

ANSWERS TO BAR EXAMINATION QUESTIONS FOR 1961

CIVIL LAW

Answered by Prof. Eduardo P. Caguioa

I

- (a) *What language or text should prevail in the interpretation and construction of the New Civil Code?*

English is the language in which the new Civil Code was enacted by the Congress of the Philippines. In its interpretation, therefore, the English text shall prevail over any translation (Sec. 15, Rev. Adm. Code).

- (b) *Art. 11 of the Civil Code of the Philippines provides that customs, if not contrary to law, public order or public policy shall be countenanced. What should first be established before such customs could be considered as a source of right?*

In order that customs may be considered as a source of right, the following must be established:

- 1) a number of acts
- 2) uniformity of acts
- 3) juridical intent
- 4) lapse of time
- 5) conformity to law (Caguioa, Comments and Cases on Civil Law, Vol. I, Part I, pp. 18-19).

Furthermore, all the above must be established as facts in accordance with the rules of evidence. (Art. 12, Civil Code of the Philippines).

- (c) *In case of silence, obscurity or insufficiency of the laws, what should a judge do in an action pending before him? Illustrate.*

The judge notwithstanding the silence, obscurity or insufficiency of the law should render judgment. (Art. 9, Civil Code of the Philippines). He should first apply custom and if none is available, the judge is free to look at analogous laws, foreign judgments, the opinion of jurists and commentators and ultimately the general principles of law (Caguioa, Comments and Cases on Civil Law, Vol. I, Part I, p. 17).

Illustration: There being no rule of law expressly applicable to the hiring of personal property in general, or of vessels in particular, and no local custom having been proved, the Court adopted by analogy the general rules of the Civil Code relating to lease of real or immovable property (Cerrano vs. Tan Chuco, 38 Phil. 392).

- (d) *What are the exceptions provided by the New Civil Code to the rule that once the criminal action has been commenced, the civil action for damages arising from the offense charged shall be suspended until the final termination of the criminal action?*

The exceptions are those cases for which the Civil Code provides for an independent civil action. These are as follows:

- 1) a civil action for damages for the same act or omission from which the accused has been acquitted on reasonable doubt. (Art. 29, Civil Code of the Philippines).
- 2) a civil action based on an obligation not arising from the act or omission complained of as a felony (Art. 31, Civil Code of the Philippines).
- 3) a civil action for the violation of the civil liberties, the political liberties of a person and the rights of an accused in a criminal case (Art. 32, Civil Code of the Philippines).
- 4) a civil action for damages based on defamation, fraud, and physical injuries (Art. 33, Civil Code of the Philippines).
- 5) a civil action for damages against a city or municipal police officer who refuses or fails to render aid or protection to any person in danger of life or property (Art. 34, Civil Code of the Philippines).

II

- (a) *In an action based on a breach of promise to marry, what rights has the aggrieved party in cases:—*

- 1) *When there has been carnal knowledge?*

The general rule in this jurisdiction is that breach of promise to marry is not actionable whether there is carnal knowledge or not (Estopa vs. Pian-say, G. R. No. L-14733, Sept. 30, 1960). However, in case there has been carnal knowledge and the girl becomes pregnant by reason thereof, the aggrieved party may recover actual as well as compensatory damages caused to her but not moral damages. Furthermore, she may ask for support of her offspring (Hermosisima vs. Court of Appeals, G. R. No. L-14628, Sept. 30, 1960).

- 2) *When there has been no carnal knowledge?*

In case there has been no carnal knowledge, no damages are recoverable unless the breach of promise to marry is accompanied by:

- a) a quasi-delict or

- b) a quasi-contract or
- c) abuse of right

(Caguioa, Comments and Cases on Civil Law, Vol. I, Part I, p. 33).

- (b) 1) *Under what circumstances can a wife exercise a profession, or occupation or engage in business without the consent of the husband?*

The general rule under the Civil Code now is that the wife can exercise a profession or occupation or engage in business without the consent of the husband. The only power now given to the husband is negative in nature, that is, to prevent the wife from engaging in the profession, occupation or business provided the husband is able to prove the following:

- a) that his income is sufficient for the family according to its social standing and
- b) his opposition is founded on serious and valid grounds (Art. 117; Civil Code of the Philippines).

- 2) *If the wife engages in business, with or without the husband's consent, what properties will be charged with the losses in case she cannot fulfill her obligations?*

If the wife engages in business, her paraphernal property will be liable for her obligations. The conjugal property will only be liable if the obligation redounds to the benefit of the family. The capital of the husband is not answerable unless he gives his consent to the wife's engaging in business. (Caguioa, Comments and Cases on Civil Law, pp. 155-156).

III

- (a) *Distinguish the rights of natural parents over their minor children from those of (1) adopting parents, (2) general guardians, (3) those who exercise substitute parental authority or the so-called "substitute guardians", and (4) guardians ad-litem.*

1) Under Article 336 of the Civil Code, the husband and the wife may adopt jointly. Parental authority shall, in such case, be exercised as if the child were their own by nature. From this provision, it can be inferred that the adopting parents have the same rights as natural parents have over their own minor children, except that the adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him. (Art. 342, Civil Code of the Philippines.)

2) Under Article 351 of the Civil Code a general guardian shall have the same authority over the ward's person as the parents. With regard to the child's property the Rules of Court on guardianship shall govern. The rights therefore of a general guardian are for the most part the same as that of the parents except of course that he is not the usufructuary of the property of the ward nor a legal heir of the ward. Furthermore, unlike the

parents, regardless of the value of the property of the ward he must give a bond unless the court otherwise declares.

