5. *See* Colin Campbell, *The 50 most anticipated games of 2019*, *available at* <https://www.polygon.com/gaming/2018/12/31/18156570/games-of-2019-most-anticipated> (last accessed May 5, 2019).
 6. Aaron Brown, *What is CES? Everything thing you need to know about the Consumer Electronics Show 2016*, *DAILY EXPRESS*, Jan. 6, 2016, *available at* <http://www.express.co.uk/life-style/science-technology/632443/What->

some of the biggest technology companies from around the world.⁷ Four

Where-When-Why-Consumer-Electronics-Show-CES-2016 (last accessed May 5, 2019).

7. *Id.* A number of up-and-coming products were presented during the showcase, one of which was Virtual Reality (VR). Numerous people have said that VR is going to be the next big thing in entertainment, spurring excitement among consumers all over the world. More than that, VR has brought a spurt of ideas to life. For instance, VR is likely to be used, and incorporated, in films, television, and games. The reach of VR, however, is much wider than for purely entertainment purposes. In the United Kingdom, a VR program is being harnessed by jurors in criminal cases so that they can better understand and “experience” the scene of the crime, when evidence is presented before them. The program has a research grant of more than U.S.\$200,000. The way it works is that jurors are equipped with VR headsets, cameras, and other materials such as a green screen. After which, they are put into a virtual crime scene where the lawyers walk the jurors through the scene of the crime, while at the same showing the latter the pertinent evidence necessary to establish their case. More than that, there is such a thing as VR pornography. Several porn sites have already begun producing VR porn available for the masses. In relation, those who have tried it have discussed how realistic the experience was, sometimes to the point of it being too uncomfortable. In short, VR is a concept that perfectly captures the growth of technology — from a stereoscope in the 1800’s, to the first VR Head Mounted Display in the 1960s, to Virtual Reality as one knows it now. The speed at which technology evolves is astounding; what was once a mere fantasy, so far-fetched from reality, is now more “normal” than extraordinary.

Sulabh Puri, Virtual Reality is going to be the next big thing in 2016, *available at* <http://timesofindia.indiatimes.com/tech/more-gadgets/Virtual-Reality-is-going-to-be-the-next-big-thing-in-2016/articleshow/50576245.cms> (last accessed May 5, 2019); Richard Darell, Is Virtual Reality The Next Big Thing in Entertainment?, *available at* <http://www.bitrebels.com/entertainment/virtual-reality-next-thing-entertainment> (last accessed May 5, 2019); Adario Strange, UK court using VR to transport jurors to the scene of the crime, *available at* <https://mashable.com/2016/05/24/virtual-reality-criminal-trials/> (last accessed May 5, 2019); Will Fulton, I Tried VR Porn in a CES Hotel Suite, and I’ll Never be the Same, *available at* <http://www.digitaltrends.com/virtual-reality/vr-porn-at-ces> (last accessed May 5, 2019); & History Of Virtual Reality, *available at* <http://www.vrs.org.uk/virtual-reality/history.html> (last accessed May 5, 2019). *See also* Ariel Shimoni, Why VR is the next big thing for brands, *available at* <https://techcrunch.com/2016/06/13/why-vr-is-the-next-big-thing-for-brands> (last accessed May 5, 2019); Gary Vaynerchuk, You Should Get Excited About Virtual Reality. Here’s Why., *available at*

years into its opening, audio equipment like cassette and audio tapes, as well as headphones, littered the show.⁸ In 1982, the compact disc and camcorder were introduced.⁹ The 2010 CES, on the other hand, was home to the Samsung 3-D LED 9000, a really thin television with its own touchscreen remote.¹⁰ More than showcasing products, however, the CES also set the stage for some public controversies. In 1991, Sony and Nintendo were partners-to-be for a CD ROM add-on for the SNES,¹¹ which the former announced at the CES.¹² However, the deal broke down when Nintendo backtracked on this partnership and said that it would partner with Philips instead.¹³ As a result, the Playstation was born, leading to significant commercial success for Sony.¹⁴ It was the first gaming console to use CDs to play games.¹⁵ Not long after, when the Playstation 2 came out, a bunch of

<https://www.garyvaynerchuk.com/you-should-get-excited-about-virtual-reality-heres-why> (last accessed May 5, 2019); & Forecast augmented (AR) and virtual reality (VR) market size worldwide from 2016 to 2022 (in billion U.S. dollars), *available at* <https://www.statista.com/statistics/591181/global-augmented-virtual-reality-market-size> (last accessed May 5, 2019).

8. Laura June & David Pierce, Incredible photos from the CES vault: 1967 to 2014, *available at* <http://www.theverge.com/2013/1/4/3828848/ces-photo-history> (last accessed May 5, 2019).

9. *Id.*

10. John Mahoney, Best of CES 2010: Popsi's Products of the Future, *available at* <https://www.popsi.com/gadgets/article/2010-01/best-ces-2010-popsi-products-future> (last accessed May 5, 2019).

11. Levi Buchanan, 10 Things You Should Know About Nintendo, *available at* <http://www.ign.com/articles/2009/03/30/10-things-you-should-know-about-nintendo> (last accessed May 5, 2019).

SNES stands for "Super Nintendo Entertainment System." Brendan Hesse, Best Emulators (NES, SNES, GENESIS, N64, AND MORE), *available at* <http://www.digitaltrends.com/gaming/best-emulators/3> (last accessed May 5, 2019).

12. Buchanan, *supra* note 11.

13. *Id.*

14. *Id.*

15. Lisa Mahapatra, From PS to PS4: The Evolution Of The Playstation [INFOGRAPHIC], *available at* <http://www.ibtimes.com/ps-ps4-evolution-playstation-infographic-1553415> (last accessed May 5, 2019).

new features came with it; it could also play music and DVD ROMs.¹⁶ Its third installment, the Playstation 3, allowed Users to connect to the Internet.¹⁷ This brought in a whole new dimension to the gaming experience. Players were able to connect and play with each other, no matter how near or far one lived from another. It has also led to a bunch of new games and advancements. Undoubtedly, at the rate technology is evolving, one has to be excited for what the future holds.

Consequently, these technological breakthroughs have brought about a change in lifestyle — a transition into a more connected and digitized society.¹⁸ This evolution of technology, though bringing a lot of good and positive developments to society, has its fair share of drawbacks.¹⁹ For instance, the concept of a cybercrime²⁰ would not have risen without the Internet.²¹ It has paved a new path for people with malicious intent to be able to carry out their criminal deeds.²² Personal information is more at risk

16. Dale, Evolution of the Playstation [Infographic], *available at* <http://wish.co.uk/blog/evolution-of-the-playstation> (last accessed May 5, 2019).

17. *Id.*

18. Merino Computer Concepts, Inc., A Society That's Fully Dependent Upon Technology is Set Up for an Epic Fail, *available at* <http://www.mccpros.com/newsletter-content/entry/a-society-that-s-fully-dependent-upon-technology-is-set-up-for-an-epic-fall> (last accessed June 18, 2016).

19. See Tim Wu, As Technology Gets Better, Will Society Get Worse?, *available at* <https://www.newyorker.com/tech/annals-of-technology/as-technology-gets-better-will-society-get-worse> (last accessed May 5, 2019).

20. A cybercrime “encompass[es] the use of computers to assist ‘traditional’ offending, either within particular systems or across global networks.” Stefan Fafinski, et al., Mapping and Measuring Cybercrime (A Discussion Paper Submitted to the Oxford Internet Institute) at 8, *available at* <https://www.oii.ox.ac.uk/archive/downloads/publications/FD18.pdf> (last accessed May 5, 2019).

21. Marco Gercke, Understanding Cybercrime: Phenomena, Challenges and Legal Response (A New Edition of A Report Previously Entitled “Understanding Cybercrime: A Guide for Developing Countries”) at 2-4, *available at* <http://www.itu.int/ITU-D/cyb/cybersecurity/docs/Cybercrime%20legislation%20EV6.pdf> (last accessed May 5, 2019).

22. See, e.g., Stephanie Austria, *Forgery in Cyberspace: The Spoof could be on you!*, J. TECH. LAW POL'Y, Volume No. 4, Spring 2004; Cheri Ganeles, *Techological Advancements and the Evolution of Terrorism*, 8 ILSA J. INT'L L. & COMP. L. 617 (2002); & Nana Yaw Asabere & Wisdom Kwawu Torgby, *Towards a Perspective*

than ever, with “criminals and other dishonest actors ... exploiting this [online connectivity] for nefarious purposes.”²³ With this, laws are unable to keep up with the changing times because technology brings in new and innovative elements at the snap of a finger.²⁴ One does not need to look far to see these changes — take Virtual Reality, for instance.²⁵ As a consequence, gaps remain in the law when it comes to the protection of online valuables, items, and information.

1. Philippine Criminal Law: A Brief Background

In the Philippines, questions relating to criminality are tackled under the Revised Penal Code.²⁶ It was enacted in 1930.²⁷ Certainly, when the law was crafted, legislators did not contemplate the technological advancements that are presently enveloping today’s society.²⁸ As such, other laws have been passed to better regulate these technological advancements. For instance, the Cybercrime Prevention Act of 2012²⁹ was enacted “to protect and safeguard the integrity of computer, computer and communications systems, networks, and databases, and the confidentiality, integrity, and availability of information and data stored therein, from all forms of misuse,

of Web Application Vulnerabilities and Security Threats, INT’L J. COMPUTER SCI. & TELECOMM., Volume No. 4, Issue No. 5.

23. Federal Bureau of Investigation, Internet Social Networking Risks (A Document released by the FBI), *available at* <https://www.fbi.gov/file-repository/internet-social-networking-risks-1.pdf/view> (last accessed May 5, 2019).
24. Gercke, *supra* note 21, at 2.
25. *See* Vaynerchuk, *supra* note 7.
26. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815 (1932).
27. *Id.*
28. *Id.* *See also* Viveck Wadhwa, Laws and Ethics Can’t Keep Pace with Technology, *available at* <https://umd.instructure.com/courses/1130461/files/36457366/download> (last accessed May 5, 2019).
29. An Act Defining Cybercrime, Providing for the Prevention, Suppression and the Imposition of Penalties Therefor and for Other Purposes [Cybercrime Prevention Act of 2012], Republic Act No. 10175 (2012).

abuse, and illegal access by making punishable under the law such conduct or conducts.”³⁰

While the Cybercrime Law penalizes acts such as Illegal Access (or hacking),³¹ Illegal Interception,³² and Data Interference,³³ to name a few, the law, inevitably, is unable to tackle all possible situations brought by the complex nature of technology.

2. Online Gaming

One community that is susceptible to experience the criminal consequences of a more connected and digitized society is the online gaming community.³⁴ This is because Internet connection is at the heart of online gaming — it is inherent in the nature of these games. Given this, many risks connected to things being accessed through the Internet, are also found in online games.³⁵ For instance, many games contain in-game items that are assigned a real-world value.³⁶

To illustrate, one can look at the gaming platform Steam.³⁷ It is a platform that allows Users to purchase and download games.³⁸ Through their Steam Market, which is an adjunct to the platform itself, Users are able

30. *Id.* § 2.

31. This is “[t]he access to the whole or any part of a computer system without right.” *Id.* § 4 (a) (1).

32. It is described as “[t]he interception made by technical means without right of any non-public transmission of computer data to, from, or within a computer system including electromagnetic emissions from a computer system carrying such computer data.” *Id.* § 4 (a) (2).

33. It is “[t]he intentional or reckless alteration, damaging, deletion or deterioration of computer data, electronic document, or electronic data message, without right, including the introduction or transmission of viruses.” *Id.* § 4 (a) (3).

34. See Eric J. Hayes, *Playing It Safe: Avoiding Online Gaming Risks* (A Publication by the United States Computer Emergency Readiness Team), available at <https://www.us-cert.gov/sites/default/files/publications/gaming.pdf> (last accessed May 5, 2019).

35. *Id.*

36. See Chris Stalmans, *More than Just Games: Virtual Property Rights in Massively Multiplayer Games*, 12 *ASPER REV. INT’L BUS. & TRADE L.* 203 (2012).

37. Welcome to Steam, available at <http://store.steampowered.com/about> (last accessed May 5, 2019).

38. *Id.*

to buy in-game items such as character or item designs, some of which are for purely aesthetical value.³⁹ These items are assigned real-world monetary equivalents and are tradable and sellable via the Steam Market.⁴⁰ Thus, the Steam Market acts as a trading or selling platform for a multitude of games, all of which are available on the Steam Client.⁴¹

Because of the real-world value assigned to these virtual items, they have become the target of persons with malicious intent. These *scammers* employ fraud to trick other players and get hold of their virtual items. They use a variety of techniques such as gaining another player's trust in order to obtain a transfer of a virtual item, or sending malicious links in order to take control of another's accounts to transfer in-game items.⁴² This can all happen within the game itself. More than in-game fraud, however, oftentimes, the fraud happens out in the real world.⁴³ This is the case with Steam. It is possible because of the social nature of some online games.⁴⁴ Players are able to trade information and conduct real-world transactions involving in-game items.⁴⁵ However, while the fraud may be conducted outside the virtual sphere, the

39. See Max Thielmeyer, *How To Bulk Sell Your Extra Steam Trading Cards*, available at <https://www.forbes.com/sites/maxthielmeyer/2018/04/28/how-to-bulk-sell-your-extra-steam-trading-cards/#4573f75c2d2b> (last accessed May 5, 2019).

40. See Community Market FAQ, available at https://support.steampowered.com/kb_article.php?ref=6088-UDXM-7214#conversion (last accessed May 5, 2019).

41. To be able to buy in-game items on the Steam Market, the player just has to log in his or her Steam account and choose the game where he or she wants to buy items. After which, he or she can search for the said item, or look for items among those suggested by Steam. *Welcome to Steam*, *supra* note 37.

42. Popular Scamming Methods of Philippines Ragnarok Online, available at http://pro.wikia.com/wiki/Popular_Scamming_Methods_of_Philippine_Ragnarok_Online (last accessed May 5, 2019). It is relevant to note that websites such as this, as well as other game-related websites like "WoWWiki," are community-made. In the gaming community, these kinds of websites are reliable and provide easy access to various information sought by gamers.

43. *Id.*

44. Nicholas Duchenaut & Robert J. Moore, *The social side of gaming: a study of interaction patterns in a massively multiplayer online game*, in CSCW '04 Proceedings of the 2004 ACM conference on Computer supported cooperative work 360-69 (2004).

45. *Welcome to Steam*, *supra* note 37.

transaction, transfer, or taking of the virtual property always happens in-game or through the virtual market.⁴⁶

In the United States (U.S.), two players stole virtual armor and gold in the game *Diablo III* and were prosecuted in real life.⁴⁷ In China, two men were fined and sentenced to jail for stealing, and subsequently selling, some other players' in-game items for more than U.S.\$6,000.⁴⁸ These unfortunate situations, however, are not limited to the international community. Given the online connectivity prevalent in today's society, persons from any country where online games are present can have their in-game items stolen.⁴⁹ In the Philippines, the Author has spoken to numerous people who have been scammed off their virtual game items.⁵⁰ With the increasing popularity of games, the number of these incidents are bound to rise. Thus, one is left in a continuing state of uncertainty — can the criminal provisions on robbery and theft apply to such situations? If not, what redresses are available to the victims of such unfortunate situations?

B. Statement of the Problem

Given the undeniable popularity of online games, paired with the lack of legislation particularly catering to the protection of online games, unwarranted situations arise where one is able to obtain the virtual in-game items of another, and profit (in real world money equivalents) from such taking.⁵¹ These situations are further complicated by the differing nature of

46. *Id.*

47. Kashmir Hill, These two *Diablo III* players stole virtual armor and gold — and got prosecuted IRL, *available at* <http://fusion.net/story/137157/two-diablo-iii-players-now-have-criminal-records-for-stealing-virtual-items-from-other-players> (last accessed May 5, 2019).

48. The game they played was called “Dungeon Fighter Online.” The two were said to be jobless, and spent much of their time playing the said game. Eric Jou, Two Gamers Are Going To Jail For Stealing \$6,405 In Virtual Items, *available at* <http://kotaku.com/two-gamers-are-going-to-jail-for-stealing-6-405-in-vir-1571780985> (last accessed May 5, 2019).

49. *See, e.g.*, Popular Scamming Methods of Philippines Ragnarok Online, *supra* note 42.

50. Interview *with* Anonymous, *in* Mandaluyong City (June 30, 2016). The Author interviewed a number of people, all of whom wished to remain anonymous.

51. *Id.* *See* Popular Scamming Methods of Philippines Ragnarok Online, *supra* note 42.

these online games and the platforms available in these games, which allow the trading or selling of in-game items.

Some people say that these in-game items are just that — items, or mere parts of the game.⁵² Also, these are virtual, intangible items — mere bytes or pixels.⁵³ Thus, according to them, there is no value attached to such.⁵⁴ Undeniable, however, is that these in-game items are more valuable than perceived; the reality is that they are assigned a real-world value and are targeted by people with malicious intent.⁵⁵

C. Significance

Increased interest has caused the gaming circuit to become more competitive and commercialized. Tournaments that bring together top players can draw large audiences, which can justify game companies and other sponsors funding events that can prove to be lucrative for winners.⁵⁶ For example, last 12 to 15 January 2017, there was a tournament held in China involving the game *Dota 2*.⁵⁷ In that tournament, Filipino team TNC emerged victorious and took home a staggering U.S.\$800,000 or roughly ₱47,000,000 in prize money.⁵⁸ This exemplifies a continuation of the upward trajectory the Filipino gaming industry currently finds itself immersed in.⁵⁹ The previous year saw the Philippines host a number of major international e-sport events like the Manila Major and ESL One Manila, both of which were *Dota 2* tournaments.⁶⁰ Both of these tournaments gained a lot of publicity and were

52. See Orin S. Kerr, *Criminal Law in Virtual Worlds*, 2008 U. CHI. LEGAL F. 415, 416 (2008).

53. *Id.*

54. *Id.*

55. *Id.*

56. See, e.g., PH wins big at 2016 World Electronic Sports Games, available at <https://www.rappler.com/technology/news/158459-wesg-2016-tnc-staz-win-dota2-hearthstone> (last accessed May 5, 2019).

