CIVIL LAW — PART ONE

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I. Introduction

If the function of law is the establishment of order in a society of human beings so that they may live together in peace rather than in conflict, one of its essential characteristics should be stability. The stability of law can be tested by its predictability. More specifically, how will those entrusted with its operation act in a given case?

The need for stability is perhaps as great in the law of property as in others which affect life and liberty. It was Bentham who even said "that there is no such thing as natural property, and that it is entirely the work of law." He further said, "Property and law are born together, and die together. Before laws were made, there was no property; take away laws, and property ceases."[1]

One does not have to go along with Bentham's theory to recognize the need for certainty in the law of property because however one views the origin of property, the law that governs it must be a law of repose.

The Philippine law on property is highly predictive. This quality is attested by the fact that Supreme Court decisions in this field have mostly applied the law as it is; they have seldom interpreted it, much less have they sought to apply the law as it ought to be. For this reason, an article like this cannot be critical.

This survey, as delimited by the editor of this publication, covers cases, if any, relevant to Book II of the Civil Code but excluding trade-marks, trade-names and registry of property. It also includes the titles on occupation, donation and prescription of Book III of the same code.

II. Classification of Property.

Basic in the law of property is its classification into different categories. This classification is intended to facilitate

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[1] Theory of Legislation, 111-113 (1864).

the solution of problems involving property for obviously, despite the universality of law, there are conditions which require that a set of rules be applied to one class but not to another. The differentiation by sex of human beings in law and the application in specific cases of one set of rules to men and another to women can be given as the most obvious example to show the compelling necessity for classification.

The Civil Code contains two primary classifications of property. It classifies property according to its nature into real or personal.[2] It also classifies property according to ownership as either of public dominion or of private ownership.[3] In both classifications, there is no attempt to define each class of property. What the code does is simply to enumerate the properties which belong in each class.

A. A thing which is or may be the object of appropriation is regarded as real property if it is included in the list given in Article 415 which contains ten items.

People's Bank and Trust Co., v. Dahican Lumber Co.,[4] involved the application of Article 415, paragraph 5, which considers as real property, "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."

Dahican Lumber Co., to secure money obligations, executed two mortgages on several parcels of land together with the buildings and improvements thereon. The mortgage deeds also contained this provision:

> "All property of every nature and description taken in exchange or replacement, and all buildings, machinery, fixtures, tools, equipment and other property which the Mortgagor may hereafter acquire, construct, install, attach, or use in, to, upon, or in connection with the premises, shall immediately be and become subject to the lien of this mortgage in the same manner and to the same extent as if now included therein, and the Mortgagor shall from time to time during the existence of this mortgage furnish the Mortgagee with an accurate inventory of such substituted and subsequently acquired property."

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[2] Art. 414.
[3] Art. 419.
[4] G.R. No. 17500, May 16, 1967.

Both deeds were registered as real mortgages in the Office of Register of Deeds.

One of the issues presented in this case was whether or not both deeds should have been registered also in the chattel mortgage registry insofar as they covered after-acquired machinery, fixtures, tools and equipment. The defendants contended that these were personal, not real, properties.

The Supreme Court found that the after-acquired properties had been placed on the mortgaged land by the debtor in connection with and for use in the development of its lumber concession and that they were purchased in addition to or in replacement of those already existing in the premises. Such being the case, the court held that the after-acquired properties had been immobilized and came within the operation of Article 415, paragraph 5 of the Civil Code. Accordingly, the mortgages did not have to be registered a second time as chattel mortgages.

This case merely reiterates *Cu Unjieng Hijos v. Mabalacat Sugar Co.*,[5] *Berkenkotter v. Cu Unjieng*,[6] and *Machinery & Engineering Supplies Inc. v. Court of Appeals*.[7]

The Supreme Court did not consider applicable its decision in *Davao Sawmill Co. v. Castillo*,[8] where it was held that machinery placed on rented land by the tenant did not become immobilized unless he acted as the agent of the owner of the land, despite the fact, as pointed by the defendants in this case, that the mortgagor did not own the whole area of its lumber concession over which the after-acquired properties were scattered. The Supreme Court said:

> "The facts in the Davao Sawmill case, however, are not on all fours with the ones obtaining in the present. In the former, the Davao Sawmill Company, Inc., had repeatedly treated the machinery therein involved as *personal property* by executing chattel mortgages thereon in favor of third parties, while in the present case the parties had treated the 'after-acquired properties' as *real properties* by expressly and unequivocally agreeing that they shall automatically become subject to the lien of the real estate mortgages executed by them. In the Davao Sawmill decision it was, in fact, stated that 'the charac-

[5] 58 Phil. 439 (1933).
[6] 61 Phil. 663 (1935).
[7] 96 Phil. 70 (1954).
[8] 61 Phil. 709 (1935).