3) In the case of those who exercise substitute parental authority a distinction should be made between those who in reality exercise substitute parental authority as in the case of the general guardian, the grandparents, or the eldest brother or sister from those who exercise merely concurrent parental authority as in the case of teachers and professors, heads of children's homes, orphanages, and similar institutions or directors of trade establishments with regard to apprentices.

With regard to the latter their only right over the minor children is to exercise reasonable supervision over their conduct. (Art. 350, Civil Code of the Philippines). With regard to the former their rights in the main are the same as those of the parents (Arts. 351, 354, Civil Code of the Philippines) except that they do not have usufruct over the property of the children and in the case of the guardian, he is not the legal heir of the child.

4) A guardian ad-litem under the Rules of Court shall have the care and custody of the person of the ward and the management of his estate or the management of the estate only. His rights are differentiated from those of the natural parents in that they are by nature temporary and last only during the pendency of the litigation for which he has been appointed. Like all guardians he is not entitled to the usufruct of the property of the child nor is he a legal heir of the ward and furthermore, unlike the parents, he must always give a bond unless otherwise declared by the court.

- (b) 1) *What is a Civil Register?*

Civil Register is the aggregate of books or the public office where is authentically recorded all events affecting the civil status of persons.

- 2) *What law or laws were in force in the Philippines as to Civil Registry before the Civil Code (new)?*

Prior to the new Civil Code the Civil Registry law enforced in the Philippines was Act 3753 which took effect on February 26, 1931. The provisions of the Spanish Civil Code on Civil Register were never enforced in the Philippines as they were suspended by Governor-General Weyler.

- 3) *Art. 412 of the New Civil Code provides that "no entry in a Civil Register shall be changed or corrected without judicial order".*

- a) *What errors may be corrected under this article?*

Under this article only clerical errors may be corrected. (Schultz v. Republic, G. R. No. L-10055, September 30, 1958).

- b) *What is the nature of the procedure contemplated under this article?*

The procedure contemplated under this article is a mere summary proceeding. (Schultz vs. Republic, G. R. No. L-10055, September 30, 1958).

- c) Suppose the change or correction sought involves the question of citizenship, which is an issue, should the question involved be threshed under the same procedure? If not, under what procedure and why?

If the change or correction sought involves the question of citizenship which is an issue, the question can not be threshed under the procedure done under this article since it is an important controversial matter which can and should only be threshed out in an appropriate action. In this action all parties who may be affected by the entries are notified or represented; otherwise, the door would be set wide open to fraud or other mischief, the consequences of which might be detrimental and far reaching. (Schultz vs. Republic, G. R. No. L-10055, September 30, 1958).

IV

(a) A, a legitimate son of B, was adopted by C, who at the time of adoption was an unmarried man. After his marriage to D, C donated *inter vivos* to A a parcel of land belonging to the conjugal partnership. A predeceased his natural father B, who was survived by E, another legitimate son of B. A died intestate and without issue. The land donated to him is now claimed by:—

- 1) E, his legitimate brother;
- 2) C, his adopting father; and
- 3) D, as to one-half of the property.

If you were the Judge, how would you decide the case? Give reasons.

1) E, the legitimate brother is entitled to the parcel of land. When A predeceased intestate his natural father B, the latter became his heir and inherited the parcel of land. (Art. 342, Civil Code of the Philippines). On his death survived by E, the latter would be entitled to all the property of B including the parcel of land which B inherited from A. (Arts. 978, 979, Civil Code of the Philippines).

2) C, the adopting father is not entitled to the land since as the adopter, he is not the legal heir of the adopted. (Art. 342, Civil Code of the Philippines).

3) D, if she did not consent, can annul the donation and recover the whole property and not merely one-half provided she brings the action during the marriage to C and within 10 years from the date of the donation. (Art. 173, Civil Code of the Philippines). Since no action for annulment is so far been brought, D has no standing in the proceedings and may not claim the property.

- (b) 1) A married B, without having entered into any marriage settlement. During their marriage, they acquired considerable property, due mostly to the industry and earnings of the wife, B. B asked her husband, A, to join her in a petition for dissolution of the conjugal partnership of gains. A, out of self-respect agreed. A petition to that effect is now pending before you, as Judge. How will you decide? Reasons.

As Judge, I will approve the petition for the dissolution of the conjugal partnership of gains since it is a voluntary petition signed by both husband and wife and, therefore, allowable under Article 191 of the Civil Code but only, of course, after previous notice to all creditors of husband and wife and the conjugal partnership and after their rights are properly protected.

- 2) If the wife obtains a loan secured by her paraphernal property, and with the money constructed a building on the land belonging to the husband, with his consent, but the building was put in the name of a son of the spouses, what is the nature of the property (building)? Why?

The money obtained by the wife as a loan is paraphernal (Villabona vs. Court of Appeals, G. R. No. L-10799, April 29, 1958) and the building constructed on the land belonging to the husband with his consent becomes the property of the husband by the rule of accession. (Arts. 445, 448, Civil Code of the Philippines). If the putting of the building in the name of a son of the spouses was made jointly by husband and wife or by the wife with the consent of the husband, then the building is the sole property of the son since putting it in his name is considered a donation to him (Art. 1448, Civil Code of the Philippines) and, therefore, it is considered property acquired by gratuitous title or ordinary adventitious property of the son. (Art. 321, Civil Code of the Philippines). However, if the building was put in the name of the son of the spouses without the consent of the husband, the same would be ineffective and the building will still be the property of the husband.

V

- (a) 1) How is a contract of sale perfected?

A contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the subject of the contract and upon the price between the vendor and the vendee. (Art. 1475, Civil Code of the Philippines).

- 2) State the obligations of the redemptioner in a conventional redemption. Are these obligations applicable to homesteads? Why?