57. *Id.*

58. *Id.*

59. *Id.*

60. Martin Patino, Biggest Philippine eSports Stories of 2016, available at <http://sports.tv5.com.ph/esports/article/biggest-philippine-esports-stories-of-2016> (last accessed May 5, 2019).

considered, even internationally, as widely successful events.⁶¹ With the way 2017 kicked off, this rising trajectory is showing no hints of slowing down.

This increasing popularity of online gaming brings more players into the virtual realm. As the number of people who engage in online gaming increases, the number of instances when virtual theft or robbery occur increases as well.⁶² As stated earlier, cases have been documented where people have been prosecuted for stealing in-game items.⁶³ The nature of these games, being online, means that the theft or robbery can occur anywhere and everywhere, especially in the Philippines which has seen a growth in the gaming industry.⁶⁴ Valve, the developer of Steam, recently came out with the following statement — “Account theft has been around since Steam began, but with the introduction of Steam Trading, the problem [of virtual theft involving virtual commodities] has increased twenty-fold as the number one complaint from our users.”⁶⁵ This puts millions of Filipino Steam Users at immediate risk, with the number only growing; and that is just one sector of the gaming community. Millions more who play other types of games on platforms other than Steam are also put at risk by the premium added on virtual commodities. Thus, the echoes for legislative enactment with regard to these commodities are as loud as it has ever been; the law must be recalibrated before the situation gets out of hand.

II. ONLINE GAMES

A. MMOFPS and MOBAs

A Massive Multiplayer Online (MMO) “is a game that thousands of participants can play simultaneously over the Internet.”⁶⁶ Thus, when a

61. *Id.* See also Philippa Warr, Dota 2: Manila Major Succeeding Where Shanghai Failed, available at <https://www.rockpapershotgun.com/2016/06/09/dota-2-manila-major> (last accessed May 5, 2019).

62. See Gercke, *supra* note 21.

63. See Hill, *supra* note 47 & Jou, *supra* note 48.

64. See Gercke, *supra* note 21 & Popular Scamming Methods of Philippines Ragnarok Online, *supra* note 42.

65. Valve, Security and Trading, available at <http://store.steampowered.com/news/19618> (last accessed May 5, 2019) [hereinafter Valve, Security and Trading].

66. Financial Times, Definition of MMO massively multiplayer online, available at <http://lexicon.ft.com/Term?term=MMO-massively-multiplayer-online> (last accessed May 5, 2019).

game is accessible using the Internet, and when it involves a multitude of players, technically, it can fall under the definition of an MMO. Popular games such as *Dota 2*, *Counter Strike: Global Offensive (CS:GO)*, *World of Warcraft (WoW)*, and even *Clash of Clans* can fall under this classification. However, under MMOs, there are sub-categories or classifications of games. These include the following:

- (1) Massively Multiplayer Online First-Person Shooter (MMOFPS). In these type of games, the player has a first-person point of view of his or her character and is looking over the top of his or her weapon;⁶⁷ from this point of view, the player controls his or her character in order to try to kill other players' characters using a variety of virtual weapons.⁶⁸ Examples include *CS:GO*, *Blackshot*, and *Overwatch*. There can be other forms of gameplay using this basic model.⁶⁹
- (2) Multiplayer Online Battle Arena (MOBA). These games feature the ability to control strategic "units" or "heroes" and deploy them in a virtual battlefield.⁷⁰ There are a variety of games (such as *Dota 2* and *League of Legends*) and styles of gameplay.⁷¹

67. MMOFPS, available at <http://newmedia.wikia.com/wiki/MMOFPS> (last accessed May 5, 2019) & Computer Hope, FPS, available at <http://www.computerhope.com/jargon/f/fps.htm> (last accessed May 5, 2019).

68. These virtual weapons include guns, knives, and even tesla canons. CSGO Analyst, Popular, available at <https://csgo.steamanalyst.com/all/popular/> (last accessed May 5, 2019). See also Winston, available at <http://overwatch.gamepedia.com/Winston> (last accessed May 5, 2019).

69. See Charles Onyett, Counter-Strike: Global Offensive's Demolition Mode, available at <http://www.ign.com/articles/2012/03/13/counter-strike-global-offensives-demolition-mode> (last accessed May 5, 2019). See also Charles Onyett, Counter-Strike: Go's Arms Race, available at <http://www.ign.com/articles/2012/04/04/counter-strike-gos-arms-race> (last accessed May 5, 2019).

70. Multiplayer Online Battle Arena, available at <https://www.giantbomb.com/multiplayer-online-battle-arena/3015-6598> (last accessed May 5, 2019).

71. In *Dota 2*, for instance, the game pits two teams against each other, the goal being to destroy the opposing team's "Ancient," which is located at the heart of the enemy team's base. Basically, the map of *Dota 2* consists of three lanes where the players battle other player-controlled "heroes." Players can buy a variety of items for their heroes in order to get stronger. Also, the "heroes" level up by killing other player-controlled heroes, as well as computer-

B. MMORPGs

Massive Multiplayer Online Roleplaying Games (MMORPGs) also fall under a subcategory of MMOs.⁷² The difference between MMORPGs and other subcategories of MMOs is that in the former, players are put in a virtual world which is “akin to the real world.”⁷³ Unlike the simulated field of play in a MMOFPS or MOBA, which usually pertain to a simple map, MMORPGs feature maps and simulated environments of a much larger scale — a “world” as opposed to a mere “map.”⁷⁴ The idea is to present an environment where a player will spend long hours just exploring and navigating the map on the way to performing tasks and completing objectives.⁷⁵ Completing tasks and objectives allow a player to “level up” a character, granting access to new gameplay scenarios, adding visual or ornamental value, and enhancing the capabilities of the character, making for an immersive gaming experience to be able to finish all the quests and follow the storyline of the game. A player’s character needs to level up; otherwise, the player will not be able to finish his or her quests.⁷⁶ One might think, however, that once a player finishes all the quests and reaches the maximum level that the game is over. This thinking is far from the truth and is the distinguishing factor of MMORPGs from other subcategories of MMOs.⁷⁷

controlled creeps of the opposing team. The first team to destroy the opposing team’s “Ancient” wins. See Dota 2, available at http://dota2.gamepedia.com/Dota_2 (last accessed May 5, 2019).

72. JASON GREGORY, GAME ENGINE ARCHITECTURE 22 (2017).

73. Hermenegildo C. Capuchino II, An Analysis and Examination of One’s Right to Virtual Property Procured in the Virtual World, at 21 (2015) (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University).

74. See Kerrie Lewis Graham, *Virtual Playgrounds? Assessing the Playfulness of Massively Multiplayer Online Role-Playing Games*, 3 AM. J. PLAY 106, 106-08 (2010).

75. *Id.*

76. See generally Heather Newman, World Of Slowcraft: The New Leveling System In ‘Warcraft’ Needs Tweaks, available at <https://www.forbes.com/sites/hnewman/2018/03/01/world-of-slowcraft-the-new-leveling-system-in-warcraft-needs-tweaks/#3a76e9ec5545> (last accessed May 5, 2019).

77. The game never really ends because players can just keep exploring and engaging in various kinds of activities to keep themselves busy. Also, there is the concept of a daily quest. In the game *Aion*, these are quests that players can complete every day in order to get items, virtual currency, and other goods.

Further, these games sometimes feature expansions that serve to increase gameplay scenarios and grow the in-game world.⁷⁸

As stated earlier, MMORPGs are “akin to the real world.”⁷⁹ Players can involve themselves in various kinds of activities, just like in the real world. Using *WoW* as an example, players can engage in activities like fishing,⁸⁰ cooking,⁸¹ or first aid.⁸² Moreover, there is also the concept of professions.⁸³

Thus, there is always something to keep the players busy. Daily Quests, *available at* <http://gameguide.na.aiononline.com/aion/Daily+Quests> (last accessed May 5, 2019).

78. These virtual worlds differ based on the game. The ever-popular *World of Warcraft*, for example, is based in the fictional worlds of Northrend, Kalimdor, or the Outland. In the *Warcraft* Universe, not only humans roam the planets, but other races as well. Thus, there are orcs, taurens, night elves, trolls, gnomes, and much more. These races constitute the playable characters in the game. To begin, players choose a character and embark on a journey, finishing in-game quests and at the same time, exploring the *Warcraft* Universe. Each character begins at level one and reaches a level cap, which varies with every new expansion of the game that is released. For instance, the level cap of *WoW* was originally set at level 60. A new patch came out entitled “World of Warcraft: The Burning Crusade,” which raised the maximum level to 70. More patches have come out since. The latest expansion caps the level at 100, but there is a new expansion that recently came out in 2016.

See Gamepressure.com, Map of Northrend, *available at* http://wow.gamepressure.com/map_of_northrend.asp (last accessed May 5, 2019); Gamepressure.com, Map of Kalimdor, *available at* http://wow.gamepressure.com/map_of_kalimdor.asp (last accessed May 5, 2019); Gamepressure.com, Map of Outland, *available at* http://wow.gamepressure.com/map_of_outland.asp (last accessed May 5, 2019); Races, *available at* <https://worldofwarcraft.com/en-us/game/races> (last accessed May 5, 2019); Level cap, *available at* http://wow.gamepedia.com/Level_cap (last accessed May 5, 2019); & World of Warcraft: Legion, *available at* <http://us.battle.net/wow/en/legion> (last accessed May 5, 2019).

79. Capuchino II, *supra* note 73.

80. Blizzard Entertainment, Fishing, *available at* <http://us.battle.net/wow/en/profession/fishing> (last accessed May 5, 2019).

81. Blizzard Entertainment, Cooking, *available at* <http://us.battle.net/wow/en/profession/cooking> (last accessed May 5, 2019).

82. Blizzard Entertainment, First Aid, *available at* <http://us.battle.net/wow/en/profession/first-aid> (last accessed May 5, 2019).

To illustrate, a character can engage in mining,⁸⁴ engineering,⁸⁵ enchanting,⁸⁶ and more. These activities can be used by players to earn virtual currency. Further, the players can buy various items from shops or from other players.⁸⁷

Another feature available in *WoW* is the ability of players to fight each other. This is called Player versus Player (PvP).⁸⁸ From its name, it is where two user-controlled characters fight each other in the virtual world. This is distinguished from Player versus Environment (PvE),⁸⁹ where players fight computer-controlled enemies. These in-game “options” are some of the biggest features available in *WoW*. For instance, in the PvP and PvE settings, players are even ranked on the *WoW* official website.⁹⁰ In the PvP setting,

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83. Elizabeth Harper, A beginner’s guide to *WoW*’s crafting professions, *available at* <https://www.engadget.com/2013/06/11/a-beginners-guide-to-wows-crafting-professions/> (last accessed May 5, 2019).
 84. Blizzard Entertainment, Mining, *available at* <http://us.battle.net/wow/en/profession/mining> (last accessed May 5, 2019).
 85. Blizzard Entertainment, Engineering, *available at* <http://us.battle.net/wow/en/profession/engineering> (last accessed May 5, 2019).
 86. Blizzard Entertainment, Enchanting, *available at* <http://us.battle.net/wow/en/profession/enchanting> (last accessed May 5, 2019).
 87. Another aspect of MMORPGs is that players can also interact with one another. This is a key aspect when discussing player-to-player transfers of items. In *WoW*, players can interact with each other through a chatbox located at the bottom of the computer or laptop screen. It functions like a normal chat window, except that the words are “spoken” through the avatar of the player. With this, players can even make their avatars engage in various acts such as dancing, kneeling, or even throwing a virtual punch at another avatar. They can also join a guild, where they join other players and embark on adventures. Players usually join guilds to help each other out by finishing quests together, and giving each other advice, whether it be related to the game, or not.
 88. Player v. Player, *available at* https://wow.gamepedia.com/Player_vs._Player (last accessed May 5, 2019) & Vangie Beal, PVP, *available at* <http://www.webopedia.com/TERM/P/PVP.html> (last accessed May 5, 2019).
 89. Player versus Environment (PvE), *available at* <https://www.techopedia.com/definition/27051/player-versus-environment-pve> (last accessed May 5, 2019).
 90. Blizzard Entertainment, Player vs. Player Leaderboards, *available at* <http://us.battle.net/wow/en/pvp/leaderboards/3v3> (last accessed May 5, 2019).

players are ranked based on “Honor Points.”⁹¹ Honor points are “gained by killing members of the opposite faction in PvP combat.”⁹² Using these honor points, players are able to obtain strong items, which one can use in combat.⁹³ Basically, the more players one kills, the more honor points he or she gets, and the higher he or she climbs in the player rankings.⁹⁴

Most of the time, this is in a fixed setting. Thus, to get honor points, players are transported to a different location, such as an arena⁹⁵ or a battleground,⁹⁶ and there the players fight each other to obtain more honor points. Honor points are also obtainable when one kills another player of the opposite faction while roaming around the virtual world, though the number of honor points obtainable, in this case, is lesser than the amount one gets in a battleground or an arena match.⁹⁷ The same concept applies to PvE.⁹⁸

It is significant to note that these concepts of PvE and PvP are not exclusive to *WoW*. A number of MMORPGs contain these features, and they comprise a vital aspect of these types of games, as well.⁹⁹ This is because, eventually, most players are able to reach the maximum level or the

91. WoWHead, Honor Points, *available at* <http://www.wowhead.com/item=43308/honor-points> (last accessed May 5, 2019).

92. *Id.*

93. *Id.*

94. This is another reason why MMORPGs do not have a definite “ending;” the player rankings change periodically, and a lot of players wants to be the “best” or “strongest” in the game, so until he or she reaches that point, he or she continues to play the game.

95. Arena, *available at* <http://wow.gamepedia.com/Arena> (last accessed May 5, 2019).

96. “Battlegrounds are instanced areas used for player versus player combat (PvP). In them[,] players can participate in team PvP, struggling for victory in one of a number of battlegrounds against a similarly capable team of players from the opposite faction.” Battleground, *available at* <http://wow.gamepedia.com/Battleground> (last accessed May 5, 2019).

97. WoWHead, *supra* note 91.

98. *Id.*

99. Player v. Player, *supra* note 88 & Player vs. Environment, (PvE), *supra* note 89.

level cap.¹⁰⁰ It is these features of PvP and PvE that keep players into the game even when they are, technically, finished.

In *WoW*, for example, this is one of the reasons why players engage in in-game professions and other kinds of activities. When a player's character mines ore or engineers an automobile, the output is sellable or tradable in the virtual world.¹⁰¹ When the player sells or trades this item, he or she, in return, obtains an item of supposedly equal value.¹⁰² This item can be in the form of currency or "tangible" virtual items like a sword.¹⁰³ This is important because these items and currencies are able to make the character stronger who, in turn, is able to increase his or her honor points and rank in the system.¹⁰⁴ Thus, players are often found in a continuous pursuit of strength.¹⁰⁵ The stronger one is, the more popular his or her character gets,¹⁰⁶ and the more fun the game becomes.

The PvP and PvE systems, however, are not the only reasons why players stay in MMORPGs after leveling. The term RPG in the genre stands for "role playing games."¹⁰⁷ Thus, some players stay in the game for the fun

100. Level cap, *supra* note 78.

101. Trade, *available at* <https://wowwiki.fandom.com/wiki/Trade> (last accessed May 5, 2019).

102. *Id.*

103. *Id.*

104. *Id.*

105. In other words, "[l]ike the humans who imbue them, avatars find themselves on something of a treadmill of social success through avatar capital accumulation: they must work to advance, but each advancement raises the aspiration level and spurs them to still greater work." Edward Castronova, *Virtual Worlds: A First-Hand Account of Market and Society on the Cyberian Frontier* (A Working Paper submitted to CESifo) at 14, *available at* https://www.econstor.eu/bitstream/10419/75918/1/cesifo_wp618.pdf (last accessed May 5, 2019) (citing Richard A. Easterlin, *Income and Happiness: Towards a Unified Theory*, 111 *ECON. J.* 465, 465-84 (2001)). "Avatar Capital" is "an enhancement of the avatar's capabilities through training." Castronova, *supra* note 105, at 14.

106. "As it turns out, the social standing of the avatar has a powerful effect on the entertainment value of the VW [(Virtual World)]." *Id.* at 13.

107. RPG, *available at* <https://en.oxforddictionaries.com/definition/rpg> (last accessed May 5, 2019).

of “playing the role of their characters.”¹⁰⁸ For instance, in *WoW*, a player who chooses an orc as a character should act the same way an orc would act based on Warcraft lore. This requires the player looking into things such as how orcs in *WoW* originated, their dispositions, and such.¹⁰⁹

For the other gamers, though, anything can be the reason; it could be sentimentality, PvP, riding his or her horse, or just wanting to go around and explore the virtual world. Thus, MMORPGs are unique in that they allow Users to do basically anything they want. With fishing, questing, fighting, and interacting with fellow players, MMORPGs have it all. Diversity is the name of the game.