> terization of the property as chattels by the appellant is indicative of intention and *impresses upon the property the character determined by the parties'* (61 Phil. 112, italics supplied). In the present case, the characterization of the 'after-acquired properties' as real property was made not only by one but by both interested parties. There is, therefore, more reason to hold that such consensus impresses upon the properties the character determined by the parties who must now be held in estoppel to question it."

B. Property in relation to the person to whom it belongs may be of public or of private ownership. *Santos v. Moreno,*[9] dealt with the classification of property according to ownership.

Article 420, paragraph 1 of the Civil Code regards as property of public dominion, "those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character." On the other hand, Article 503, paragraph 5 of the same Code considers as of private ownership, "the channels of flowing streams, continuous or intermittent, formed by rain water, and those of brooks crossing estates which are not of public ownership."

The *Santos* case involved twenty-two streams or "sapangs" which, except for one, had been constructed by the grantor of Santos — Ayala y Cia. It appeared that the grantor owned a vast tract of marshland in Macabebe, Pampanga, the Hacienda San Esteban. To provide access to different parts of the hacienda, Ayala y Cia dug interlinking canals which by the gradual process of erosion, acquired the characteristics and dimensions of rivers.

When Santos bought part of the hacienda, he closed the canals and converted them into fishponds. This did not sit well with the residents of the surrounding communities, who claimed that the closing of the canals caused floods during the rainy season, and that they were deprived of their means of transportation and fishing grounds.

The mayor of Macabebe sought to open the canals; Santos tried to enjoin him but lost in the court of first instance. Santos then appealed to the Supreme Court.

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[9] G.R. No. 15829, December 4, 1967.

The Court found that — except for Sapang Cansusu, which was a natural stream and a continuation of the Cansusu river, admittedly a public stream — all the others were of private ownership because their channels were located in private land. Said the Court: "The said streams, considered as canals, of which they originally were, are of private ownership. Under Article [420], canals constructed by the State and devoted to public use are of public ownership. Conversely, canals constructed by private persons within private lands and devoted exclusively for private use must be of private ownership."

The court set aside the claim that the public had acquired the use of the canals by prescription as expressed in its *obiter* in *Mercado v. Municipal President of Macabebe*,[10] "considering that the owners of Hacienda San Esteban held them for their exclusive use and prohibited the public from using them."

The Court adjudged then that —

> "All the other streams, being artificial and devoted exclusively for the use of the hacienda owner and his personnel, are declared of private ownership. Hence, the dams across them should not be ordered demolished as public nuisances."

The case of *Hilario v. City of Manila*,[11] answers this legal question: when a river, leaving its old bed, changes its original course and opens a new one through private property, would the new riverbanks lining said course be of public ownership also?

This question arose because in 1937, during the regime of the old Spanish Civil Code, the San Mateo river in Marikina, Rizal, left its original bed and meandered through the Hilario estate. From 1945, sand and gravel were extracted from the new riverbanks, first by the U.S. Army and later by agencies of the Philippine Government. Contending that the new riverbanks from which the sand and gravel were extracted were of private ownership, plaintiff sued the defendants to restrain them from continuing to remove the materials and to recover damages. Although the U.S. Army paid for the materials taken by it, the defendants refused to pay on the ground that the new riverbanks were of public ownership.

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[10] 59 Phil. 592 (1934).
[11] G.R. No. 19570, April 27, 1967.

There is no question that the new bed of the San Mateo river which used to be the private property of the plaintiff is now of public ownership. This is explicitly provided in Article 372 of the old Civil Code and in Article 462 of the new Civil Code. The question as to whether or not the new riverbanks are also of public ownership is also answered by Article 339, paragraph 1 of the old code which provided:

> "Property of public ownership is —
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> "1. That devoted to public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, riverbanks, shores, roadsteads, and that of a similar character;"

And Article 420, paragraph 1 of the new code likewise provides:

> "ART. 420. The following things are property of public dominion:
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> "(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;"

Finally, Article 73 of the Spanish Law of Waters of August 3, 1866 which continues in force[12] defines "banks of a river" as follows:

> "By the phrase 'banks of a river' is understood those lateral strips or zones of its bed which are washed by the stream only during such high floods as do not cause inundations. . . ."

From these provisions, it can be gathered that the *bed* of a river is of public ownership; the *banks* of a river are part of its bed; hence, the banks are also of public ownership.