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The obligations of the redemptioner in a conventional redemption are:

- a) to return to the vendee the price of the sale;
- b) to return to the vendee the expenses of the contract and any other legitimate payments made by reason of the sale; and
- c) to return to the vendee the necessary and useful expenses made on the thing sold. (Art. 1616, Civil Code of the Philippines).

These obligations are applicable to homesteads because the Public Land Law does not contain any provision with regard to the matter and, therefore, the provision of the Civil Code will apply in a suppletory character. (Sumawang vs. Alipio, CA-G. R. No. L-8673-R, Dec. 28, 1955; Sumili vs. Caoili, CA-G.R. 14494-R, Sept. 19 1957).

(b) *A sold real property to T, redeemable within three years. Upon subsequent agreement, the period was extended for another three years. The term for repurchase expired without A having exercised his right. T filed a motion asking that the Court order a judicial consolidation of ownership under Art. 1607 of the New Civil Code, which was granted. A motion for the reconsideration of the order was denied. As A's counsel, what will you advise him? Reasons.*

As counsel, I would advise A to appeal the order of the Court on the ground of lack of jurisdiction on the part of the Court. In the case of Juan Tacdoro vs. Jesus Arcenas, G. R. No. L-15312, Nov. 29, 1960, the Supreme Court held that the petition to consolidate title under Art. 1607 does not partake of the nature of a motion, but is an ordinary civil action cognizable by the Court of First Instance and, therefore, should be commenced with the filing of a complaint and the service of the proper summons on the vendor a retro. In the present case, the Court never acquired jurisdiction because the motion filed by T was not sufficient to confer such jurisdiction. The order issued by the Court by virtue of such motion was consequently not valid.

VI

(a) *What are the obligations of the seller and the buyer in contracts of (1) "c.i.f." and (2) "f.o.b." sale?*

- 1) The obligations of the seller in contracts of "c.i.f." are:
 - a) to ship the goods in conformity with the contract;
 - b) to pay or arrange for the freight charge for transportation;
 - c) to secure appropriate insurance to cover the shipment and
 - d) to tender the requisite documents to the buyer showing that all these have been done.

The obligations of the buyer in contracts of "c.i.f." are to pay the stipulated price which consists of a lump sum which includes the cost price of the goods, the freight to destination or other point especially named and

the insurance during transit and also to suffer the risk of loss during the transfer while the goods are in transit unless otherwise agreed. (Vold on Sales, pp. 216-218).

2) The obligations of the seller in contracts of "f.o.b." are to bear all expenses for putting the goods into the hands of the carrier or at the point of shipment or at the point of "f.o.b." and to bear the risk of loss until their delivery to the carrier at the point of shipment or at the point of "f.o.b."

The obligations of the buyer in contracts of "f.o.b." are to receive and accept the goods at the point of "f.o.b." and to bear the risk of loss from the time of their delivery to the carrier at the point of shipment or at the point of "f.o.b." and all expenses thereafter. (Vold on Sales, pp. 213-214).

(b) 1) *In what cases can the unpaid seller exercise the right of stoppage "in transitu"?*

The unpaid seller may exercise the right of stoppage in transitu only in one case and, that is, when the buyer is or becomes insolvent and while the goods are in transit. (Art. 1530, Civil Code of the Philippines).

2) *How is this right exercised?*

This right is exercised in either of the three ways:

- a) by obtaining actual possession of the goods; or
- b) by giving notice to the person in actual possession of the goods; or
- c) by giving notice to the principal within such a time and under such circumstances that the latter by the exercise of reasonable diligence may prevent delivery to the buyer. (Art. 1532, par. 1, Civil Code of the Philippines).

(c) 1) *Define limited partnership and explain how it is created.*

A limited partnership is one formed by two or more persons under the provisions of Art. 1844, having as members one or more general partners and one or more limited partners (Art. 1843, Civil Code of the Philippines).

It is created by substantial compliance in good faith with the requirements of Art. 1844 which provides that two or more persons desiring to form a limited partnership shall sign and swear to a certificate, which shall state all the facts enumerated in said article and file for record such certificate in the Office of the Securities and Exchange Commission. (Art. 1844, Civil Code of the Philippines).

2) *State the obligations of a limited partner to the partnership creditors.*

The limited partners, as such, are not bound by the obligations of the partnership (Art. 1853, Civil Code of the Philippines). Therefore, they

have no obligations to the partnership creditors. However, a limited partner whose surname appears in a partnership name contrary to the provisions of the first paragraph of Art. 1846, Civil Code of the Philippines, is liable as general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner. A limited partner who in addition to the exercise of his rights and powers as a limited partner, takes part in the control of the business shall also be liable to partnership creditors as a general partner. (Art. 1848, Civil Code of the Philippines). In these cases, the obligations of the limited partner to the partnership creditors are the same as the obligations of a general partner.

(d) 1) *What is a contract of insurance, and by what rules of law is it governed?*

Insurance is a contract whereby one undertakes for a consideration to indemnify another against loss, damage, or liability arising from an unknown or contingent event. It is governed by Act No. 2427, as amended, and in all matters not provided for therein, by the provisions of the Civil Code. (Art. 2011, Civil Code of the Philippines.)

2) *Is a bet in a professional golf tournament recoverable in an action? Reasons.*

Yes, unless there is a local ordinance which prohibits betting therein. (Art. 2020, Civil Code of the Philippines). Should the amount, however, of the bet be excessive, under the circumstances, the court may reduce the loss to the proper sum (Art. 2020, Civil Code of the Philippines).