III. VIRTUAL COMMODITIES IN ONLINE GAMES

Given the aforementioned, another important aspect of MMORPGs is the in-game items that the characters possess.¹¹⁰ These can also be called virtual commodities. It includes the garments or armor that the characters wear, including accessories such as necklaces or rings. These could also include the boots or gloves that the character puts on. It is not limited, however, to what is on a character, it extends to things that a character can possess.¹¹¹ Thus, it includes items like swords, guns, or other weapons that characters use to combat monsters, bosses, or other players. Moreover, it can include other miscellaneous items such as gold ore,¹¹² which one gets through mining. Even a fish that was caught in one of the lakes in the game location of Kalimdor can be considered a virtual commodity. More importantly, copper, silver, and gold, which are the currencies in *WoW*,¹¹³ are considered as virtual commodities.

108. Duchenaute & Moore, *supra* note 44.

109. See MMORPG RP Basics, available at <http://rpmadesimple.com/the-rp-survival-guide/mmorpg-rp-basics> (last accessed May 5, 2019).

110. See Keith Stuart & Jordan Erica Webber, *16 trends that will define the future of video games*, GUARDIAN, July 23, 2017, available at <https://www.theguardian.com/technology/2015/jul/23/16-trends-that-will-change-the-games-industry> (last accessed May 5, 2019).

111. *Id.*

112. Blizzard Entertainment, Gold Ore, available at <http://us.battle.net/wow/en/item/2776> (last accessed May 5, 2019).

113. Money, available at <http://wowwiki.wikia.com/wiki/Money> (last accessed May 5, 2019).

One must remember, however, that these commodities differ per MMORPG. Thus, there can be certain items that are available in *WoW* but are unavailable in other games, such as *Cabal*,¹¹⁴ a local, Philippine-based MMORPG. In *Cabal*, the currency is also measured by gold.¹¹⁵ This is not the same as *WoW* gold. They operate in different contexts and different virtual worlds.¹¹⁶

Therefore, virtual commodities include both currency and items. In essence, these are things that one would own in real life. To illustrate, in real life, when a person owns a laptop, this is his or her commodity. If he or she owns law books, medical books, or encyclopedias, these are his or her commodities. The same goes for the clothes that one wears, or jewelry he or she puts on. The same principle applies to the virtual world. One difference though, between virtual worlds and the real world, is that in the former, the character himself or herself is a commodity. One must remember that all these items, including the character, are fictional. They exist only in the virtual world. As such, characters themselves are capable of being possessed. In a way, one's character is the User's tool in order to obtain more virtual items. Obviously, this is not the case in real life. One cannot own another,¹¹⁷ nor can he or she possess another. Human beings are not tools,

114. *Cabal Clashing*, available at <http://cabal.e-games.com.ph/main.php> (last accessed May 5, 2019).

115. *Id.*

116. To illustrate further, the Shadowmourne in *WoW* was one of the strongest items in the game during the *WoW* expansion "World of Warcraft: The Wrath of the Lich King," and is obtainable by combining certain items which a player can only obtain by beating a certain boss. Obviously, the bosses, monsters, and the virtual worlds in which the characters play in, are different. One must remember, however, that the value of virtual commodities, really, is limited to the confines of the game in which it can be found. These include the items obtainable by the players.

Blizzard Entertainment, *World of Warcraft: Wrath of the Lich King*, available at <http://sea.blizzard.com/en-sg/games/wrath> (last accessed May 5, 2019) & *Shadowmourne: A Guide to the Creation of Frostmourne's Sister Blade*, available at <http://www.wowhead.com/guide=503/shadowmourne-a-guide-to-the-creation-of-frostmournes-sister-blade> (last accessed May 5, 2019).

117. See Hillel Steiner, *Slavery, Socialism, and Private Property*, 22 *NOMOS* 244, 244-45 (1980).

nor are they commodities. In essence, everything procurable in the virtual world is a virtual commodity.¹¹⁸

Moreover, while virtual commodities seem to be most applicable to MMORPGs, this is not the case. As discussed earlier, MMOs can be subdivided into smaller subcategories of games. Two of the ones that were discussed are MMOFPS (or FPS) games and MOBAs. While the concepts or goals of these kinds of games are more clear-cut and easier to understand, these games also possess virtual commodities. The guns that the players use in FPS games, as well as the designs of those guns, in some cases, can be virtual commodities. This will be discussed in detail later on.

IV. TRADING AND SELLING PLATFORMS FOR VIRTUAL COMMODITIES

While all games, technically, have virtual items, not all of them are able to facilitate a player-to-player transfer of these items. To be able to transfer these virtual commodities, the nature of the game, the item itself, and other factors have to be taken into consideration.

A. Virtual Market

Given that virtual commodities are found in a game, the way these are transferred is through some kind of virtual market. An example is the Steam Client, which is a platform that allows Users to purchase and download games,¹¹⁹ including popular titles such as *Dota 2*,¹²⁰ *CS:GO*,¹²¹ *DOOM*,¹²² *Grand Theft Auto V*,¹²³ *Civilization VI*,¹²⁴ and more. Some of the games are free to download, while others have to be bought from the Steam Store.

118. See Vili Lehdonvirta, et al., *Virtual Consumerism: Case Habbo Hotel*, 12 INFO. COMM. & SOC'Y 1059, 1060 (2009).

119. Refer to the subheading "online gaming" found in the Introduction, specifically, under Part I.A. Background of the Study.

120. Steam, *Dota 2*, available at <http://store.steampowered.com/app/570> (last accessed May 5, 2019).

121. Steam, Counter-Strike: Global Offensive, available at <http://store.steampowered.com/app/730> (last accessed May 5, 2019).

122. Steam, *Doom*, available at <http://store.steampowered.com/agecheck/app/379720> (last accessed May 5, 2019).

123. Steam, *Grand Theft Auto V*, available at <http://store.steampowered.com/agecheck/app/271590/> (last accessed May 5, 2019).

124. Steam, Sid Meier's *Civilization® VI*, available at <http://store.steampowered.com/app/289070> (last accessed May 5, 2019).

Once the User downloads the game, either by buying it or if it is free-to-play, he or she can install it in his or her computer or laptop, and, subsequently, play the game. Included in the Steam Client is the Steam Market (Market). Basically, the Market is a platform where Users can trade or sell (virtually) their in-game items with other players.¹²⁵

For instance, *Dota 2* is a game which, at first glance, does not seem to involve any sort of player-to-player transfers. However, if one were to go to the Steam Market, the *Dota 2* virtual commodities that can be transferred from player-to-player are character or avatar designs. That is, one can trade visual designs of the 112 playable characters¹²⁶ on the market.

Another example would be the game *CS:GO*. As mentioned earlier, *CS:GO* is a FPS-type game. This game, in particular, offers a lot of different kinds of weapons, all of which vary in strength and use, and can enhance the gameplay experience of players by helping them kill more opponents, resulting in a win. Like *Dota 2*, the virtual commodities in this game consist of items that make the game more aesthetically pleasing — namely, weapon designs.¹²⁷ In gamer jargon, these are commonly termed as “skins.”¹²⁸ These “skins” can be traded for other weapon designs, or for virtual currency.¹²⁹ Essentially, these virtual commodities have become an essential part of the gaming experience.

Given all of the above, the trading or selling of virtual commodities has boomed in recent years.¹³⁰ And this has been accompanied with two key developments: (1) the assignment of real-world currency values to virtual commodities and (2) the increase in the real-world value of these virtual

125. See Community Market FAQ, *supra* note 40.

126. Heroes, available at <http://dota2.gamepedia.com/Heroes> (last accessed May 5, 2019).

127. Margarate Rouse, Skin, available at <https://whatis.techtarget.com/definition/skin> (last accessed May 5, 2019).

128. *Id.*

129. The virtual currency in the Steam Market is Steam credits. Welcome to Steam, *supra* note 37.

130. See WAX io, How on earth is trading virtual items in video games a \$50 billion industry?, available at <https://medium.com/wax-io/how-on-earth-is-trading-virtual-items-in-video-games-a-50-billion-industry-5972c211d621> (last accessed May 5, 2019) & Wayne Rumbles, *Theft in the digital: Can you steal virtual property?*, 17 CANTERBURY L. REV. 354, 358 (2011).

commodities.¹³¹ Some of the items reach thousands of dollars in price.¹³² For instance, there are guns in *CS:GO* that go for above ₱20,000.¹³³ James Davenport and Chris Livingston further explained how the trading scheme in the Steam Market works, thus —

[*CS:GO*] skins and all other Steam Market items are subject to a [U.S.]\$400 maximum listing price. Items are often sold for greater sums through key trades, a sub-currency of the [*CS:GO*] economy. A single [*CS:GO*] key costs [U.S.]\$2.50 and can be sold on the Steam Marketplace. To break through the [U.S.]\$400 ceiling, [one must] convert [his or her] listing price to a key value. If [he or she] want[s] to sell an item for [U.S.]\$500, [he or she] divide[s] [his or her] listing price by the key value[:] 500 by 2.5 [=] 200 keys. Most people use third-party trading websites to list *CS:GO*'s rarest wares, but once a trade is made, those keys can be sold back into the Steam Marketplace. There are some skins in our list that definitely break that cap, but due to both the extraordinary rarity of these items and their inconsistent prices in the key market, [we have] pulled our best estimates from varying trading sites. These are subject to change on a whim, but remain impressive no matter how transitory.¹³⁴

Using *CS:GO* as an example, Devenport and Livingston explained that even though there is a cap to the items, players can exceed this cap by converting their credits into “keys.”¹³⁵

Dota 2, on the other hand, has items that have fetched similar rates.¹³⁶ For instance there is the “Platinum Baby Roshan,” which acts as a courier¹³⁷

131. See Rumbles, *supra* note 130, at 358–60; Matthew Lee, *Online Role Play Games — The Legal Response*, 4 HERTFORDSHIRE L. J. 72, 73 (2006) & Margaret Rouse, virtual asset, available at <http://searchfinancialsecurity.techtarget.com/definition/virtual-asset> (last accessed May 5, 2019).

132. WAX io, *supra* note 130.

133. *CS:GO* Stash, AK-47 Skins, available at <https://csgostash.com/weapon/AK-47> (last accessed May 5, 2019).

134. James Davenport & Chris Livingston, The most expensive *CS:GO* skins, knives, and stickers, available at <http://www.pcgamer.com/the-most-expensive-csgo-skins> (last accessed May 5, 2019).

135. *Id.*

136. See Imaginary Capital Markets, Top 5 most outrageous *Dota* items sold, available at <http://imaginarymarkets.com/top-5-most-outrageous-dota-items-sold> (last accessed May 5, 2019).

in the game, which sold for U.S.\$2,000 to U.S.\$3000.¹³⁸ There was also the *Golden Baby Roshan*, which sold for U.S.\$13,000, and the *Legacy Ethereal Flames Wardog*, which sold for U.S.\$38,000.¹³⁹ Both of these are couriers. Until now, there are still items that fetch big amounts. For instance, there is the *Frozen Acolyte of Clasz Set*, a design for the game character Faceless Void, a *Dota 2* hero, which is currently on the Market for around U.S.\$400.¹⁴⁰ But one must remember that all of these are only the items available on the Market. Other items, especially the rarest of ones, are on sale on other third-party websites. Given the threshold amount laid down by the Steam Market, these rare items are sold in these third-party sites for prices above the threshold.¹⁴¹ This is how the rarest items are traded.

B. MMORPGs

Trading or selling in MMORPGs is different from those games that use virtual markets. While the Steam Client uses the Market to facilitate trades, transfers in MMORPGs happen in the game itself.¹⁴² Thus, there is an in-

137. “Custom Couriers are cosmetic items that can be equipped in the Courier slot of the loadout screen. Upon being equipped, any purchased couriers will be replaced by the Custom Courier. This change is purely cosmetic.” Custom Courier, *available at* http://dota2.gamepedia.com/Custom_Courier (last accessed May 5, 2019).

In essence, couriers are like an extra avatar that Users can control. Their main purpose is to deliver the items to the main avatar of the User, so that the latter does not have to go back to his or her base to heal or buy items. Couriers are an integral part of the game as time management is an important aspect in *Dota 2*. A few extra minutes could mean a big difference in the game. Thus, the changing looks of the couriers, like the avatars, are virtual commodities. Such, like what was previously mentioned, is purely for cosmetic, or aesthetical value.
Id.

138. Imaginary Capital Markets, *supra* note 136.

139. *Id.*

140. Dotabuff, Acolyte of Clasz Set, *available at* <https://www.dotabuff.com/cosmetics/faceless-void/20192-acolyte-of-clasz-set> (last accessed May 5, 2019).

141. An example is the website OPSKINS. See OPSKINS, CS:GO, *available at* https://opskins.com/?app=730_2&loc=shop_browse (last accessed May 5, 2019). Also, people have engaged in trading virtual commodities on discussion websites such as Reddit. There, players can personally contact one another to engage in trades. *Id.*

142. Augustus Urschel, Understanding Real Money Trading in MMORPGs at 6-7, *available at* <https://library.gwu.edu/sites/default/files/eckles/Understanding>

game trading of virtual commodities, and this is the only way virtual commodities are transferrable in MMORPGs.¹⁴³

In *WoW*, for instance, players are able to trade directly, through a system of offering and acceptance.¹⁴⁴ Just like in the real world, the trades can oftentimes be one-sided. This is because, presumptively, players make the trades on their own free will. Also, it is possible that there be trades for nothing. Thus, in a way, “donations” can be effected. For instance, a player can trade his or her broad sword to another player and receive absolutely nothing in return.

As mentioned earlier, the game has a virtual economy. Thus, some players will, inevitably, turn out “better off” than others. This stems from a lot of reasons. It could be trading savvy, or a player using his or her profession to get richer. This establishment of an in-game social hierarchy (based on riches) is a reason why some players may just want to donate or give away items to help others out. This happens a lot, especially when the higher leveled players donate relatively “useless” items to lower leveled ones in order to help them level up.

Another reason why a player donates to another is that both are members of the same guild. Given the nature of a guild, which is a group of players who seek to help each other out, an association of sorts,¹⁴⁵ the donation of items to other guild members is typical. Members of the guild want each other to fully experience and enjoy the game, and donating items to one another is one way by which everyone can enjoy. Again, this is all in

[%20Real%20Money%20Trading%20in%20MMORPGs.pdf](#) (last accessed May 5, 2019).

143. *Id.*

144. Here, players are able to trade by clicking on another player’s avatar, which then reveals a trade option. Once the User clicks on the trade button, the trade box appears. After which, players just have to drag the items they wish to trade into the trading box. This is done by opening the player’s bag, which contains the items. If what they seek to trade is in-game currency, then the player just has to put the amount which he or she wishes to trade. Once the players are sure that they want a trade to proceed, there is a confirmation or acceptance button which both players have to press in order to complete the trade. It is important to note that even if one player presses the trade or accept button, if the other player does not do the same, the trade does not push through. Thus, the trade or transfer is something that should be mutual.

145. Guild, *available at* <https://wowwiki.fandom.com/wiki/Guild> (last accessed May 5, 2019).

consideration of the virtual economy that envelops the virtual world. Players make trades that are, supposedly, economically beneficial to them. Moreover, when they donate, they usually give items that do not have a lot of value to them, relatively speaking. Although, like in the real world, there are those who still give a lot regardless of whether the item takes up a lot of their total wealth, or not.

V. VIRTUAL ECONOMY

While the games differ in nature, each having its own set of goals and objectives, a lot of these games have one distinct commonality — the presence of a virtual economy.

A. Virtual Market

The prices in the virtual market are determined by a number of factors such as rarity, aesthetics, and other market forces such as supply and demand.¹⁴⁶ Thus, the prices are determined by how much people are willing to sell and buy virtual commodity.¹⁴⁷ As discussed earlier, the Steam Market, which is a kind of virtual market, is a platform where Users can trade or sell their in-game items with other players.¹⁴⁸ To reiterate, in *Dota 2*, the character designs are the tradable items,¹⁴⁹ while in *CS:GO*, the tradable items are the skins of the guns.¹⁵⁰ These constitute the virtual commodities of those games. Each game differs with what constitutes as its virtual commodities.

Thus, given that each game has its own set of commodities that can be transferred, how is one to ascertain that he or she is getting his or her fair share in the trade? The Steam Market does this by assigning real-world values to the virtual commodities.¹⁵¹

When a User goes to the Steam Market, he or she is greeted by virtual items with a corresponding price tag attached to it.¹⁵² A User can search for

146. Cheng-Hsun Ho & Ting-Yun Wu, *Factors Affecting Intent to Purchase Virtual Goods in Online Games*, 10 INT'L J. ELECTRONIC & BUS. MGMT. 204, 207-08 (2012).

147. *Id.*

148. Welcome to Steam, *supra* note 37.

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.*

a virtual item in the search box, or he or she can search for items based on the game. Thus, for instance, a User can filter the search to specific items found in the games *Dota 2*, *CS:GO*, *Team Fortress 2*, and more. With this, the items can be specifically examined.¹⁵³ The User clicks on the specific item, is able to see a short description of it, and get information about who is selling an item, as well as information for pricing. Included in the specific web page is a chart showing the *Median Sales Price* of the item.¹⁵⁴ The Median Sales Price is a chart showing the number of times the said items were sold during the past few weeks, and the price at which they were sold. With this, the players are able to see whether or not another User is selling an item at a relatively higher price or not. These price ranges are dictated by the rarity of the items, as well as factors such as aesthetics or whether the item includes a “stat tracker” or not.¹⁵⁵

Buying or selling in the Steam Market is done by purchasing Steam credit in certain stores that are readily available throughout the country.¹⁵⁶ The way Steam earns from this set-up is that they get a certain percentage when one buys Steam credit.¹⁵⁷ Thus, whatever the player earns (or loses) in the sale or trade of his or her item, Steam has nothing to do with, as it is already getting its share in the profits when the player bought Steam credits from a store.