VII

(a) *Under Art. 114 of the Civil Code of the Philippines, the wife cannot, without the husband's consent acquire any property by gratuitous title. What are the reasons for this prohibition?*

The reason given for the limitation of the wife's capacity expressed in Art. 114 is to protect the husband and maintain the peace and tranquility of the family. It has been shown that gifts made by strangers to married women are usually in consideration of favors granted or to be granted and certainly is derogatory upon the honor of the husband. (Caguioa, Comments and Cases on Civil Law, Vol. I, Part I, p. 152).

1) *What does gratuitous title mean?*

By gratuitous title is meant any conveyance without any pecuniary consideration and includes both testate succession and gratuitous donation. (Caguioa, Comments and Cases on Civil Law, Vol. I, Part I, p. 152).

2) *State the exceptions, if any, and when and how is such consent given.*

The wife may acquire property gratuitous title even without the consent of the husband, from her ascendants, descendants, parents-in-law, and collateral relatives within the fourth degree. (Art. 114, Civil Code of the Philippines). The consent by the husband may be given expressly or tacitly, since the law does not prescribe any form.

(b) *A, under duress, married B. During the pendency of the case for annulment filed by A, B married C. The Fiscal, upon the complaint of C, prosecuted B for bigamy. Can B successfully interpose a prejudicial question to suspend the prosecution of the bigamy charge? Give reasons.*

If B was the person who exercised the duress on A, then he can not interpose the defense of a prejudicial question since he can not use his own unlawful act as a defense, but if the duress was not exercised by B, he can successfully interpose a prejudicial question to suspend the prosecution for bigamy. (People vs. Aragon, 50 O. G. 4863).

VIII

(a) 1) *Name two classes of contracts where warranty is implied. Contracts of sale and contracts of lease.*
2) *State the implied warranties of the person who negotiates a document of title by indorsement or delivery.*

The implied warranties of a person who negotiates a document of title by indorsement or delivery are:

- a) that the document is genuine;
- b) that he has a legal right to negotiate or transfer it;
- c) that he has knowledge of no fact which would impair the validity or worth of the document; and
- d) that he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would be implied if the contract of the parties has been to transfer without a document of title the goods represented thereby. (Art. 1516, Civil Code of the Philippines).

(b) *In a contract of sale, a surety and a guarantor joined the vendor in the same contract, assuring the performance of the obligations therein. The vendor failed to comply with his obligations and they were all sued in the same action. Both the surety and the guarantor were adjudged in default, and the judgment rendered had become final.*

1) *Can the surety and the guarantor successfully oppose the levy on execution issued against them on the ground that the action against the vendor is still pending? Reasons.*

The surety cannot successfully oppose the levy on execution because he assumes liability as a regular party to the undertaking, and his obligation is

solidary and primary. He is, therefore, liable the moment the principal does not pay, regardless of whether or not the action against the vendor is still pending. (Art. 2047, par. 2, Civil Code of the Philippines, and Art. 2059, No. 2, Civil Code of the Philippines). The guarantor can successfully oppose the levy on execution issued against him because under Art. 2058, Civil Code of the Philippines, the guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor and has resorted to all the legal remedies against him. In this case, the creditor has not yet exhausted all the legal remedies available against the vendor. Furthermore, his being joined as party defendant with the debtor is illegal and does not affect his rights (Art. 2062, Civil Code of the Philippines).

2) *What rights of action do they have against one another?*

In case either one of them pays the creditor each may demand from the other his corresponding share of the obligation which in the absence of stipulation is equal, since a surety by being solidarily liable does not lose the rights of a guarantor, except those arising from his solidary liability (Stevenson & Co. vs. Climaco, (CA) 36 O. G. 1571).

IX

(a) *Is the domestic helper entitled to compensation if he is dismissed without cause? Discuss.*

Yes. In the case of Ancheta vs. Colcol, CA-G. R. No. 19139-R, prom. Dec. 19, 1958, the Court of Appeals held that Art. 1698 of the new Civil Code should be liberally construed to entitle a house helper to separate pay equivalent to one month salary in lieu of the required notice, considering that according to law and the well-recognized social justice policy, in case of doubt, labor legislation and labor contracts are construed in favor of the worker. This ruling was reiterated by the same court in the case of Gatus vs. G. Y. Canso Inc., CA-G. R. No. 17665-R, prom. May 17, 1960.

In case the domestic helper is hired for a fixed period, he may not be dismissed without cause before the expiration of the term, otherwise, he is entitled to indemnity of 15 days salary. (Art. 1697, Civil Code of the Philippines).

(b) *X, a school teacher, hired Y to dig a well on his land. The next day Y died of asphyxia after he was lowered into the bottom of the well. His mother, Z, with whom he was living, filed an action to recover compensation. Is Z entitled to compensation for her son's death under Art. 1711 of the Civil Code, the Workmen's Compensation Act or the Employer's Liability Act? Discuss.*

Z is not entitled to compensation for her son's death either under Art. 1711 of the Civil Code or the Workmen's Compensation Act or the

Employer's Liability Act. Those laws are applicable when there is a relation of employer and employee and the employer is engaged more or less in business or industry. In the above case, X, being a school teacher who does not own any enterprise does not fall under the above laws and furthermore, because the employment of Y was purely casual and not for the purposes of occupation or business of said defendant. Hence, there is no way by which defendant may be held liable for the death of Y since it is due to an accidental cause or fortuitous event. (Alarcon vs. Alarcon, G. R. No. L-15692, May 31, 1961).

X

(a) *In what cases will the right to accession arise?*

In general the right to accession arises when fruits are produced by one's property or when another's property is incorporated or attached to ours either naturally or artificially. (Art. 440, Civil Code of the Philippines).