Moreover, Steam also acknowledged the presence of virtual economies in games, albeit to address a different problem — the rise of online gambling sites. Steam has issued a statement, *viz* — “In 2011, we added a feature to Steam that enabled Users to trade in-game items as a way to make it easier

153. The search of an item can go this way — assume that the User is one who plays *CS:GO*. He or she is looking for a new knife skin for a certain knife. He or she searches for a specific knife in the search box. With this, he or she remembers one item that attracts his or her attention in the game, because another player was using it — the Flip Knife. Upon searching for the said item, a bunch of designs appear. There is the Flip Knife | Slaughter, the Flip Knife | Doppler, and the Flip Knife | Scorched, to name a few.

154. *See, e.g.*, *Dota 2*, available at <https://steamcommunity.com/market/listings/753/Dota%202> (last accessed May 5, 2019).

155. Ho & Wu, *supra* note 146.

156. Welcome to Steam, *supra* note 37.

157. *Id.*

for people to get the items they wanted in games featuring in-game economies.”¹⁵⁸ The issue on gambling will also be discussed later on.

Taking all this into account, however, trading through the Steam Market is not the only way players can trade or sell items. Transactions can be done in real-life. Thus, one player can transfer his or her virtual commodity in Steam, and pay in real money. This could be done through a face-to-face meet-up or through various other money transferring schemes.¹⁵⁹

B. MMORPGs

With respect to MMORPGs, the concept of a Virtual Economy is not as clear-cut as it is in other games. Given that MMORPGs are parallel to the real world, and each MMORPG is set in a different virtual world from the others, the virtual economy that exists in one virtual world is confined to the limits of that game.¹⁶⁰

Edward Castronova,¹⁶¹ in a working paper, extensively discussed the concept of a virtual economy.¹⁶² He based his findings on a study of the virtual world called *Norrath*, which is one of the realms in the game *Everquest*.¹⁶³ Essentially, his paper was about how the economy in these virtual worlds, particularly *Norrath*'s, mimics the economy of a real-world country.¹⁶⁴ Castronova, explaining this phenomenon, stated that,

Some 60,000 people visit *Norrath* in any given hour, paying for the privilege, around the clock, every day, year-round. Nearly a third of the adults among them — perhaps some 93,000 people out of *Norrath*'s

158. Erik Johnson, In-Game Item Trading Update, *available at* <http://store.steampowered.com/news/22883> (last accessed May 5, 2019) [hereinafter Steam, Update].

159. *Id.*

160. Ho & Wu, *supra* note 146.

161. “Edward Castronova, Professor of Telecommunications at Indiana University, is a founder of scholarly online game studies and an expert on the societies of virtual worlds.” Edward Castronova, *available at* <https://www.tedxblomington.com/edward-castronova> (last accessed May 5, 2019).

162. Castronova, *supra* note 105.

163. *Id.* at 2.

164. *Id.* at 37.

[400,000-person] user base — spend more time in Norrath in a typical week than they do working for pay. The exchange rate between Norrath's currency and the U.S. dollar is determined in a highly liquid (if illegal) currency market, and its value exceeds that of the Japanese Yen and the Italian Lira. The creation of dollar-valued items in Norrath occurs at a rate such that Norrath's [gross national product (GNP)] per capita easily exceeds that of dozens of countries, including India and China. Some 20[%] of Norrath's citizens consider it their place of residence; they just commute to Earth and back. To a large and growing number of people, virtual worlds are an important source of material and emotional well-being.¹⁶⁵

Castronova also wrote about how Norrath has its own “exchange rate, inflation rate, GNP per capita, and poverty rate.”¹⁶⁶ Norrath, in a way, is a world of its own, albeit found in the virtual sphere. It is also this unique feature of MMORPGs that makes it so attractive to many Users. In relation, the way a gamer thinks and makes decisions is also an important aspect of virtual economies.

One can consider a gamer's utility as a function of his or her performance in the game, which in turn, is a function of his or her items, since stronger items lead to better performance, and an intrinsic utility component from playing (fun).¹⁶⁷ Gamers derive some utility from giving other players items since they derive some fun from that.¹⁶⁸ Also, one can consider these two components of utility to be independent. On the other hand, as players get stronger, the relative utility of some items goes down, but the cost of hoarding them goes up; therefore, a player will just choose to give an item away if the net utility from holding an item that gives him or her better performance is less than the utility (fun) he or she derives from giving the item to another player. The economic aspect is just one of many other reasons why people engage in online gaming.¹⁶⁹ Moreover, the utility derived from playing the game is another important aspect of virtual economies. This is one of the driving forces of the virtual economy since it relates to how a player thinks, makes trades, why he or she donates, and more.

165. *Id.* at 3.

166. *Id.* at 5.

167. Utility can be described as something that makes the player seem “better off.” This can be, or not be, money-driven. Thus, the fun a player experiences from playing the game is utility, and so are economic gains from trades.

168. Duchenaud & Moore, *supra* note 44.

169. *Id.*

More than this, however, is the relation of the in-game economy to the real-world economy. *WoW*, to illustrate, has gained notoriety as a real-world money-making machine.¹⁷⁰ The economy of the game is so big that it has spilled over into the real world, to the point where people start making real money off the game itself. In 2015, Blizzard, the creators of *WoW*, introduced a new system where players, using real money, can buy what they call a *WoW Token*.¹⁷¹ This was done primarily to combat the phenomenon of using real world money to obtain items.¹⁷² The *WoW Token* is described as having been “created to give players with lots of extra [in-game] gold the option to use it to help cover their subscription cost, and give those who want to purchase gold a way to do so from fellow players through a secure, easy-to-use system.”¹⁷³ Moreover,

[b]uying [in-game] gold from third-party services negatively impacts the game experience for everyone. The overwhelming majority of the gold these services provide comes from stolen player accounts, halting the victims’ ability to play the game and contribute to their guilds. On top of this, gold selling companies often farm resources using hack programs, sell fake product codes as a scam, and spam entire realms with ads to buy gold, disrupting the game in very real ways.

The [*WoW Token*] allows players to exchange real money for gold in a secure and sanctioned way — together with the ongoing efforts of our developers, support staff, and anti-hack teams to stop the exploits these companies use and help players who have become *victims* of their operations, we hope the [*Token*] can help make [*WoW*] a *safer* and more enjoyable game for all of our players.¹⁷⁴

The *WoW Token*’s deployment as an anti-fraud mechanism implies the existence of an active in-game economy, one that is vibrant enough for

170. MoneyPantry, How to Make Money Selling Virtual Gold as a WOW Gold Farmer, *available at* <http://moneypantry.com/make-money-selling-virtual-gold> (last accessed May 5, 2019).

171. Blizzard Entertainment, Introducing the WoW Token, *available at* <https://worldofwarcraft.com/en-us/news/18141101> (last accessed May 5, 2019) [hereinafter Blizzard, WoW Token].

172. *Id.*

173. *Id.*

174. *Id.* (emphases supplied).

participants to want to resort to hacking, taking advantage of exploits, and stealing other players' accounts in order to gain an advantage.¹⁷⁵

To recap, some games have virtual economies, while some games do not. Those games that have virtual economies are usually online multiplayer games, which means that the games are playable online with other Users. Moreover, virtual economies are not limited to MMORPGs, but as seen earlier, can also be extended to other types of games such as MOBAs or MMOFPS, through online platforms such as the Steam Client. The economies in these types of games are also different. MMORPGs, being worlds in themselves, have their own economy and unique features. MOBAs and MMOFPS games, though they do not have an in-game trading option, make use of virtual markets to be able to trade virtual commodities found in the game. Thus, while both are different in the way each economy works, and in the way the virtual commodities are traded, the subject or object of the trade remains the same — valuable virtual commodities that are found in a specific online game.

VI. VIRTUAL COMMODITIES AS PROPERTY

The characteristics of virtual commodities described above demonstrate that these items are manipulated and traded the same way real-world items are. In fact, their very treatment inside a game is that a character wields and uses these items the way they would with equivalent items outside a game: a virtual sword is picked up, used to attack a virtual opponent, improved using virtual means, and can be sold, traded, or stolen, all the same way a real sword in the real world might.

Moreover, a unique characteristic of virtual commodities today is that they are capable of being assigned real-world monetary value and can be traded between players not just in the virtual space for virtual currency, but via online markets where real money changes hands.¹⁷⁶ Virtual commodities can, in this fashion, create an expectation of real financial value.¹⁷⁷ This development is not insignificant, because virtual commodities share this trait with other financial expectations, such as negotiable promises to pay or to

¹⁷⁵. *Id.*

¹⁷⁶. Ho & Wu, *supra* note 146.

¹⁷⁷. *Id.*

receive payment, uncertificated shares of stock, title over assets, or even various forms of intellectual property.¹⁷⁸

In the same way that the aforementioned examples all fall under a particular classification of property, the Author submits that virtual commodities will bear classification as property as understood under Philippine law. Understanding virtual commodities in this manner allows for a more complete understanding of how these items work and can be treated under the law.

A. Virtual Items as Property

Several theories have been forwarded by experts to show that virtual commodities are properties. Joshua Fairfield, in an article published in the *Boston University Law Review*,¹⁷⁹ states that virtual property has three certain characteristics.¹⁸⁰ For one, it is rivalrous.¹⁸¹ This means that “one person owns and controls it, [while] others do not.”¹⁸² Another characteristic is that it is persistent, which means that “[u]nlike the software on [one’s] computer, they do not go away when [one] turn[s] [his or her] computer off.”¹⁸³ Lastly, it is interconnected, meaning other players or Users can interact with them.¹⁸⁴ These characteristics are found in virtual commodities, regardless of the type of game. Given that Users have complete control of their items, these items certainly fall within the concept of virtual property.¹⁸⁵

178. *Id.*

179. Joshua Fairfield, *Virtual Property*, 85 B.U. L. REV. 1047 (2005).

180. *Id.* at 1049–50.

181. *Id.* at 1049.

182. *Id.*

183. *Id.*

184. *Id.* at 1050.

185. Since Users have complete control of their items, to the exclusion of others, the first requirement is present. Moreover, the item persists even if one turns off his or her computer since the item is linked to one’s account or avatar. Thus, a sword in *WoW*, or a skin of a gun in *CS:GO* stays with the character even if the latter is offline. Also, other players are able to experience and interact with these items. To illustrate, in *WoW*, four players enter into a 2v2 arena where the team that survives, wins. Here, players are able to interact with the virtual properties of another character, although sometimes, in a way that he or she would not like. This is because players use their virtual items (swords, guns, and

Virtual commodities, as a kind of virtual property, suffer from being unrecognized and undefined by law as property.¹⁸⁶ However, like what was mentioned earlier, there are several theories that extend property rights to virtual properties.¹⁸⁷ For one, there is the Utilitarian Theory, which is characterized thus —

[A]s is clear from the amount of real-world time and money invested in the virtual property, individuals place a very high value on the virtual objects they create. From the utilitarian perspective, a societal good is composed simply of aggregate individual goods. Since millions of people labor to create objects of value in virtual worlds, there are utilitarian grounds for granting property rights based on the value of the transactions to individual users.¹⁸⁸

The Utilitarian Theory is based on the notion that private property interests should be granted if it will increase overall utility or social welfare.¹⁸⁹ Applied to virtual commodities, such can be granted property interests since more than there being a lot of players, such virtual commodities are highly valued by the Users.¹⁹⁰

Another theory advanced to give virtual commodities property rights is the Lockean Labor Theory of Property.¹⁹¹

Locke's central property thesis is that '[w]hatsoever [man] removes out of the state that nature [has] provided and left it in, [he or she has] mixed his [or her] labor with, and joined to it something that is his [or her] own, and thereby makes it his [or her] property.' Locke's property theory is a theory of desert from labor; that is, the person who expended labor to render the 'thing in nature' into valuable form deserves to reap its value.¹⁹²

armor, for example) to be able to beat the other players in battle. Other players can see the item, hear it (if it makes any sounds, like guns), and even "feel" it (if a weapon, for instance, was used against them). Thus, there is interaction.

186. Fairfield, *supra* note 179.

187. Capuchino II, *supra* note 73, at 30.

188. F. Gregory Lastowka & Dan Hunter, *The Laws of the Virtual Worlds*, 92 CAL. L. REV. 1, 45 (2004).

189. *Id.* at 44.

190. Ho & Wu, *supra* note 146.

191. Lastowka & Hunter, *supra* note 188, at 46.

192. *Id.* (citing JOHN LOCKE, SECOND TREATISE OF GOVERNMENT 17 (Thomas P. Pearson ed., 1952)).

Based on this theory, players can have a claim to virtual commodities as property based on the time and effort spent on the game to obtain such.¹⁹³ This is readily applicable to MMORPGs, as one needs to level up in order to obtain better items. He or she also has to finish quests, obtain gold through various means, and make economically sensible trades. In other types of games, the same is also applicable. The presence of a virtual economy, in the first place, requires one to devote more time into studying what trades would be the best. He or she would have to know the items, do his or her research, and find a credible trading partner. Undeniably, all this takes time and effort. Thus, to be able to find an item, persuade a player to trade or sell it, study the virtual economy at length, is labor on its own, considerable enough to vest rights over the commodity he or she virtually possesses.

Lastly, there is the Personality Theory.¹⁹⁴ This is described in the following manner —

In essence, these theorists argue that property rights are related — either as necessary conditions for, or as connected to — human rights such as liberty, identity, and privacy. A simple example is the property interest one has in a wedding ring or a house [—] rather than being merely property interests, these objects and rights are deeply connected to one's sense of self.¹⁹⁵

Thus, this theory views property rights as an extension of one's personality.¹⁹⁶ Like what was mentioned earlier, "objects and rights are deeply connected to one's sense of self."¹⁹⁷ With regard to virtual commodities, the theory is readily applicable. When a player obtains a virtual commodity, he or she feels that sense of ownership.¹⁹⁸ In *WoW*, for example, a player who obtains the weapon Shadowmourne¹⁹⁹ holds it as something more than a weapon, but as a badge — a badge that hours of hard work, stress, and even sleepless nights playing the game have reaped fruits in

193. Latowska & Hunter, *supra* note 188, at 46.

194. *Id.* at 48.

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. This was explained earlier in Part III. Virtual Commodities in Online Games. It is the strongest double handed axe in the *WoW* expansion Wrath of the Lich King.

the form of one of the rarest items available. He or she takes pride in being one of the handful of players to be able to use such item, to the envy of thousands, or millions of others. Undoubtedly, loss of this item, by fraudulent means, for instance, would mean more than a potential pecuniary loss, but rather a loss of hard work — a loss that quite frankly, cuts deep into one's skin. When one buys a crate in the Steam Market, a crate filled with unknown items, and inside this crate is an item so rare that Users have a less than one percent chance to obtain it, the User who is able to get hold of the item will similarly be able to wear it like a badge. Its value transcends its pecuniary estimates.

Moreover, studies have determined a variety of reasons why people play online games. For instance, some of the reasons people play games are for relationship purposes.²⁰⁰ The reality in a lot of these games is that the interconnectedness of the Internet allows players to communicate with each other.²⁰¹ Thus, some of the players of these online games play primarily to interact with others. This is the case in the game *Habbo Hotel*.²⁰² Socializing is the most important part of this game.²⁰³ Other activities such as designing your own room, playing games within the game, and more, are subsidiary to the goal of *Habbo*, which encourages Users to make online friends.

Another reason why people play online games is the phenomenon termed “escapism.”²⁰⁴ For a lot of people, games offer an escape from reality.²⁰⁵ Some even prefer to live in the virtual world than the real

200. Nick Yee, *The Demographics, Motivations and Derived Experiences of Users of Massively Multi-User Online Graphical Environments*, 15 PRESENCE: TELEOPERATORS & VIRTUAL ENV'TS, 309, Abs. (2006).

201. Duchenaut & Moore, *supra* note 44.

202. “Habbo is an online vintage pixel-art style virtual community where you can create your own avatar, make friends, chat, build rooms, design [and] play games and so much more! Almost anything is possible in this strange place full of awesome people ...” What is Habbo?, *available at* <https://www.habbo.com/playing-habbo/what-is-habbo> (last accessed May 5, 2019).

203. Duchenaut & Moore, *supra* note 44.

204. “Escapism ... measures how much a User is using the virtual world to temporarily avoid, forget about and escape from real-life stress and problems.” Yee, *supra* note 200, at 319.

205. Duchenaut & Moore, *supra* note 44.

world.²⁰⁶ Moreover, “to a large and growing number of people, virtual worlds are an important source of material and emotional well-being.”²⁰⁷ Another reason is achievement.²⁰⁸ “The ‘[a]chievement’ factor measures the desire to become powerful in the context of the virtual environment through the achievement of goals and accumulation of items that confer power.”²⁰⁹ Sometimes, these achievements are meant to compensate for real-life shortcomings. For instance, a college student, who is not the brightest student out there, will seek other platforms where he or she can show, to himself or herself or to others, that there are things that he or she can excel in. Gaming offers an enjoyable opportunity to showcase his or her “talent.”²¹⁰

B. Property Under Philippine Law

The Civil Code of the Philippines (Civil Code) classifies property into immovable or real property²¹¹ and movable or personal property.²¹² The classification is important as it affects a number of rights, actions, and even remedies that are peculiar to a specific class of property.²¹³ In addition to this, Philippine law also recognizes the existence of intellectual property.²¹⁴

206. “According to Jim Blascovich and Jeremy Bailensen, ‘The Internet and virtual realities easily satisfy such social needs and drives [—] sometimes [they are] so satisfying that addicted users will withdraw physically from society.’” Monica Kim, *The Good and the Bad of Escaping to Virtual Reality*, available at <http://www.theatlantic.com/health/archive/2015/02/the-good-and-the-bad-of-escaping-to-virtual-reality/385134> (last accessed May 5, 2019).