With regards to immovables, the right of accession will arise with respect to whatever is built, planted or sown on the land of another and the improvements made therein as well as that which is attached thereto naturally. (Arts. 445, 457, Civil Code of the Philippines).

With respect to movables, the right of accession arises whenever two movable things belonging to different owners are united in such a way that they form a single object. (Art. 466, Civil Code of the Philippines).

With respect to fruits, the right of accession will arise in cases of natural fruits, industrial fruits, and civil fruits. (Arts. 441, 442, Civil Code of the Philippines).

(b) *Is accession a mode of acquiring ownership? Explain.*

No. Accession is not a mode of acquiring ownership but a right included in ownership because in accession discreta, the ownership of the thing is extended to the fruits because the fruits are but the produce of the thing owned and in accession continua, the fact that such accession is but an attribute of ownership becomes manifest when we consider that he who acquires the thing by accession continua acquires the same by virtue of his ownership over the principal, that the accessory loses its individuality by virtue of its union with the principal and that no new title is needed for it other than the same title of ownership which the owner has over the principal. Furthermore, in the Civil Code of the Philippines accession is discussed in connection with the right of ownership and Art. 712 which provides for the modes of acquiring ownership does not include accession as one of them. (Caguioa, Comments and Cases on Civil Law, Vol. III, Part II, p. 514).

(c) *State in general the obligations, if any, of the person having the right to accession.*

In general the obligation of the person having the right to accession is to compensate the value of the accessory which becomes his by the right of accession subject, of course, to the rules of good or bad faith since bad faith on the part of the owner of the accessory may cause him to forfeit any right of reimbursement for the value of his accessory.

LAND REGISTRATION & MORTGAGES

Answered by Prof. Antonio H. Noblejas

I

- (a) Under what law is registration of private lands voluntary, and under what law is it compulsory? Who should appear as the applicant or petitioner in each instance?

Registration of private lands is voluntary in original registration proceedings under Act No. 496, and compulsory in cadastral proceedings under Act No. 2259. (Noblejas, *Land Titles & Deeds*, 1961 ed., p. 37)

Under Act 496, the owner of the land or his legal representative is the applicant; under Act 2259, the Director of Lands (on behalf of the Government, represented by the Solicitor General) is the petitioner. (*Ibid.*)

- (b) Does registration under Act No. 3344, as amended, or under the Spanish Mortgage Law at the present time, refer to adjudication and confirmation of ownership in the same way as under Act 496? Explain your answer briefly.

No. The ownership of properties subject of documents recorded under Act 3344 is not settled or adjudicated in a judicial or administrative proceedings. (Noblejas, *op. cit.* p. 333) Registration under Act 3344 refers to recording of documents involving real properties not registered under the Spanish Mortgage Law, nor under Act 496. Rights acquired under this system are not absolute, but yield to better rights. (Section 194, Revised Administrative Code, as amended; Noblejas, *op. cit.*, p. 31; see *Legayda vs. Soriano*, 49 O. G. G., Feb. 1953, pp. 603-609).

The Spanish Mortgage Law provides that instruments relating to real property including deeds conveying or declaring the ownership of real property or rights therein, instruments creating or affecting real rights specified therein, shall be recorded in the Registry of Property. (Noblejas, *op. cit.*, p. 321). The inscription made is a notice to the public of the existence of a right or interest in the property, and is effective against third parties as long as it remains uncanceled; registered rights are valid against third parties while those unregistered cannot prejudice third persons. (Noblejas, *op. cit.*, p. 320). Registration under the Spanish Mortgage Law, however, does not grant indefeasible title to the registered owner. Pro-

erties registered under this system are subject to adverse possession or prescription. Hence, registration under the Spanish Mortgage Law does not refer to adjudication and confirmation of ownership in the same way as in Act No. 496.

Registration under Act No. 496 entitles the registered owner to a Torrens title which becomes incontrovertible and indefeasible after the lapse of one year from the issuance of the decree of registration. Section 38, Act 496). The property covered by the title issued under Act 496 is not subject to adverse possession or prescription. (Section 46, Act 496).

- (c) May the owner of a building constructed on an unregistered land belonging to another apply for the registration of such building under the Land Registration Act? What should he do to protect his right in case the owner of the land applies for registration thereof?

No, the owner of a building constructed on an unregistered lot belonging to another may not apply for registration of the building alone under Act 496. He should prove his ownership of the building at the time of the hearing of the application for registration of the land on which it is erected, so that his title to the building may be noted on the decree and title to the land, (Noblejas, *op. cit.*, p. 41; See *Manila Bldg. & Loan Ass. vs. Peñalosa*, 13 Phil. 575).

II

- (a) What kind of instruments require the presentation of the owner's duplicate certificate of title in order that they may be registered, and what kind of instruments does not require presentation of the owner's duplicate?

Voluntary instruments like sale, mortgage, lease, etc., require the presentation of the owner's duplicate certificate of title in order that they may be registered, while involuntary instruments like *lis pendens*, attachment, liens, adverse claims, etc., do not require such presentation before registration.

- (b) In the second case, that is, where the owner's copy of the title need not be presented, what is the duty of the Register of Deeds after the instrument is registered?

In the second case, that is, where the owner's copy of the title need not be presented, it is the duty of the Register of Deeds, within 24 hours after the instrument has been registered, to send notice by mail to the registered owner, stating that such paper had been registered, and requesting him to send or produce the duplicate certificate in order that a memorandum of the attachment or other lien or adverse claim shall be made thereon. If the owner neglects or refuses to comply within a reasonable time,

the register of deeds shall suggest the fact to the court, and the court, after notice, shall enter an order to the owner to produce his certificate at a time and place to be named therein and may enforce the order by suitable process. (Sec. 72, Act 496).