207. Castronova, *supra* note 105, at 3.

208. Yee, *supra* note 200, at 319.

209. *Id.*

210. *Id.*

211. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 415 (1950).

212. *Id.* arts. 416 & 417.

213. See CIVIL CODE, arts. 415-427.

214. CIVIL CODE, art. 712 & An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Powers and Functions, and for Other Purposes [INTELL. PROP. CODE], Republic Act No. 8293 (1997).

The governing law on this is the Intellectual Property Code of the Philippines (IPC).²¹⁵

I. Movable or Personal Property

Articles 416 and 417 of the Civil Code define movable property by inclusion, thus —

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

- (1) *Those movables susceptible of appropriation which are not included in the preceding article;*
- (2) Real property which by any special provision of law is considered as personal property;
- (3) Forces of nature which are brought under control by science; and
- (4) In general, all things which can be transported from place to place without impairment of the real property to which they are fixed.

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

- (1) Obligations and actions which have for their object movables or demandable sums; and
- (2) Shares of stock of agricultural, commercial and industrial entities, although they may have real estate.²¹⁶

As seen above, Article 416 functions as a catch-all provision. Thus, personal property is everything that is not real property.²¹⁷ The distinguishing factor between the two is that personal property can generally be transported from one place to another without being a hindrance to any other thing.²¹⁸ Real property, on the other hand, is more or less permanent.²¹⁹ Again, the classification is important for numerous reasons such as for mortgaging or for tax purposes.

215. *Id.*

216. CIVIL CODE, arts. 416 & 417 (emphasis supplied).

217. DESIDERIO P. JURADO, CIVIL LAW REVIEWER 321 (2009).

218. *Id.*

219. *See* CIVIL CODE, art. 415.

Philippine law recognizes various forms of personal property, including intangible property such as shares of stock, bonds, and electricity.²²⁰ Various items such as these have been treated by jurisprudence as property.²²¹

2. Intellectual Property

Intellectual property is treated as movable property under the Civil Code, but is also the subject of its own separate legal regime through the IPC.²²² To illustrate in common parlance, when one takes another's intellectual property like his or her photograph (that the person specifically took for his or her own advertising purposes) and advertises it as his or her own creation, then, in common usage, one can say that the former stole the latter's personal property. The physical embodiment of these intellectual properties such as the hard copy of the photograph can also be stolen. Given, however, that intellectual property is subject to its own separate legal regime, what constitutes intellectual property is also different. Some common forms of intellectual property can be seen in Article 172 of the IPC.²²³ These are literary and artistic works like books, pamphlets, letters, musical compositions, drawing, and photographs.²²⁴ Intellectual property, if registered, is also afforded a lot of different kinds of protection by the law.²²⁵

C. Classifying Virtual Items as Property Under Philippine Law

The concept of personal property is tied to the Civil Code definition of real property.²²⁶ Since virtual commodities are not listed in the enumeration in

220. CIVIL CODE, art. 417 & Laurel v. Abrogar, 438 SCRA 243, 271 (2006).

221. See United States v. Genato, 15 Phil. 170 (1910) & Laurel v. Abrogar, 576 SCRA 41 (2009).

222. See generally INTELL. PROP. CODE.

223. *Id.* art. 172.

224. *Id.* art. 172 (a) (f) (g) & (k).

225. See, e.g., INTELL. PROP. CODE, pts. II, III, VII, VIII, & XIII.

226. Article 415 provides for a list of things that are considered as real or immovable property, to wit —

Art. 415. The following are immovable property:

- (1) Land, buildings, roads and constructions of all kinds adhered to the soil;
- (2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;

the Civil Code, virtual commodities are not real, tangible property. This is evident in MMOFPS and MOBA games where the virtual commodities are designs of characters, guns, and other items.

But how about lands in MMORPGs? Although these are intended to simulate real property that is land, they cannot be considered as real property under the Civil Code. More than the fact that the Code went into effect in the 1950s,²²⁷ thus impliedly showing the lack of intent on the part of the legislators to include these kinds of properties, land in some MMORPGs partake of the nature of personal property being things that can be traded using the game's virtual trading platform.²²⁸

Virtual properties, when considering the virtual economy, as well as the various online trading platforms available to Users, are subject to

-
- (3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;
 - (4) Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;
 - (5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;
 - (6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;
 - (7) Fertilizer actually used on a piece of land;
 - (8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;
 - (9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;
 - (10) Contracts for public works, and servitudes and other real rights over immovable property.

CIVIL CODE, art. 415.

227. See CIVIL CODE.

228. Leah Shen, *Who Owns Virtual Items?*, DUKE L. & TECH. REV., Volume No. 11, 2010, ¶¶ 12-13.

appropriation.²²⁹ A player will be able to sell or trade his virtual commodities to another User. This can involve either in-game currency or actual money. Either way, virtual commodities, though intangible, are still properties that can be transferred from one User to another. This is in accordance with the case of *Laurel v. Abrogar*,²³⁰ which also mentions that gas and electricity are considered as personal property that can be appropriated.²³¹ Just like gas and electricity, virtual commodities are intangible personal property that can be transferred. The similarities, however, end there.

Virtual commodities differ from gas or electricity since the latter can stand alone while virtual commodities need a medium (in a sense) to survive and stay relevant, which is the game it is found in.

Moreover, virtual commodities differ from intellectual property. Although virtual commodities are technically the creations of one's mind, when one takes another's virtual commodity, he or she is not stealing the creator's idea and advertising it as his or her own, but is merely taking another player's control or exclusive use of it. And this is all caused by the trading function. Thus, there is no stealing of another's intellectual property in the first place. The creator is neither hindered nor burdened; the one who ultimately suffers the loss is the player from whom the item was taken.

Based on the foregoing, the Author submits that virtual commodities can be treated as movable property under the Civil Code, susceptible of being traded and taken in the various forms understood by Philippine law. With this appreciation of virtual commodities as property, the way that crimes involving these items can be committed can be better understood.

VII. CRIMINAL AND TORT LIABILITY

Given the undeniable pecuniary value attached to these seemingly worthless items, the question now is, should these items be the subject of proper redress under the law when such are stolen or taken unlawfully?

229. *Id.*

230. *Laurel v. Abrogar*, 438 SCRA 243 (2006).

231. *Id.* at 271.

A. Theft

1. Conventional Definition of Theft: Its Nature and Elements

The leading case of *Valenzuela v. People*²³² aptly describes the nature and elements of theft. The case involved two people, petitioners Aristotel Valenzuela and Jovy Calderon, who were charged with the theft of a number of cases of Tide Ultramatic, a detergent.²³³ The two were caught by a security guard, Lorenzo Lago, as they loaded the cases of detergent in a taxi, and tried to speed away without showing a receipt for the items.²³⁴ The total cost of the taken goods was more than ₱12,000.²³⁵ The two pleaded not guilty to the crime charged.²³⁶ After which, petitioner Valenzuela contended that the crime he was guilty of committing was frustrated, and not consummated theft.²³⁷ In ruling against the petitioner, the Court discussed the nature of theft. The Court cited Article 308 of the Revised Penal Code,²³⁸ to wit —

Art. 308. *Who are liable for theft.* — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

- (1) Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
- (2) Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him [or her]; and
- (3) Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of

232. *Valenzuela v. People*, 525 SCRA 306 (2007).

233. *Id.* at 314-17.

234. *Id.* at 314-15.

235. *Id.* at 315.

236. *Id.* at 316.

237. *Id.* at 317-18.

238. *Valenzuela*, 525 SCRA at 323.

its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.²³⁹

The Court further discussed theft in this manner —

Article 308 provides for a general definition of theft, and three alternative and highly idiosyncratic means by which theft may be committed. In the present discussion, we need to concern ourselves only with the general definition since it was under it that the prosecution of the accused was undertaken and sustained. On the face of the definition, there is only one operative act of execution by the actor involved in theft [—] the taking of personal property of another. It is also clear from the provision that in order that such taking may be qualified as theft, there must further be present the descriptive circumstances that the taking was with intent to gain; without force upon things or violence against or intimidation of persons; and it was without the consent of the owner of the property.²⁴⁰

Thus, theft, in the general sense, is the taking of someone's property without the use of force upon things, or violence against or intimidation of persons.²⁴¹ Its elements are as follows:

- (1) [T]hat there be taking of personal property;
- (2) [T]hat said property belongs to another;
- (3) [T]hat the taking be done with intent to gain;
- (4) [T]hat the taking be done without the consent of the owner; and
- (5) [T]hat the taking be accomplished without the use of violence against or intimidation of persons or force upon things.²⁴²

Upon the concurrence of all these elements, one is said to have committed the crime of theft. Using the abovementioned as basis for their decision, the Court in *Valenzuela* decided that all the elements were present in the case.²⁴³ Petitioner *Valenzuela* was held guilty of theft.²⁴⁴

239. REVISED PENAL CODE, art. 308.

240. *Valenzuela*, 525 SCRA at 323-24.

241. LUIS B. REYES, THE REVISED PENAL CODE: BOOK TWO 731 (18th ed. 2012).

242. *Valenzuela*, 525 SCRA at 324. See also REYES, *supra* note 241, at 732.

243. See *Valenzuela*, 525 SCRA at 326.

244. *Id.* at 327.

2. Virtual Theft

The definition of theft in the Revised Penal Code is clear-cut. Statutorily, as well as conventionally, this definition has been consistently applied. For instance, A takes B's personal belongings, a laptop and cellphone, with intent to gain, and without the latter's consent. All of this is done without force. B's personal items are worth an aggregate of ₱50,000. The items could have been taken secretly from A's house, bag, or maybe even his or her car. The point is that these items were taken unlawfully from A, who lost possession of them. This is the situation that the law contemplates. It is a situation where one, who is in physical possession of a valuable item, loses possession of it to another, who then gains possession of the item.

But the problem is manifested through the date of the law's creation — the 1930's.²⁴⁵ While Congress could have contemplated intangible properties, it is not clear that Congress considered virtual commodities in a virtual world, much less virtual commodities in a virtual world with real-world monetary value. When one thinks of stealing, one thinks of a person who gets another's item and keeps it for himself or herself. But how about a situation where the item or valuable that was stolen is a virtual commodity found in a game? What if one has possession of an item, albeit through his online avatar? How does the concept of *taking* come into play? What is the gain that is being contemplated in the Code, and is this gain present when one takes a virtual commodity?

The advances in technology have brought about changes in the way society operates. Businesses rely more on technology than ever before,²⁴⁶ and unwarranted situations, such as virtual theft and robbery of virtual commodities, are left without any clear legal recourse.²⁴⁷ More than a potential pecuniary loss, Users are deprived of their right to enjoy the virtual commodities that they obtained either through actual purchase using real-world funds, or purchased through virtual funds or through some other means that could have only been afforded by long, dedicated hours playing the game — effort that itself can be said to have real economic value.

245. See REVISED PENAL CODE.

246. See Chris Cancialosi, Outdated Tech is Costing You More Than You Think, available at <https://www.forbes.com/sites/chrisancialosi/2017/08/16/outdated-tech-is-costing-you-more-than-you-think/#1816548c1099> (last accessed May 5, 2019).

247. Wayne Rumbles, *Theft in the Digital: Can You Steal Virtual Property?*, 17 CANTERBURY L. REV. 354, 364-66 (2011).

For example, A and X play *WoW*. Both are Filipinos and of legal age. They met because one day, X saw A playing the game in a computer shop. Since then, whenever X saw A in the computer shop, the former would talk to the latter about *WoW*-related issues, and the two of them would go on in-game quests together. After a while of playing the game, A was able to obtain a rare item worth ₱30,000 in real-world currency. X got jealous — X wanted the item. One day, when A and X met in the computer shop, X asked A if he could borrow A's item. Since A, to some extent, knew X, A approved X's borrowing of the rare item and effected an in-game transfer of the item from his avatar to the avatar of X. X promised to give the item back the following day, when the two would meet in the computer shop. A returned the next day, but X did not, nor did he ever return it. Apparently, X already sold the item earlier in the day through a meet-up with another player (who was the buyer). In this case, X took A's rare item, and A is left without any sort of recourse. This is a case of virtual theft.

B. Robbery

1. Conventional Definition of Robbery: Its Nature and Elements

Robbery, as defined by an eminent authority on Criminal Law, Former Associate Justice of the Court of Appeals Luis B. Reyes, is “the taking of personal property belonging to another, with intent to gain, by means of violence against, or intimidation of any person, or using force upon anything.”²⁴⁸ Its elements are the following:

- (1) [T]hat there be personal property;
- (2) [T]hat said property belongs to another;
- (3) [T]hat there is an unlawful taking of that property;
- (4) [T]hat the taking must be done with intent to gain; and
- (5) [T]hat there is violence against or intimidation of any person, or force upon anything.²⁴⁹

In addition, “[w]hat distinguishes theft from robbery is that in theft, the offender does not use violence or intimidation or does not enter a house or building through any of the means specified in Article 299 or Article 302 in

248. REYES, *supra* note 241, at 656.

249. *Id.*

taking personal property of another with intent to gain.”²⁵⁰ Robbery is unlawfully taking someone’s personal property by means of force, while theft is the unlawful taking without force.²⁵¹ One can imagine a knife to one’s throat while on a jeepney, with the perpetrator seeking to obtain valuable items like a cellphone, jewelry, or cash. Another common example of how the layperson envisions robbery is shown in movies and television shows, when a masked person, or a gang of them, robs a bank. These are the conventional ways of committing robbery.

2. Virtual Robbery

Like virtual theft, virtual robbery suffers from the same problems. Its definition is also found in an antiquated Code. These days, however, the object of a robbery, like that of theft, can be a virtual commodity that has no tangible presence. Since robbery, in a lot of cases, consists of violence or intimidation to the bodily presence of another, the fact that one is stealing intangible property should not depart from this basic premise. Since what the robbers are stealing is intangible, only the means of *taking* the item should differ, with the elements of violence or intimidation still ever-present.

Take for example the following scenario: A and X play the same online game. This online game possesses a virtual economy where a player can obtain virtual commodities. Just like any other game, some items are rarer than others, they may require more playing time, defeating different kinds of bosses, or getting lucky. A, luckily, is able to obtain item which has a value of ₱40,000. With this, he decides to sell it. A finds a buyer in X. Since both A and X, after multiple online correspondences, find out that they are both Filipinos living within Metro Manila, they decide to meet up to facilitate the sale of the virtual commodity, given that the item has a substantial amount attached to it. They decide to meet up in a computer shop in the City of Malabon. Once there, A and X greet each other and commence to facilitate the transfer, with X handing over ₱40,000, while A, at the same time, logs into his account in the computer shop to transfer the item to X’s character. Suddenly, and unknown to A, he is suddenly threatened with a knife to the throat. Apparently, X, together with the employees of the computer shop, lured A there in order to obtain his virtual commodity. Having to choose

250. *Id.* at 732 (citing REVISED PENAL CODE, arts. 299 & 302).

251. *Id.*

between his life and his virtual commodity, A ended up effecting a transfer of the virtual commodity, without getting the ₱40,000 in return.

How is one supposed to protect himself or herself from robberies seeking to take these virtual items? What redresses are available? The advent of technology has put a value on things that society never thought would have value, and the victims, those who ultimately pay the price, are the unknowing, innocent Users.

C. Tort Violations

I. Tort: Its Definition, Nature, and Elements

A frequently used tort provision in the Civil Code is Article 2176, to wit —

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.²⁵²

This is the concept of a quasi-delict, which has the following elements:

- (1) damages suffered by the plaintiff;²⁵³
- (2) “an act or omission constituting fault or negligence” on the part of the defendant, or some other person for whose acts he or she must respond;²⁵⁴ and,
- (3) the connection of cause and effect (also known as a causal relation) between the fault or negligence of the defendant and the damages incurred by the plaintiff.²⁵⁵

Simply, to hold one liable for a quasi-delict, the abovementioned elements must concur.²⁵⁶ To illustrate, X is doing cartwheels in a crowded mall. While recklessly doing cartwheels like he is the only person in the mall, X accidentally hits A in the face. A is a flight attendant in one of the

252. CIVIL CODE, art. 2176.

253. *Id.*

254. TIMOTEO B. AQUINO, TORTS AND DAMAGES 28 (13th ed. 2013).

255. *Andamo v. Intermediate Appellate Court*, 191 SCRA 195, 201 (1990) (citing *Taylor v. Manila Electric Company*, 16 Phil. 8 (1910) & *Vergara v. Court of Appeals*, 154 SCRA 564 (1987)) & AQUINO, note *supra* note 254, at 28.

256. *Id.*

more popular airlines in the country. As a result of the blow, A is not allowed to go on any flights. Moreover, A is forced to undergo dental work because two teeth were knocked out. In this case, all the elements are present. There were damages suffered by A through the fault or negligence of X, and a causal relation between the two, given that it resulted from X hitting A recklessly while doing cartwheels in the mall.

Likewise, a tort, in common law, is defined as an

unlawful violation of a private right, not created by contract, and which gives rise to an action for damages. It is an act or omission producing an injury to another, without any previous existing lawful relation of which the said act or omission may be said to be a natural outgrowth or incident.²⁵⁷

It has also been defined as a

violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other that is involved in a given transaction. There must always be [a] violation of some duty that must arise by operation of law and not by mere agreement of the parties. It is a legal wrong committed upon person or property independent of contract.²⁵⁸

Thus, quasi-delicts, as well as the broader definition of a tort, are both sources of liability.²⁵⁹ In addition, there are different kinds of tort liabilities. There are intentional torts,²⁶⁰ torts arising from negligence,²⁶¹ and strict

257. AQUINO, *supra* note 254, at 1 (citing *Robles v. Castillo*, 62 O.G. 1220, 5 C.A.R. [28] 213).

258. AQUINO, *supra* note 254, at 1 (citing BLACK'S LAW DICTIONARY 1335 (5th ed., 1979)).

259. CIVIL CODE, art. 1157 (5).

260. These "include conduct where the actor desires to cause the consequences of his [or her] act or believe the consequences of his [or her] act or believe the consequences are substantially certain to result from it." AQUINO, *supra* note 254, at 2 (citing BLACK'S LAW DICTIONARY 1355). It includes assault, battery, false imprisonment, defamation, invasion of privacy, and interference of property." AQUINO, *supra* note 254, at 2. *See also* Antonio T. Carpio, *Intentional Torts in Philippine Law*, 47 PHIL. L.J. 649, 650 (1972).

261. Unlike intentional torts, in this kind of tort, the actor does not intend to cause the same, however, the act or omission is still voluntary. AQUINO, *supra* note 254, at 2. *See also* Carpio, *supra* note 260, at 650.

liability torts.²⁶² These concepts are embodied in a number of provisions throughout the Civil Code. Most notably, these concepts are embodied in the so-called “catch-all provisions.”²⁶³ These are Articles 19, 20, and 21 of the Civil Code.

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.²⁶⁴

According to one author, “[t]he provisions introduce malice in the commission of torts. Article 20 is the ‘general sanction for all other provisions of law which do not especially provide for their own sanction’ and is ‘broad enough to cover all legal wrongs which do not constitute violations of contract.’”²⁶⁵ Thus, these provisions are just some of the pertinent provisions of torts that may be relevant to virtual theft and robbery.

2. Torts Involving Virtual Commodities

Unlike the stricter definition of theft and robbery, the concept of a tort is more flexible. In the former concepts, there are specific elements that must be fulfilled, with the immediate reaction being how do virtual commodities fit this mold? Whereas in the concept of a tort, the potential roadblocks present in theft and robbery such as there being personal property, taking, and gain, are absent. If there is damage to another, no pre-existing contractual relation, and an act or omission that constitutes fault or

262. This is where a person is “made liable independent of fault or negligence upon submission of proof of certain facts.” AQUINO, *supra* note 254, at 2. Moreover, “[w]hen strict liability is imposed, the conduct is generally not wrongful in itself but the wrong consists in causing harm by engaging in certain types of risky activities.” *Id.* (citing Tony Honore, *The Morality of Tort Law*, in *PHILOSOPHICAL FOUNDATIONS OF TORT LAW* 75 (David G. Owen, ed. 1995 ed.). See also Carpio, *supra* note 262, at 650.

263. AQUINO, *supra* note 254, at 6.

264. CIVIL CODE, arts. 19, 20, & 21.

265. AQUINO, *supra* note 254, at 6-7.

negligence on the part of one party, then the offended party might have a case for damages based on a tort. This definition does not seem to limit the concept, as long as there is damage of some sort. With this, questions still remain. When one takes another's virtual commodity, will there be sufficient basis to claim damages based on a tort? If the offender cannot be punished criminally, can legal recourse still be resorted to for civil damages due to the occurrence of a tort?

VIII. ANALYSIS

A. Preliminaries

Given the aforementioned, the theft or robbery of virtual commodities should be punished. Simply, when one takes the virtual commodity of another, he or she is taking something of value to the latter. The latter's right to enjoy the virtual commodity, and to do whatever he or she wants to do with that certain commodity, is deprived. All the time and effort to obtain the virtual commodity is put to waste.

More than that, there is actual pecuniary loss when this occurs. For one, the game itself costs money. Who would play a game when he or she has no more items because everything valuable to him or her was unlawfully taken? In the first place, the money used to purchase the game would already be a loss in itself. Moreover, these very items, in themselves and apart from the game, have real-world monetary values attached to them. Thus, when one loses these items, he or she loses even more money. What if the User also took the pains to study the in-game economy in order to make economically-sensible trades? That would go down the drain as well. Loss here would be in the form of opportunity cost in that the player, instead of doing something more productive, chose to play or study the game.

The reality, however, is that “[c]riminal law tends to follow the physical rather than the virtual.”²⁶⁶ In essence though, and taking into consideration the present make-up of society, taking a virtual commodity should be similar to taking one's cellphone, cash, or other valuable items like jewelry, albeit, in a different manner and involving intangible items. Thus, “[w]hile it might be tempting to ignore MMORPG crimes as being purely virtual in nature,

266. Kerr, *supra* note 52, at 416.

and thus not ‘real,’ the vast majority of virtual crimes have real world victims.”²⁶⁷

B. Theft

1. Elements

a. *That There Be Taking of Personal Property*

At present, virtual commodities have yet to be classified for what they are. Some say they should be classified as intellectual property, being adjunct and completely dependent on the game itself,²⁶⁸ while others argue that they should be considered as personal property like a telephone or book given the transition of games from being something purely for entertainment to becoming a legitimate source of income.²⁶⁹ As explained earlier, the Author submits that virtual commodities should be classified as the latter.

When the law speaks of personal property in the context of theft, one only needs to look at various Supreme Court rulings and annotations to understand its meaning. The ruling in *Laurel* is enlightening, *viz* —

Cognizant of the definition given by jurisprudence and the Civil Code of Spain to the term ‘personal property’ at the time the old Penal Code was being revised, still the legislature did not limit or qualify the definition of ‘personal property’ in the Revised Penal Code. Neither did it provide a restrictive definition or an exclusive enumeration of ‘personal property’ in the Revised Penal Code, thereby showing its intent to retain for the term an extensive and unqualified interpretation. Consequently, any property which is not included in the enumeration of real properties under the Civil Code and capable of appropriation can be the subject of theft under the Revised Penal Code.

The only requirement for a personal property to be the object of theft under the penal code is that it be capable of appropriation. It need not be capable of ‘asportation,’ which is defined as ‘carrying away.’ Jurisprudence is settled that to ‘take’ under the theft provision of the [P]enal [C]ode does not require asportation or carrying away.

267. Crime and Policing in Virtual Worlds, available at <http://f3magazine.unicri.it/?p=360> (last accessed May 5, 2019).

268. Shen, *supra* note 228, ¶¶ 15–21.

269. *Id.* ¶¶ 11–14.

To appropriate means to deprive the lawful owner of the thing. The word ‘take’ in the Revised Penal Code includes any act intended to transfer possession which, as held in the assailed Decision, may be committed through the use of the offender’s own hands, as well as any mechanical device, such as an access device or card as in the instant case. This includes controlling the destination of the property stolen to deprive the owner of the property, such as the use of a meter tampering, as held in *Natividad v. Court of Appeals*, use of a device to fraudulently obtain gas, as held in *United States v. Tambunting*, and the use of a jumper to divert electricity, as held in the cases of *United States v. Genato*, *United States v. Carlos*, and *United States v. Menagas*.²⁷⁰

As can be seen above, the main requirement for personal property to be the object of theft is that it be capable of appropriation.²⁷¹ This means that the personal property can pass on from one person to another.²⁷² Moreover, “any property which is not included in the enumeration of real properties under the Civil Code and capable of appropriation can be the subject of theft under the Revised Penal Code.”²⁷³ This fits squarely into the nature of virtual commodities. As described above, virtual commodities can be treated as property that is passed from one person to the other through the trading function of games. Moreover, trading the items (even for nothing) is not per se illegal given that trading is still a function of the game — in other words, you are still playing the game when you trade. The Author would like to highlight that the trading function which involves virtual commodities was originally installed to enhance gameplay. The current situation where people go lengths to steal another’s virtual commodity is only a product of recent times. Since people really enjoy playing the games, one is now willing to spend real money on these items. Thus, what was once a mere game-function, purely for enhanced gameplay and enjoyment, is now being abused by persons with ill-motives who take advantage of and unlawfully take what others consider as their property.

270. *Laurel*, 576 SCRA at 51-52 (citing *People v. Mercado*, 65 Phil. 665 (1938); *Duran v. Tan*, 85 Phil. 476 (1950); FLORENZ D. REGALADO, CRIMINAL LAW CONSPECTUS 520 (2000 ed.); *Natividad v. Court of Appeals*, 1 SCRA 380 (1961); & *People v. Menagas*, 11 N.E. 2d 403 (1937) (U.S.)) (emphasis supplied).

271. *Laurel*, 576 SCRA at 51.

272. *Id.*

273. *Id.*

As a hypothetical example of this element — assume that A has a credit card and frequently makes purchases online. A and X are acquaintances, having met one night in a popular night club in the Taguig area. A and X frequented the club and had drinks every so often. One night, feeling dizzy from all the drinks he just had, A asked X to hold her bag so that the former could go to the comfort room. While there, X took A's credit card information, and subsequently, made online purchases of items totaling ₱40,000, all of which were completed. A only noticed these transactions after X was able to obtain her items. In this case, what X really stole was A's money. Using this money, X was able to obtain certain items for his own personal use. X did not steal any bills or coins, but he stole personal property from A — money. In the same way, if X takes A's virtual commodity, X would be taking something from A. Like the money used in this example, virtual commodities are intangible.

What the offender is taking is what these intangible properties represent, and that is something of not only economic but also of labor and emotional value. If one's virtual commodity is stolen, what could be taken is something with a real-world price, in the range of a few thousands of pesos or dollars — a price that is either set by the market or given value by the countless hours and sleepless nights spent acquiring the item. To one whose day-to-day life focuses on playing these games, these items undoubtedly hold a special place in his or her heart, perhaps more so than real-world, tangible possessions. When one day, all of a sudden, that item one gets so attached to is suddenly lost amidst the virtual sphere, the loss is significant, and, unless there can be a finding of legal wrongdoing and the ability to attribute that wrongdoing, the player stands to lose more than just a game.

The loss, frankly, can have devastating effects far beyond pecuniary loss. In China, a man was put to jail after stabbing someone in the chest multiple times.²⁷⁴ This was because the victim sold the perpetrator's virtual sword online.²⁷⁵ When he went to the police to report the incident, the enforcers

274. *Online gamer killed for selling virtual weapon*, SYDNEY MORNING HERALD, Mar. 31, 2005, available at <http://www.smh.com.au/news/World/Online-gamer-killed-for-selling-virtual-weapon/2005/03/30/1111862440188.html> (last accessed May 5, 2019).

275. *Id.*

laughed at him, and he was forced to leave the station.²⁷⁶ Unable to take the psychological and emotional impact of his loss, he committed murder.²⁷⁷

Moreover, *video game addiction* is becoming increasingly prevalent; the “games are becoming increasingly complex, detailed, and compelling to a growing international audience of players. With better graphics, more realistic characters, and greater strategic challenges, [it is] not surprising that some teens would rather play the latest video game than hang out with friends, play sports, or even watch television.”²⁷⁸ Undoubtedly, when one loses something of value to them, the loss can have a lasting effect on the way he or she thinks, what more if the person loses something he or she was addicted to.

b. That Said Property Belongs to Another

This element is simple and is inextricably linked to the previous element. Theft is the taking of someone else’s property.²⁷⁹ It is not theft if one takes something that he or she owns.²⁸⁰ The situation, however, blurs when put in the context of the virtual world.

One of the reasons for this is the presence of an End User License Agreement or EULA.²⁸¹ Most games have a policy that Users must subscribe to before being able to play the game. It is important, however, to remember that the terms differ per game.

276. Taipei Times, *Games player kills friend over online ‘dragon sabre’*, TAIPEI TIMES, Apr. 1, 2005, available at <http://www.taipetimes.com/News/world/archives/2005/04/01/2003248619> (last accessed May 5, 2019).

277. *Id.*

278. Video Game Addiction, available at <http://www.video-game-addiction.org> (last accessed May 5, 2019).

279. REYES, *supra* note 241, at 731.

280. *Id.* at 741.

281. “An end-user license agreement (EULA) is a license that gives a user the right to use a software application in some manner.” End-User License Agreement (EULA), available at <https://www.techopedia.com/definition/4272/end-user-license-agreement-eula> (last accessed May 5, 2019).

For instance, in the game *Second Life*, Users are granted ownership rights to things created in the game.²⁸² This can further be seen from the description of the game on its official website, which says, “The largest-ever 3D virtual world created entirely by its users.”²⁸³ For instance, if one makes a house in the game, he or she is the one who has property rights over his or her in-game creation. This game is different, though, from the norm. In *WoW*, the EULA states,

Blizzard is the owner or licensee of all right, title, and interest in and to the Battle.net Client, Battle.net, the Games, Accounts, and all of the features and components thereof. Battle.net and the Games may contain materials licensed by third-parties to Blizzard, and these third-parties may enforce their ownership rights against you in the event that you violate this Agreement. The following components of Battle.net and/or the Games, are owned or licensed by Blizzard:

- i. All virtual content appearing within Battle.net or the Games, such as:
 - (1) Visual Components: Locations, artwork, structural or landscape designs, animations, and audio-visual effects;
 - (2) Narrations: Themes, concepts, stories, and storylines;
 - (3) *Characters: The names, likenesses, inventories, and catch phrases of Game characters; [and]*
 - (4) *Items: Virtual goods, currency, potions, wearable items, pets, mounts, etc[.]*.²⁸⁴

The EULA in Steam is also different.²⁸⁵ It provides that “[a]ll title, ownership rights and intellectual property rights in and to the Content and Services and any and all copies thereof, are owned by Valve and/or its or its affiliates’ licensors.”²⁸⁶

282. See Linden Lab, Terms of Service, available at <http://www.lindenlab.com/tos#tos2> (last accessed May 5, 2019).

283. Second® Life, available at <http://secondlife.com> (last accessed May 5, 2019).

284. Blizzard End User License Agreement, available at <http://us.blizzard.com/en-us/company/legal/eula> (last accessed May 5, 2019) [hereinafter Blizzard, EULA] (emphases supplied). Blizzard is the game developer of *WoW*.

285. The EULA of Steam is termed the Steam Subscriber Agreement. Steam Subscriber Agreement, available at http://store.steampowered.com/subscriber_agreement (last accessed May 5, 2019) [hereinafter Steam, Subscriber Agreement].

286. *Id.* As mentioned, Valve is the developer of the Steam Client.

The Steam [C]lient software and any other software, content, and updates you download or access via Steam, including but not limited to Valve or third-party video games and in-game content, and *any virtual items you trade, sell or purchase in a Steam Subscription Marketplace are referred to in this Agreement as 'Content and Services[;]'* the rights to access and/or use any Contents and Services accessible through Steam are referred to in this Agreement as 'Subscriptions.'²⁸⁷

Just like in *WoW*, the virtual commodities in Steam are also owned by the developer. This is the usual agreement in most games. What the User usually has is the right to use these items within the game.²⁸⁸

Conventionally, this element is not supposed to be a problem. Again, however, it is blurred when the concept is applied to virtual commodities because one's notion of criminal law is physical, it is one that involves tangibles. Applying these concepts to virtual commodities, the property taken, which is the virtual commodity, is taken by one who is not the owner — the owner being the game developer, based on the EULA.

Undeniably though, when a User plays a game, the items he or she possesses, depending on the game, is under his or her exclusive control. In MMORPGs, for instance, a sword forged in the game and placed in the inventory of one player is usable only by him or her. Only that player controls it, unless he or she decides to trade or sell the item. The same applies in MMOFPS games or MOBAs, the player designs are usable exclusively by the player who possesses them, to the exclusion of others. Again, this is the case unless the player trades or sells the said item.

The element of theft with regard to ownership has been interpreted in a different way. The law does not strictly confine theft to instances where the item stolen was owned, in the strict sense of the term, by someone else. Theft can also occur against someone who, while he or she does not strictly own the property, has an exclusive right to use or possess the said item.²⁸⁹

For instance, A borrowed the laptop of B to use for his school project, because the former's laptop was broken. On the way home from school, and while riding on a jeepney, X surreptitiously got the laptop that A borrowed

287. *Id.* (emphasis supplied).

288. This is usually through a license granted by the developers of the game. See Steam, Subscriber Agreement, *supra* note 285 & Blizzard, EULA, *supra* note 284.

289. *U.S. v. Albao*, 29 Phil. 86, 107 (1914).

from B. In this case, X cannot claim that he cannot be convicted of theft because A does not strictly own the laptop. Evidently, A had exclusive use and possession of the laptop. Thus, X can still be held liable for theft. The case of *U.S. v. Albao*²⁹⁰ reiterates this thinking. There the Court said, “[i]t is sufficient if the property is taken from him [or her] by means of threats and violence, for the purpose of gain, on the part of the person appropriating it. The possession of the property is sufficient. Ownership is not necessary.”²⁹¹

Applied to virtual commodities, therefore, although the player does not strictly own the virtual commodity, he or she has exclusive use and possession of the item, to the exclusion of all others. Thus, it can still be the object of theft.

Other than that, the EULA is unfairly prejudicial to the players of the game. For example, A is able to obtain a virtual commodity through countless hours of effort and playing. He or she is able to obtain one of the rarest items in the game, which is subsequently valued at around ₱12,000. If he or she loses the said item through virtual theft, the developer of the game can disclaim liability, given that he or she owned the item in the first place, as stated in the EULA. This leaves the User without any recourse but to lament the loss of his or her virtual commodity. This is presuming that the User does not know who the perpetrator of the heist was. This is, and will be, a common occurrence given nature of these types of games.