(c) *May the Register of Deeds refuse registration to a public document of sale on the ground that the vendor alleges that his signature thereto was obtained by means of fraud? Give the reason for your answer.*

The Register of Deeds may not refuse the registration of a public document of sale on the ground that the vendor alleges that his signature thereto was obtained by means of fraud, because his duty is ministerial if the document is regular and registrable on its face and presented together with the corresponding owner's duplicate certificate of title, and legal fees paid for. The Register of Deeds may only be restrained from acting by proper injunction from the Court (LRC Consulta No. 22, dated Oct. 8, 1954); and while the Register of Deeds cannot close his eyes to protests from private individuals against the registration of a pending document in his office, he cannot, on the other hand, be restrained from proceeding with the registration thereof if he finds upon examination of the document that it is in order. However, this does not preclude the party or parties protesting, if they believe that their protest is justifiable and based on legal grounds, from availing themselves of the intervention of the courts of justice by injunction or other suitable remedy that may be granted under the circumstances (LRC Consulta Nos. 28 & 57 dated Feb. 23, 1955 and Oct. 19, 1955, respectively). The law on registration does not require that only valid instruments shall be registered. It must follow as a necessary consequence that registration must first be allowed, and validity or effect litigated afterwards. (Gurbax Singh Pabla & Co. et al. v. Reyes and Tan-toco (48 O. G. 10, p. 4365, Oct. 1952).

III

Jose Santos applied for registration of a parcel of land under Act 496, portions of which land were occupied by Pedro Cruz and Juan Diaz, respectively. Cruz, having been personally notified of the application, filed an opposition thereto. Diaz received no personal notice and did not file any opposition. In 1948, after the judgement granting the application of Santos to the entire land had become final, the decree of registration was entered and the certificate of title issued in his favor. Cruz and Diaz, however, continued in possession of the portions respectively occupied by them. In 1949 another person, Felix Reyes, entered into possession of still another portion of the land. In 1960, Santos asked the Court to issue a writ of possession. It was opposed: (1) by all the three occupants on the ground that the right to ask for such writ had already prescribed; (2) by Juan Diaz on the ground that the judgment was not binding on him because he had not been personally notified of the application for

registration; and (3) by Felix Reyes on two grounds — first, that he had acquired ownership of the portion possessed by him through prescription and, secondly, that he entered into such possession after the issuance of the decree of registration to Jose Santos.

State whether or not the writ of possession may be issued against any or all of the opposition, giving your opinion with respect to each and every one of the grounds upon which their opposition is based.

(1) The oppositions of Pedro Cruz and Juan Diaz are untenable because they were in possession of the property during the land registration proceedings and the right of a successful party to the issuance of a writ of possession does not prescribe. (Manlapaz vs. Llorente, 48 Phil., 298; see Buhat et. al. vs. Besana et. al., G. R. No. L-6746, prom. Aug. 31, 1954; Noblejas, *op. cit.* p. 88).

The writ of possession, however, cannot issue against Felix Reyes because his possession commenced after the decree of registration was issued and he cannot be summarily ousted through a writ of possession without giving him a day in court in a proper independent proceeding. (Magla-sang vs. Maceren, et al., 46 O. G. 11, p. 90, supp. Nov. 1950; Noblejas, *op. cit.* p. 87).

(2) The ground relied upon by Juan Diaz in his opposition cannot be sustained because an original registration proceeding under Act 496 is a proceeding *in rem* which binds the whole world and hence personal notice is not essential to the validity of the proceedings.

(3) The first ground of Felix Reyes that he acquired the portion he claims through prescription is untenable in view of Section 46 of Act 496 providing that "no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession." The second ground of his opposition that he entered into such possession after the issuance of the decree of registration to Jose Santos is tenable for the reason above stated in paragraph (1).

IV

Under what circumstances are each of the following remedies proper?

- (1) *a petition for review of the decree of title;*
- (2) *an action for reconveyance of the property registered; and*
- (3) *an action for damages against the Assurance Fund.*

(1) The petition for review of a decree of registration is available only to an aggrieved party who has been deprived of land or interest therein by the decree of registration on the ground of actual fraud, provided that the petition for review is filed with the Court of First Instance of the city or province where the land lies within one year after the date of entry of the decree, and provided that no innocent purchaser for value has acquired an interest therein. (Sec. 38, Act 496). The actual fraud

must be perpetrated or utilized in the procurement of the decree and not thereafter.

(2) An action for reconveyance of the property registered is available to aggrieved parties whose lands had been registered in the name of another, provided that the same had not been transferred to an innocent purchaser for value. Reconveyance is an action *in personam*.

(3) An action for damages against the Assurance Fund may be filed by the party who was deprived of his land or interest therein through the operation of the Torrens System under the following conditions:

(a) That the party claiming such loss had a title to or interest in the property registered in the name of another;

(b) That he was wrongfully deprived of his land by registration in the name of another through actual or constructive fraud;

(c) That the remedies provided by law are no longer available, that is, the period of 1 year for petition for review of decree has lapsed; or that reconveyance is not possible as land has passed to an innocent purchaser for value; or that recovery of damages from the person who registered the property is not possible due to his insolvency;

(d) That the party claiming is not guilty of negligence or laches;

(e) That the action for recovery of damages has not prescribed.

(f) That the loss is not caused by a breach of trust, whether express, implied or constructive, committed by any registered owner who is a trustee.

(g) That the loss was not caused by the improper exercise of any sale in mortgage foreclosure proceedings.

V

(a) *What is the difference in concept or juridical basis between extraordinary prescription as a mode of acquiring ownership under the Civil Code and 30 years continuous possession of public agricultural lands under the Public Land Act, as amended by Rep. Act 1942, pursuant to which the possessor may ask for judicial confirmation of his title?*

Extraordinary prescription under the Civil Code is a mode of acquiring ownership of private land. It provides that uninterrupted adverse possession for thirty years may give title to the possessor without need of either just title or good faith as basis for such possession. The juridical basis of this is prescription. The underlying concept is that the possession of the thing — which is the undisputable basis of the prescription of the ownership thereof — after the lapse of the long period fixed by law, even without just title or good faith, weakens and destroys the force and value of the best title, that may be had in the thing held *x x x*. Consequently, the possession for more than 30 years enjoyed by a person as owner, even without title or good faith, constitutes a sufficient title for

acquiring the ownership of the realty held *x x x* (Kincaid vs. Cabututan, 35 Phil. 383). Possession, adverse and under the conditions prescribed by law, *automatically* ripens into ownership after the lapse of the prescriptive period.

On the other hand, the 30-year possession under the Public Land Act, as amended by R.A. 1942, immediately preceding the application for confirmation of title, applies to public lands occupied by private persons who are allowed to acquire title to them under this condition, on basis of the concept that they are conclusively presumed, due to that lapse of time, to have performed all the conditions essential to a Government grant and therefore entitled to a certificate of title under provisions of the Public Land Law.

(b) *If at the time of the survey for registration purposes under the Cadastral Act a certain land was already in the possession of a private person, but for some justifiable reason he was unable to file his claim in the proper court and as a result the land was declared public land in the cadastral proceeding, what remedy, if any, is given to him by law and until when may he apply for such remedy?*

His remedy is to file a petition for a reopening of the cadastral proceeding not later than December 31, 1968. (Republic Act No. 931, as amended by Republic Act 2061).

VI

(a) *X, the registered owner of a parcel of land, entrusted his certificate of title to his friend Y. Y then went to Z and, representing himself to be the owner X, sold the land to Z by forging the signature of X on the deed of sale. After Z obtained a transfer certificate of title in his name, X discovered the transaction and filed an action against Z to annul the sale and cancel the latter's title. Will the action prosper? Why?*

Yes. The action to annul the sale and cancel the transfer certificate of title will prosper for the reason that such title issued to "Z" was based on a deed of sale executed by an imposter and therefore void. Under Section 55 of Act 496, registration procured by the presentation of a forged deed is null and void. A deed which is void and therefore cannot transfer a valid title, could not be validated by the mere fact that it was successfully registered. Although the underlying purpose of the Land Registration Act is to impart stability and conclusiveness to transactions that have been placed within its operations, still that law does not permit its provisions to be used as a shield for the commission of fraud (De Lara and De Guzman vs. Ayroso, 50 O. G. 10, p. 4838, October, 1954).

Z was defrauded not because he relied upon what appeared in the title, but because he believed the words of an impostor. While it was not

incumbent upon Z to go beyond what was stated on the face of the certificate of title, yet it was his duty to ascertain the identity of the man with whom he was dealing. That duty devolves upon all persons buying property of any kind, and one who neglects it does so at his peril.

(b) Suppose Y, in the foregoing question, forged the signature of X in a deed of sale in his own (Y's) favor and on the strength thereof obtained a transfer certificate of title in his name, and then sold the land to Z, who was not aware of the forgery. Would the sale be valid as against X? Why?

Yes. The sale would be valid against X. Where the certificate of title was already in the name of the forger when the land was sold to an innocent purchaser, the vendee had the right to rely on what appeared in the certificate, and in the absence of anything to excite suspicion, was under no obligation to look beyond the certificate and investigate the title of the vendor appearing on the face of the certificate. (De Lara & De Guzman vs. Ayroso, 50 O. G. p. 4838, Oct., 1954). (De la Cruz v. Fabie 35 Phil. 144).

VII

(a) What do you understand by the term "equitable mortgage"? Give an example.

Equitable mortgage is one which, although it lacks some formality, form of words and other requisites prescribed by a statute, shows the intention of the parties to charge real property as a security for a debt and contains nothing impossible or contrary to law. (41 C. J. 303).

A contract is presumed to be an "equitable mortgage" in any of the following cases:

1. When the price of a sale with right to repurchase is unusually inadequate;
2. When the vendor remains in possession as lessee or otherwise;
3. When upon or after the expiration of the right to repurchase another instrument extending the period of redemption or granting a new period is executed;
4. When the purchaser retains for himself a part of the purchase price;
5. When the vendor binds himself to pay the taxes on the thing sold;
6. In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

Example: Where the vendor after disposing of the property with right to repurchase, continued to occupy the same as lessee, the contract is presumed one of equitable mortgage.

(b) Distinguish between judicial and extrajudicial foreclosure of real estate mortgages from the standpoint of:—

- (1) The law that governs in each case;
- (2) The period of redemption given to the mortgagor; and
- (3) The right to the possession of the property mortgaged before the expiration of the redemption period.

(1) Judicial foreclosure of real estate mortgage is governed by Rule 70 of the Rules of Court; extrajudicial foreclosure by the provisions of Act No. 3135, as amended by Act 4118.

(2) In judicial foreclosure, the equity of redemption may be exercised within a period of 90 days from the order of foreclosure or even thereafter but before the judicial confirmation of the sale. (Villar vs. Javier de Paderanga, 51 O. G. 10, Oct. 1955, p. 5162). However, in the case of judicial foreclosure of properties mortgaged in favor of the Philippine National Bank and the Development Bank of the Philippines, the period of redemption allowed is one year, to be counted not from the foreclosure sale but from the date of the confirmation thereof by the court. (Gonzales vs. PNB, 48 Phil. 824).