The EULA is the contract between the parties — the User and the developer.²⁹² Given that it is a contract, the parties are free to stipulate the terms and conditions that will govern their contract relationship.²⁹³ However, this is limited to stipulations that are “not contrary to law, morals, good customs, public order, or public policy.”²⁹⁴ EULAs can be argued to

290. *U.S. v. Albao*, 29 Phil. 86 (1914).

291. *Id.* at 107 (emphasis omitted).

292. Article 1305 of the Civil Code provides for the definition of a contract. It is “a meeting of minds between two persons whereby one binds himself [or herself], with respect to the other, to give something or to render some service.” CIVIL CODE, art. 1305.

293. This is embodied in Article 1306 of the Civil Code, to wit — “Art. 1306. The contracting parties may establish such stipulations, clauses, terms[,] and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.” *Id.* art. 1306.

294. *Id.*

fall under the exceptions provided by law. As stated in *Sy Suan and Price Incorporated v. Regala*,²⁹⁵ to wit —

It is a general rule that agreements against public policy are illegal and void. Under the principles relating to the doctrine of public policy, as applied to the law of contracts, courts of justice will not recognize or uphold any transaction which, in its object operation, or tendency, is calculated to be prejudicial to the public welfare, to sound morality, or to civic honesty. The test is whether the parties have stipulated for something inhibited by the law or inimical to, or inconsistent with, the public welfare. An agreement is against public policy if it is injurious to the interests of the public, contravenes some established interest of society, violates some public statute, is against good morals, ends to interfere with the public welfare or society, or as it is sometimes put, if it is at war with the interests of society and is in conflict with the morals of the time. An agreement either to do anything which, or not to do anything the omission of which, is in any degree clearly injurious to the public and an agreement of such a nature that it cannot be carried into execution without reaching beyond the parties and exercising an injurious influence over the community at large are against public policy. There are many things which the law does not prohibit, in the sense of attaching penalties, but which are so mischievous in their nature and tendency that on grounds of public policy they cannot be admitted as the subject of a valid contract. The question whether a contract is against public policy depends upon its purpose and tendency, and not upon the fact that no harm results from it. In other words, all agreements the purpose of which is to create a situation which tends to operate to the detriment of the public interest are against public policy and void, whether in the particular case the purpose of the agreement is or is not effectuated. For a particular undertaking to be against public policy actual injury need not be shown; it is enough if the potentialities for harm are present.²⁹⁶

In what way can the EULA be contrary to public policy? For one, the EULA is a contract of adhesion.²⁹⁷ The way the EULA works, in the

295. *Sy Suan and Price Incorporated v. Regala*, 105 Phil. 1024 (1959).

296. *Id.* at 1028-29 (citing 12 AM. JUR. 662-64) (emphasis omitted).

297. Jurisprudence has defined a contract of adhesion, to wit —

A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his [or her] signature or his [or her] ‘adhesion’ thereto, giving no room for negotiation and depriving the latter of the opportunity to

context of online games, is that the developer puts terms and conditions that Users must either agree to or not. If they choose the former, they can play the game, if they choose the latter, they will not be able to play the game. This basically leaves the User with no choice but to accept the terms and conditions in order to play the game. More than that, EULAs usually have stipulations that keep ownership rights with the game developers, leaving no recourse to the User whatsoever in case the virtual commodities are stolen. This is regardless of the time, money, and energy spent by the User. It is the Author's position that this certain stipulation, prohibiting the Users from gaining any kind of right whatsoever, are prejudicial to their interests. The changing times have necessitated more protection for Users. Like what was mentioned earlier, the virtual game industry is booming. More and more players are engaging in online games, and the revenue this generates for the developers is astounding. Developers are able to earn lots of profit, and are able to escape scot free from any liabilities. Moreover, the offenders who take the virtual commodity will always be able to point to the EULA to disclaim liability. This leaves the innocent, now helpless User, lamenting the loss of his or her items.

There is also the case of *Bragg v. Linden Research*.²⁹⁸ "In November 2003, Linden announced that it would recognize participants' full intellectual property protection for the digital content they created or otherwise owned in [*Second Life*]. As a result, *Second Life* avatars may now buy, own, and sell virtual goods ranging 'from cars to homes to slot machines.'"²⁹⁹ Included here are virtual lands which players can design, build houses on, and exclude

bargain on equal footing. It must be borne in mind, however, that contracts of adhesion are not invalid [per se]. Contracts of adhesion, where one party imposes a ready-made form of contract on the other, are not entirely prohibited. The one who adheres to the contract is, in reality, free to reject it entirely; if he [or she] adheres, he [or she] gives his [or her] consent.

Norton Resources and Development Corporation v. All Asia Bank Corporation, 605 SCRA 370, 380-81 (2009) (citing *Radio Communications of the Philippines, Inc. v. Verchez*, 481 SCRA 384, 401 (2006) & *Premiere Development Bank v. Central Surety & Insurance Company, Inc.*, 579 SCRA 359, 384 (2009)). See also *Capuchino II*, *supra* note 73, at 35-38.

298. *Bragg v. Linden Research, Inc.*, 487 F.Supp.2d 593 (E.D. Pa. 2007) (U.S.).

299. *Id.* at 595. *Second Life* is a "3D virtual world created entirely by its users." See *Second® Life*, *supra* note 283.

other players from entering.³⁰⁰ Bragg claims that he was induced by Linden to “invest” in lands found in *Second Life*, and that he paid real money as “tax” on the land he owned in the game.³⁰¹ Controversy arose when Bragg acquired a parcel of land for U.S.\$300, to which Linden said had been improperly acquired.³⁰² Thus, Bragg’s account was subsequently frozen, while his property and currency was confiscated.³⁰³ Thus, a suit was brought against Linden in 2006.³⁰⁴ One of the issues in this case was the validity of an arbitration clause in the Terms of Service (TOS) of the game.³⁰⁵ The U.S. Court held that the TOS was a contract of adhesion, describing it in this matter —

The TOS [is] a contract of adhesion. Linden presents the TOS on a take[–]it-or-leave-it basis. A potential participant can either click ‘assent’ to the TOS, and then gain entrance to [*Second Life*]’s virtual world, or refuse assent and be denied access. Linden also clearly has superior bargaining strength over Bragg. Although Bragg is an experienced attorney, who believes he is expert enough to comment on numerous industry standards and the ‘rights’ or participants in virtual worlds ... he was never presented with an opportunity to use his experience and lawyering skills to negotiate terms different from the TOS that Linden offered.³⁰⁶

Thus, it can be seen that TOS or EULAs have been held to be contracts of adhesion. It is pertinent to note, however, that even though the agreement is a contract of adhesion, such will still be respected if reasonable.³⁰⁷ In this case, the U.S. court only found specific provisions to be unreasonable, and thus, struck them down.³⁰⁸

Hence, assuming *arguendo* that the EULA is interpreted to be unfairly prejudicial to the Users, the several property theories earlier mentioned can also kick in, thus giving property rights over the virtual commodities to the

300. *Id.* at 596.

301. *Id.* at 596-97.

302. *Id.* at 597.

303. *Id.*

304. *Id.*

305. *Bragg*, 487 F.Supp.2d at 603.

306. *Id.* at 606.

307. *Norton Resources and Development Corporation v. All Asia Bank Corporation*, 605 SCRA 370, 381 (2009).

308. *Bragg*, 487 F.Supp.2d at 611.

Users themselves. Consequently, if property rights are granted to the Users, then the two elements of “taking personal property from another” will be satisfied. In this case, it will be more clear-cut that what another player is taking is personal property of another.

c. That the Taking Be With Intent to Gain

This element requires intent to gain, but what constitutes *gain* is not always clear. Gain is not necessarily pecuniary. It also means the “benefit which in any other use may be derived or expected from the act which is performed.”³⁰⁹ Thus, in the case of *People v. Bustinera*,³¹⁰ citing the case of *Villacorta v. Insurance Commission*,³¹¹ the Supreme Court held that the taking of a motor vehicle without consent, even if the taking was only temporary, “is theft, there being intent to gain.”³¹² Further discussing the concept of gain, the Supreme Court stated that “[one] is guilty of theft because by taking possession of the personal property belonging to another and using it, his [or her] intent to gain is evident since he [or she] derives therefrom utility, satisfaction, enjoyment[,] and pleasure.”³¹³

Based on this, the definition of gain encapsulates the theft of virtual commodities. There are various reasons why one takes the virtual commodity of another. For instance, in *WoW*, a player may take another player’s Shadowmourne because he or she wants to use it for himself or herself, given that it is a strong and rare item. In *CS:GO*, a player might take another person’s gun design, or skin, so that he or she can use it for himself or herself and show it off to other players. In both examples, it is a very real possibility that one takes another’s virtual commodity in order to profit by selling or trading it to unknowing and innocent third-party purchasers. Or perhaps, the player who takes the item does it for fun — because he or she feels a certain thrill from taking other’s items.

To reiterate, gain is not limited to monetary gain. Even the taking of these items for personal satisfaction and pleasure falls within the ambit of the law. Moreover, it is enough that in taking the items, there be an intent or

309. REYES, *supra* note 241, at 741.

310. *People v. Bustinera*, 431 SCRA 284 (2004).

311. *Villacorta v. Insurance Commission*, 100 SCRA 467, 474-75 (1980).

312. *Bustinera*, 431 SCRA at 297.

313. *Id.* at 297-98 (citing *Villacorta*, 100 SCRA at 474-75).

desire to gain.³¹⁴ Thus, when one takes an item intending to sell it for profit to a third party, such constitutes intent to gain within the definition of the law.

d. That the Taking be Done Without the Consent of the Owner

This element can be illustrated as follows — A is riding the Manila Light Rail Transit System, and is on his way home. X, hard-pressed for money, targets A's expensive watch. When X tries to steal the watch of A, he will not ask permission from A, such would be absurd. Rather, X would try to take the watch surreptitiously, without A knowing that the watch was taken. If X is successful in secretly taking the watch, such would be without A's consent, and would fall squarely within the definition of lack of consent.

Plainly, therefore, consent “is an act of reason and deliberation.”³¹⁵ It is one party agreeing,³¹⁶ either verbally or through his or her actions, to another's proposition. Moreover, it is “an act unaffected by [f]raud, duress, or sometimes even mistake[.]”³¹⁷

The same can be applicable in the case of virtual commodities. Online games with virtual economies have their own ways of being able to buy and sell items. These methods require both parties assenting to the trade by clicking a button designated for such. This does not mean, however, that every trade is done with the consent of both parties. A lot can happen in between the trades; thus, the circumstances of each trade must also be taken into consideration.

To illustrate, A and X communicate with each other in order to transfer A's item. X will buy the item using real money. Thus, the two persons trade contact details and agree to trade. With this, X transfers the money to A's account, then A transfers the item to X using the applicable virtual trading platform. Unknowingly to A, however, X cancels the transfer and gets back his money. Thus, even though both A and X assented to the trade via the virtual trading platform, such is “taking without consent of the owner” as contemplated under the law. To reiterate, a lot of trades also happen

314. REYES, *supra* note 241, at 742.

315. The Free Dictionary, Consent, *available at* <http://legal-dictionary.thefreedictionary.com/consent> (last accessed May 5, 2019).

316. The Law Dictionary, Consent, *available at* <https://thelawdictionary.org/consent> (last accessed May 5, 2019).

317. *Id.*

through real-life meet ups. Thus, the sale is similar to selling one's laptop or other gadget, except that the transfer of one of the items involved, is done virtually through the trade mechanisms provided for by the game.

e. That the Taking be Accomplished Without the Use of Violence Against or Intimidation of Persons or Force Upon Things

The use of violence against or intimidation of persons or force upon things is the distinguishing factor between theft and robbery.³¹⁸ While in theft, there is no violence or intimidation involved, the same is not true for robbery.³¹⁹ On its own, this element speaks for itself. Thus, when applied to virtual commodities, the taking of one's item is usually classified as theft, rather than robbery because of the nature of these commodities — it being intangible. When the trade or sale occurs, it will most likely be done through online correspondences. This is because of the platform where one trades or sells the items. In *WoW*, for instance, the trade will happen in-game. Thus, there seems to be no chance for one party to inflict violence or threat upon another. The same is true if one uses the Steam Market as a trading platform.

Thus, if A and X play *WoW*, and the former lives in Manila, while the latter in Davao, which is on a different island, A and X will not be able to see each other face to face, nor do they have to, because the trade happens online. Any unlawful taking of property, in this case, will not involve any kind of physical violence or intimidation and will constitute theft.

To reiterate, “[w]hat distinguishes theft from robbery is that in theft, the offender does not use violence or intimidation or does not enter a house or building through any of the means specified in Article 299 or Article 302 in taking personal property of another with intent to gain.”³²⁰ Essentially, the first four elements of theft apply to robbery. The only difference is that in robbery, there is intimidation or force.

But when does violence or intimidation come into play? As stated in the immediately preceding Section, trading or selling of virtual commodities is done through online platforms. Thus, the risk of being able to inflict any kind of violence or intimidation seems to be low. However, one must remember that trades can happen outside the virtual platforms, as well.

318. REYES, *supra* note 241, at 732.

319. *Id.*

320. *Id.*

Players can meet up in real life, with one paying the other with real money, while simultaneously effecting a transfer of the virtual commodity.

In this case, violence or intimidation becomes a possibility. The hypothetical scenario mentioned earlier shows how robbery of virtual items can take place.³²¹ This is the example where X, along with his cohorts from the computer shop, stole A's virtual commodity by putting a knife to his throat while the latter logged into his account and transferred the said item to X's account. This was done after A and X agreed to meet up face-to-face in order to make the sale, since the item possesses a value of ₱40,000.

In this situation, can the provisions on robbery be applied? It is the Author's position that such should be applied for the same reasons that theft should be applied. More than being threatened, A, in this case, also lost hours of hard work and a substantial amount in money, as seen in the economic value attached to the virtual good that was taken without his consent.

C. *International Cases and Current Controversies*

Given the rising number of online game players, the number of virtual theft and robbery cases will also rise. In a lot of games, this has been the primary complaint of Users.³²² As stated in a report,

[w]ith more than [one] billion registered accounts in online worlds — many of [whom] make money through the sale of virtual goods and property — the threat of fraud and theft is growing, the report suggests. It says that while 30% of all users have lost something of value, often as a result of criminal activity, only 25% subsequently recovered the items — with laws and procedures for dealing with such situations often fuzzy.³²³

“Where the criminal behavior extends beyond the virtual and into the real world, it is already clear that the criminal law[s] can apply.”³²⁴ This is what happened in the case of *Runescape*.

321. To see the whole example, refer back to Part VI.B. Robbery, under the sub-heading Virtual Robbery.

322. Valve, Security and Trading, *supra* note 65.

323. Bobbie Johnson, *Virtual theft on the rise*, GUARDIAN, Nov. 20, 2008, available at <https://www.theguardian.com/technology/2008/nov/20/theft-in-virtual-worlds> (last accessed May 5, 2019).

324. Rumbles, *supra* note 131, at 365.

1. *Runescape* Theft

Runescape is a “free browser MMO game where millions of players from around the globe become heroes[,] with the freedom to explore and experience a realm full of magic, mystery[,] and adventure.”³²⁵ The case in question began in 2007,³²⁶ when the victim, a minor, was on his way home from school, and was met by the first offender.³²⁷

Upon facing each other, the first offender told the victim that he wanted some items that the victim possessed, to which the victim refused.³²⁸ Suddenly, the second offender appeared.³²⁹ Both offenders, like the victim, are minors as well.³³⁰ The two offenders knew each other well, and both began to threaten the victim to transfer the latter’s *Runescape* items to them.³³¹ Scared, the victim acceded to the request of the offenders.³³²

Subsequently, the three of them went to the house of one of the offenders, where the transfer of the virtual in-game item would be effected.³³³ Upon reaching the house, the victim refused to transfer the items, which resulted in multiple physical injuries to his body, in the form of punches and kicks.³³⁴ He was hit in the head and ribs, and the offenders

325. About *Runescape*, available at <http://medievalblackmarket.com/mmo/what-is-rs.html> (last accessed May 5, 2019).

326. The Virtual Policy Network, *Runescape Theft — Dutch Supreme Court Decision*, available at <http://www.virtualpolicy.net/runescape-theft-dutch-supreme-court-decision.html> (last accessed May 5, 2019).

327. ECLI: NL: HR: 2012: BQ9251, Jan. 31, 2012, available at <http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2012:BQ9251> (last accessed May 5, 2019) (This is the link to the official decision of the case, as provided for by the Government of the Netherlands.).

328. *Id.* ¶ 2.2 (a).

329. *Id.*

330. *Id.*

331. *Id.*

332. *Id.*

333. ECLI: NL: HR: 2012: BQ9251, ¶ 2.2 (a).

334. *Id.* ¶ 2.2 (b).

even stood on top of the victim's chest.³³⁵ As the victim still refused, the offenders got knives from the kitchen and threatened to kill the victim.³³⁶

Left without any choice, the victim effected the transfer.³³⁷ This was done by the victim logging into his account using the computer in the offender's living room; the whole time, the victim was accompanied by one of the offenders.³³⁸ The other offender, on the other hand, logged into his account using the computer in the bedroom.³³⁹ After which, the items of the victim were dropped in-game, and subsequently picked up by one of the offenders using his avatar.³⁴⁰

This all happened because the offenders saw the victim pick up valuable loot from a dead avatar in the game,³⁴¹ prompting them to get jealous and obtain the items for themselves.³⁴² Based on official reports from the police, the offenders admitted to planning the taking of the virtual property.³⁴³

The court decided that the taking away of virtual objects could be qualified as theft.³⁴⁴ Initially, theft, under the Dutch Penal Code, was limited to physical objects; however, a Dutch Supreme Court ruling in 1921 changed that notion when it decided that the taking of electricity, which is an intangible, could be qualified as theft.³⁴⁵ The reasoning of the Dutch Court for the conviction was that the purpose of the Article is "to protect

335. *Id.*

336. *Id.* ¶ 2.2 (a) & (b).