In the case of extrajudicial foreclosure, the redemption period is one year from and after the date of the sale (Sec. 6, Act 3135, as amended by Act 4118). However, where the subject of the mortgage foreclosure is a homestead, the same may be repurchased by the mortgagor and homesteader within five years (Section 119, Commonwealth Act No. 141). This period of five years is counted after the expiration of the one year period of repurchase provided by Act 3135 as amended, when the deed of absolute sale is executed and the property formally transferred to the purchaser. (Paras vs. Court of Appeals et al., G. R. No. L-4091, May 28, 1952; Peña, p. 259).

In both judicial and extrajudicial foreclosure of mortgage under Section 78 of Republic Act No. 337, otherwise known as the General Banking Act, approved July 24, 1948, the redemption period is one year after the sale of the real estate in the foreclosure sale.

Redemption period in cases of foreclosure of mortgages by rural banks affecting homestead and free patent properties is two years from the date of foreclosure under Republic Act 2670, approved June 18, 1960.

(3) In judicial foreclosure, the right of possession belongs to the mortgagor before the expiration of the period of redemption.

In extrajudicial foreclosure, the general rule is that during the period of redemption, the mortgagor retains possession of the property. However, if desired, the purchaser may take possession with the proper authority from the court which may be granted upon petition filed in the original registration proceedings and furnishing a bond in an amount equivalent to the use of the property, to indemnify the debtor in case the sale is set aside or in case the property is redeemed after the purchaser has been given possession. (Sections 7 and 9, Act 3135 as amended by Act 4118).

VIII

- (a) *When is a person dealing with another's property covered by a Torrens title bound by prior rights of third persons although such rights are not noted on the title?*

When the rights of those third persons are known as "legal or statutory liens" which, under the Land Registration Act are valid and enforceable although not noted on the certificate of title. (Section 39, Act 496).

- (b) *A is the holder of a certificate of title to a piece of land, subject to the lien of a usufruct in favor of B as long as B remains single. If B gets married, but refuses to execute a document cancelling the usufruct, what should A do in order that the annotation of the lien on his title may be removed?*

A may file a petition in court for the cancellation of the lien on the ground that the registered interest has already terminated. (Section 112, Act 496). The petition should be entitled in the same case where the decree of registration was issued.

IX

- (a) *What is a chattel mortgage?*

By a chattel mortgage, personal property is recorded in the Chattel Mortgage Register as a security for the performance of an obligation. (Art. 2140, N.C.C.).

- (b) *Where should it be registered?*

In general, a chattel mortgage should be registered in the office of the register of deeds of the city or province where the mortgagor resides and also where the property is situated, unless the two places coincide, in which case one registration shall be sufficient. (Sec. 4, Act No. 1508).

Where the object of a chattel mortgage is a vessel, the registration thereof should be in the records of the Collector of Customs at the port of entry and not in the office of the Register of Deeds. (Arroyo vs. Yu de Sane, 54 Phil. 511; Phil. Refining Co. vs. Jarque, 61 Phil., 229).

Where the subject matter of a chattel mortgage involves shares of stock, the registration thereof in the office of the corporation is not necessary and has no legal effect, inasmuch as the transaction does not involve transfer of ownership but a mere security. (Monserrat vs. Ceron et al., 58 Phil., 469). For purposes of registration of the chattel mortgage of shares of stock under Section 4 of Act No. 1508, it has been held that the property in the shares may be deemed to be situated in the province in which the corporation has its principal office or place of business. In this sense the property mortgaged is not the certificate but the participation and share of the owner in the assets of the corporation. (Chua Guan vs. Samahang Magsasaka, Inc., 62 Phil. 472).

Where a chattel mortgage consists of a motor vehicle, it should not only be registered in the office of the Register of Deeds, but should also be recorded in the Motor Vehicles Office in order to affect third persons (Section 5 (e), Revised Motor Vehicle Law; see Borlough vs. Fortune Enterprises, Inc., G. R. No. L-9451, prom. March 29, 1957; Noblejas, *op. cit.*, p. 387).

Where the object of a chattel mortgage is an airplane, the document should likewise be recorded in the office of the Civil Aeronautics Administration. (Sec. 38, Rep. Act 776), in the Safety Regulations Division thereof in addition to the recording in the registries provided by the Chattel Mortgage Law (Act 1508).

- (c) *What kind of mortgage — real or chattel — should be constituted on each of the following properties in order to be binding on third persons?*

- (1) *usufruct on land;*
- (2) *growing crops;*
- (3) *a house constructed on land belonging to another person;*
- (4) *shares of stock in a corporation; and*
- (5) *machinery installed by a shoe manufacturer on a tenement leased by him from the owner.*

1. Real estate mortgage

2. Real estate mortgage because "while the parties to the contract may treat certain improvements and crops as chattels, however, insofar as the public is concerned, such improvement, if falling under the provisions of Art. 415 of the Civil Code of the Philippines, are immovable property. As a consequence, a mortgage constituted on said improvements must be susceptible of registration as a real estate mortgage and of annotation on the certificate of title to the land of which they form part." (Tolentino vs. Baltazar, et. al., G. R. No. L-14597, March 27, 1961).

However, Sec. 7 of the Chattel Mortgage Law provides, "If growing crops be mortgaged...", thereby implying that a chattel mortgage may be constituted on growing crops.

3. Real estate mortgage

4. Chattel mortgage

5. Chattel mortgage

X

- (a) *What limitation is imposed by law upon the right of the owner of a homestead to alienate the same?*

The owner of a homestead may not alienate or encumber the same within five years from and after the date of issuance of the patent, except in favor of the government or any of its branches, units or institutions