337. *Id.* ¶ 2.2 (b).

338. *Id.* ¶ 2.2 (a) & (b).

339. ECLI: NL: HR: 2012: BQ9251, ¶ 2.2 (b).

340. *Id.* ¶ 2.2 (a) & (b).

341. This dead avatar is another user-controlled character. In the game *Runescape*, once a User dies, he or she drops some of the items that he or she is holding, which later on can be picked up by another avatar. Such is termed "loot." One must remember that this is different from trading or selling, the picking up of "loot" is part of the game.

342. ECLI: NL: HR: 2012: BQ9251, ¶ 2.2 (b).

343. *Id.* ¶ 2.2 (b) & (c).

344. Arno R. Lodder, *Dutch Supreme Court 2012: Virtual Theft Ruling a One-Off or First in a Series?*, 6 J. VIRTUAL WORLDS RESEARCH 1, 3 (2013) [hereinafter Lodder, *Dutch Supreme Court 2012*].

345. *Id.*

capital (assets, resources, [and] money).”³⁴⁶ Also, it decided that virtual items are goods as contemplated under the Dutch Article on theft.³⁴⁷ To reach this conclusion, the Dutch Court considered the following questions:

- (1) Does the item have value?³⁴⁸
- (2) Is the item tangible?³⁴⁹
- (3) Does it contemplate “taking away”?³⁵⁰

In deciding the first question, the Dutch Court ruled that virtual goods have become important to a large number of people, and subsequently, have acquired value to many people.³⁵¹ “Moreover, virtual goods are bought and sold ... via the Internet or on the schoolyard,”³⁵² In this case, evidently, the virtual items had value to the offenders and the victim. As for the second question, like what was mentioned earlier, the object of theft need not be a tangible item.³⁵³ Lastly, the term “‘possession’ [in Dutch] [P]enal law means actual power.”³⁵⁴ In this case,

the victim had actual power over the amulet and ... mask. Possession of virtual goods can be transferred, from one account to another ... In this case[,] the possession was transferred from the victim to the offender(s). The victim lost actual power, and the offenders obtained actual power over the amulet and the mask.³⁵⁵

346. Arno R. Lodder, *Conflict Resolution in Virtual Worlds: General Characteristics and the 2009 Dutch Convictions on Virtual Theft*, in VIRTUAL WORLDS AND CRIMINALITY 88 (Kai Cornelius & Dieter Hermann eds., 2011) [hereinafter Lodder, *Conflict Resolution*].

347. *Id.*

348. *Id.*

349. *Id.*

350. *Id.*

351. *Id.* This reasoning is in consonance with some of the theories granting property rights to Users — the Utilitarian and Personality Theories. See Lastowka & Hunter, *supra* note 188, at 45 & 48.

352. Lodder, *Conflict Resolution*, *supra* note 346, at 88.

353. Lodder, *Dutch Supreme Court 2012*, *supra* note 344, at 3.

354. Lodder, *Conflict Resolution*, *supra* note 346, at 88.

355. *Id.* at 89.

Based on these criteria, the offenders were convicted of theft.³⁵⁶ This initial judgment was raised to the Dutch Supreme Court.³⁵⁷ When it reached the Supreme Court of the Netherlands, the initial ruling was upheld for various reasons. The main contentions of the defense were that the goods are not goods under contemplation of the law, but are merely bits and bytes.³⁵⁸ The Court rejected this argument by stating that the virtual nature of these goods does not preclude it from falling within the ambit of the law.³⁵⁹ It stated that these items had value, taking into account the effort and time invested in the game, and that these could be taken away.³⁶⁰ Another argument was that the point of the game was to take items from other players.³⁶¹ The Court ruled that the taking, in this case, was done outside the context of the game.³⁶² Furthermore, it stated the victim's undisturbed enjoyment and power over the virtual objects was disturbed; his right to use the item to the exclusion of others was violated.³⁶³ This is the same reason the court gave for rejecting the defense's argument that since the objects were not strictly owned by him, then there was no theft available.³⁶⁴ The court held that this fact was irrelevant.³⁶⁵

Thus, the offenders were convicted of theft.³⁶⁶ Significantly, while the case was in the appellate court, such court also ruled that the terms and conditions saying that the virtual items belong to Jagex Ltd.³⁶⁷ "was too restrictive, since the player has the factual and exclusive power over the items in his possession."³⁶⁸

356. *Id.*

357. Lodder, *Dutch Supreme Court 2012*, *supra* note 344, at 3.

358. ECLI: NL: HR: 2012: BQ9251, pt. II.

359. *Id.* ¶ 3.6.1.

360. *Id.* Again, this can be said to be in consonance with the Personality Theory.

361. *Id.* ¶ 3.4.

362. *Id.* ¶ 3.5.

363. *Id.* pt. III.

364. The Virtual Policy Network, *supra* note 326.

365. *Id.*

366. *Id.*

367. Jagex Ltd. is the game developer of Runescape.

368. Lodder, *Dutch Supreme Court 2012*, *supra* note 344, at 3. This is related to the point that EULAs, or in this case, terms and conditions, are sometimes unfairly prejudicial to the players.

2. Online Gambling Sites

On 13 July 2016, Valve³⁶⁹ released an announcement involving the Steam trading system.³⁷⁰ This was to address a recent and persisting issue involving virtual items. Valve started by acknowledging the presence of in-game economies.³⁷¹ The importance of this fact cannot be stretched further.

An article published on Bloomberg even stated that “[b]uying and selling in-game stuff for real-world money has become a common feature of video games, and encouraging players to buy virtual merchandise has become a predominant business model for game companies.”³⁷² Valve then started to address the growing number of online gambling sites that leverage the trading system found on Steam.³⁷³ It disclaimed any affiliation with these third-party websites, and reiterated its ban on having such websites.³⁷⁴ One of the popular cases that is linked to this controversy involves the *Counter-Strike: Global Offensive* gambling site called “CSGO Lotto.” Involved in this controversy are two popular *YouTubers*, Trevor “TmarTn” Martin and Tom “Syndicate” Cassell.³⁷⁵ As reported,

videos showed the pair gambling weapon skins on the site, which allows anyone over 13 years of age to trade their hard-earned weapon skins for actual money. They often won big, resulting in videos with titles like ‘HOW TO WIN \$13,000 IN 5 MINUTES.’

Ordinarily, such a video might be regarded as the [sort] of clickbait you [would] see on a banner ad while browsing unscrupulous websites. But, with millions of subscribers, both Martin and Cassell have a captive audience to watch their videos. And now this audience has been turning out in droves to launch allegations of unethical [behavior] and lack of

369. Steam is part of Valve Corporation.

370. Steam, Update, *supra* note 158.

371. *Id.*

372. Joshua Brustein & Eben Novy Williams, Virtual Weapons are Turning Teen Gamers into Serious Gamblers, *available at* <http://www.bloomberg.com/features/2016-virtual-guns-counterstrike-gambling> (last accessed May 5, 2019).

373. *Id.* Interestingly, it is said that “[t]he boom in pro video gaming is fueled by \$2.3 billion [U.S. dollars] in online bets.” *Id.*

374. *Id.*

375. Mark Walton, Youtubers under fire for promoting their own CS:GO gambling site in videos, *available at* <http://arstechnica.com/gaming/2016/07/youtube-syndicate-tmartn-csgo-lotto-scandal> (last accessed May 5, 2019). “TmarTn” and “Syndicate” are the YouTube accounts of the aforesaid persons.

disclosure against the two YouTubers. It turns out the owners of the CSGO Lotto website are none other than Martin and Cassell [themselves].³⁷⁶

The problem as well as the controversy here is that neither of them disclosed that they were the owners of the said website.³⁷⁷ In essence, they were promoting their own website, and encouraging players to bet their virtual items (which have real monetary equivalents) for a chance to win something worth more. What is the probability that the results were rigged, and that the website was a ploy to get money from unsuspecting players? One would think that such assumption is a fairly reasonable one. Nevertheless, suits have already been filed against the pair, who have since then, taken down some of their online videos.³⁷⁸

Although the case does not have anything to do with theft, strictly speaking, one can see the broad influence caused by trading in online games with virtual economies. If such big-scale taking of virtual property can happen, what more when the taking involves single transactions. At the rate the business is growing, it will not be long before more cases of virtual theft arise, and the cries for legal recourse become plentiful.

D. Torts

Other than criminal violations for theft and robbery of virtual commodities, the person who stole the items should also be civilly liable. There are a number of provisions found in the Civil Code which can apply to the theft or robbery of virtual goods.

For one, there are the catch-all provisions. To reiterate these are Articles 19, 20, and 21 of the Civil Code. Basically, these provisions “[can] serve as [the] basis of any imaginable tort action.”³⁷⁹ In other words, the aforesaid Articles

make persons liable for every conceivable wrongful act. There is a general duty owed to every person not to cause harm either willfully or

376. Walton, *supra* note 375. As mentioned earlier, “skin” is the term used for the designs of guns.

377. *Id.* See also h3h3 Productions, Video, *Deception, Lies, and CSGO*, July 3, 2016, YOUTUBE, available at https://www.youtube.com/watch?v=_8fU2QG-IVo (last accessed May 5, 2019).

378. *Id.*

379. AQUINO, *supra* note 254, at 7.

negligently. Articles 19, 20, and 21 are provisions on human relations that ‘were intended to expand the concept of torts in this jurisdiction by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to specifically provide in the statutes.’³⁸⁰

As applied to virtual commodities, it is evident that the catch-all provisions should be applied to virtual theft or robbery.

For instance, A and X play *CS:GO* on Steam. A, using real money, bought a crate from the Steam Market. Upon opening the crate, which gives the player random items based on probability, he is able to obtain a weapon skin for his AWP sniper rifle. The probability of obtaining this certain skin is at 1%. When X learns of A’s item, and the value that it possesses, X decides to take A’s item and sell it. With this, X fraudulently misrepresents to A that he wants to borrow the gun to test it out in the game. A, being longtime trade buddies and acquaintances with X, effects the transfer of his item to X for nothing. X suddenly blocks and deletes A from his list of friends on Steam, and cashes out the item almost immediately, as a lot of players want to get a hold of that particular item. The result is that A loses his item for nothing. More than that, he also lost money he needed to buy a crate on the Steam Market. X, meanwhile, is now ₱30,000 richer. The item, on the other hand, is now in the hands of an innocent third-party. In this particular instance, the wrong is evident. The item that was taken from A undeniably had value; such was evident from X even targeting the item in the first place. Such was confirmed when X was readily able to sell the item on the Market. Definitely, it is morally wrong for someone to borrow another’s item and subsequently sell it. What makes this worse is that X used his prior relations with A to be able to obtain the item. X did not uphold his “general duty owed to every person not to cause harm either willfully or negligently.”³⁸¹

Another basis that can be used against the offender is the rule on quasi-delicts. To reiterate, the same is provided for in Article 2176 of the Civil Code, to wit —

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the

380. *Id.*

381. *Id.*

parties, is called a quasi-delict and is governed by the provisions of this Chapter.³⁸²

The requisites of a quasi-delict are the following:

- (1) damages suffered by the plaintiff;³⁸³
- (2) “an act or omission constituting fault or negligence” on the part of the defendant, or some other person for whose acts he or she must respond;³⁸⁴ and
- (3) the connection of cause and effect (also known as a causal relation) between the fault or negligence of the defendant and the damages incurred by the plaintiff.³⁸⁵

Given this backdrop, all the requisites are present in the earlier mentioned hypothetical case of A and X. For one, damage was suffered by A. Not only did he lose something of value to him, but he suffered psychological and moral damage, as well. Given that X intentionally planned to take A’s item, such constitutes fault or negligence on his part. In the event that X disclaims liability, claiming that what he or she did was only to gain a competitive edge, such was still negligent as it goes beyond game. The trade Market was made for players to make mutually beneficial trades; it was not meant as a tool for one to deceive the other to take his hard-earned items. Thus, in the event a criminal case is filed against X, of which he is subsequently acquitted and absolved of liability, X may still be held liable civilly for his negligent acts. Lastly, the third requisite is satisfied because, undoubtedly, it was the act of X taking A’s item that caused damage to the latter. Thus, regardless of whether X’s act was criminal or not, A suffered damage by reason of X’s actions. Such is also morally wrong, and should entitle A to damages.

Also, Article 33 of the Civil Code which governs torts of fraud are applicable to virtual thefts and robberies. The said Article provides —

Art. 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be

382. CIVIL CODE, art. 2176.

383. *Id.*

384. AQUINO, *supra* note 254, at 28.

385. *Andamo*, 191 SCRA at 201 (citing *Taylor v. Manila Electric Company*, 16 Phil. 8 (1910) & *Vergara v. Court of Appeals*, 154 SCRA 564 (1987)) & AQUINO, *supra* note 254, at 28.

brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.³⁸⁶

This is an independent civil action, thus giving the offended party more flexibility when it comes to choosing his or her own remedy.³⁸⁷ The elements of a cause of action under this particular type of tort liability are the following:

- (1) The defendant must have made a false representation to the plaintiff;
- (2) The representation must be one of fact;
- (3) The defendant must know that the representation is false or reckless about whether it is false;
- (4) The defendant must have acted on the false representation;
- (5) The defendant must have intended that the representation should be acted on; and
- (6) The plaintiff must have suffered damage as a result of acting on the representation.³⁸⁸

Again, taking the example of A and X, the elements to hold X liable under Article 33 are present. The first element is present in that X falsely misrepresented to A that he was going to borrow the gun to test it out in the game. The second element is also present as the representation was a factual one — the borrowing of the said item. As for the third element, X knowingly represented a false fact. Notably, the element also speaks of the defendant being reckless about whether the representation is false. Thus, it would seem that negligence or recklessness which leads to a false representation, can possibly be allowed. The fourth element also persists

386. CIVIL CODE, art. 33.

387. *See* 2000 REVISED RULES OF CRIMINAL PROCEDURE, rule 111, § 3. The provision states —

Section 3. When civil action may proceeded independently. — In the cases provided for in Articles 32, 33, 34[,] and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

REVISED RULES OF CRIMINAL PROCEDURE, rule 111, § 3.

388. AQUINO, *supra* note 254, at 667.

because A would not have lent X his item had A known that X were to sell it to a third-party. The fifth element is present in the case because X intended that A act upon his representation, after which he could obtain the said valuable and sell it for personal gain. Lastly, and like what was stated earlier, A suffered damage not only monetarily, but he also suffered psychological damage through the loss of a hard-earned item.

IX. CONCLUSION

The effects brought about by technology abound — societal barriers are eroding and people are connecting in ways one could only imagine 30 years ago. This is the reality one faces today. One lives in the digital age now. The current make-up of society shows that these factors have changed the way one looks at games, including the virtual commodities that come with it.

Based on the Author's analysis, the taking of virtual commodities in the manner described should give rise to criminal liability. This stems from the argument that virtual commodities can be considered as intangible personal property under Philippine laws. As earlier discussed, virtual commodities have yet to be classified by law — whether it be intellectual property, personal property, or whatnot. On that note, the Author subscribes to the view that taking these virtual commodities should be treated similarly to when one takes another's personal property. While virtual commodities differ from other intangible properties like electricity or gas, classifying it as anything else would unduly deprive those with virtual commodities of money and effort, and would let those with ill-motives get away scot-free. This view is supported by an assortment of theories propounded by different authorities. Likewise, if one's money, accessible online through his or her credit card, is considered as one's personal property, why should virtual commodities be left out of this scope? The same goes for shares of stock of a corporation. All these are intangible, personal properties which can definitely be the subject of unlawful taking, as seen from the numerous examples propounded throughout this Note. All these have some sort of value. In the case of virtual commodities, the value goes even deeper — more than the monetary value, hard work, emotional attachment, and opportunity cost come into play. The only difference is that the commodities are found in a game, which necessitates that the taking be done through a specific platform for trade.

Moreover, an analysis of the elements of theft and robbery show that virtual commodities should be interpreted as falling within the scope of these penal provisions. There is basis for one to claim liability based on these

grounds. Currently, a case can be made that a virtual storage containing one's virtual possessions like works made, pictures stored, or even one's ideas, is more valuable than a physical tangible storage containing random junk. In the same way, when one asks another, what is more valuable — his or her cap which was bought along the streets, or a virtual commodity which he or she spent 20 hours trying to obtain and which costs ₱10,000 — the answer could very well be the latter. Evidently, virtual commodities have basis to fall within the ambit of these Penal Code provisions.

Lastly, the unlawful taking of these commodities violates some of the most basic precepts of society — that one treats another with justice, and gives everyone his or her due. In the event that criminal liability is denied, civil liability for damages will undeniably apply to the wrongdoing of taking another's virtual commodity. Simply, if one takes another's tangible commodity without that person's consent, it can be considered a wrong, as it was done without consent of the owner. The same applies to intangible virtual commodities. What more if these commodities that are taken cost thousands of pesos or dollars in monetary value? What if fraud or violence was employed? Undeniably, this is a wrong and immoral conduct which warrants, at the very least, civil liability.

Put into context, MMOs have not been looked into as a source of cybercrimes because of its nature, it being a game. However, and as was mentioned earlier, this is a primary complaint of millions of Users. Furthermore, those Users whose items were stolen are lost and confused with what to do next. This leaves them distraught and stressed, especially if the stolen item had a lot of value attached to it.

The direction in which society moves forward has mandated that its law enforcers keep abreast with the developments and potential avenues where cybercrimes can be committed, one of which is in the seemingly harmless world of online gaming.