There should be no difficulty with this syllogism except for the fact that in *Commonwealth v. Gungun*,[13] the Supreme Court said that private ownership of riverbanks is not prohibited. In the words of the court, "el articulo 73 de la Ley de Aguas de 3 de Agosto de 1966 no prohibe que las riberas de un rio sean objeto de apropiacion por particulares." The court went on to say that the only restriction imposed "es que esten sujetas a la servidumbre de 3 metros de zona para uso publico, en el interes general de navegacion, la flotacion, la pesca y el salvamento." It was obviously referring to Article 553 of the old code, now Article 638 of the new code which stipulates:

> "ART. 638. The banks of rivers and streams, even in case they are of private ownership, are subject throughout their en-

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[12] See Civil Code, Art. 518.
[13] 70 Phil. 194 (1940).

> tire length and within a zone of three meters along their margins, to the easement of public use in the general interest of navigation, floatage, fishing and salvage.
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> "Estates adjoining the banks of navigable or floatable rivers are, furthermore, subject to the easement of towpath for the exclusive service of river navigation and floatage.
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> "If it be necessary for such purpose to occupy lands of private ownership, the proper indemnity shall first be paid."

The plaintiff pointed out that on the basis of the *Gungun* case and the provisions of Article 553 which speak of banks "even in case they are of private ownership," when a river changes its course and opens a new bed through a private estate, the banks remain private property.

Not so, said the court, because —

> "A study of the history of Art. 553 will however reveal that it was never intended to authorize the private acquisition of riverbanks. That could not have been legally possible in view of the legislative policy clearly enunciated in Art. 339 of the Code that all riverbanks were of public ownership. The article merely recognized and preserved the vested rights of riparian owners who because of prior law or custom, were able to acquire ownership over the banks. This was possible under the *Siete Partidas* which was promulgated in 1834 yet. Under Law 6, Title 28, Partidas 3, *the banks of rivers belonged to the riparian owners*, following the Roman Law rule. In other words, they were privately owned then. But subsequent legislation radically changed this rule. By the Law of Waters of August 3, 1866, riverbanks became of public ownership, *albeit* impliedly only because considered part of the bed — which was public — by statutory definition. But this law, while expressly repealing all prior inconsistent laws, left undisturbed all vested rights then existing. So privately owned banks then continued to be so under the new law, but they were subjected by the latter to an easement for public use."

Property of public dominion may pertain to the State or to provinces, cities and municipalities. The property of the State consists of those for public use, public service, development of national wealth and patrimonial property.[14] The property of provinces, cities and municipalities is divided into property for public use and patrimonial property.[15]

Property of public dominion, not patrimonial in character, is outside the commerce of man. Hence, it cannot be the object

[14] Civil Code, Arts. 420-421.
[15] Civil Code, Art. 423.

of prescription,[16] of contracts[17] or of legal processes such as execution.[18]

In *City of Manila v. Garcia*,[19] defendants, between 1945 and 1947, entered lands belonging to the plaintiff which were intended for school purposes without the latter's knowledge and consent. The defendants, in other words, were squatters on property of public ownership intended for public use.

When their occupancy was "discovered" in 1947, some of the defendants were given "lease contracts" by then Mayor Valeriano Fugoso, others received their permits from former Mayor Manuel de la Fuente, and the rest had none. For their occupancy, all of the defendants were charged nominal rentals.

When the plaintiff decided to use the property for the expansion of Epifanio de los Santos Elementary School, it told defendants to vacate the premises, remove their improvements and pay for their occupancy. Defendants refused; hence, this suit to recover possession.

The defendants, among other defenses, insisted that they had acquired the legal status of tenants. They are wrong, said the Supreme Court. For "the Manila mayors did not have authority to give permits, written or oral, to defendants, and... the permits... granted are null and void."

III. OWNERSHIP IN GENERAL

The old as well as the new civil code are conceptualist in their approach. This is made manifest by their preoccupation with legal definitions. Some writers are not happy with this approach. Scott, for instance, derides the practical value of legal definitions. He says, "A definition cannot properly be used as though it were a major premise so that rules governing conduct can be deduced from it. ...the definition results from the rules, and not the rules from the definition."[20]

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[16] Civil Code, Art. 1113.
[17] Cavite v. Rojas, 30 Phil. 602 (1915); Unson v. Lacson, 100 Phil. 695 (1957); Espiritu v. Municipal Council of Pozurrubio, 102 Phil. 867 (1958).
[18] Tan Toco v. Municipal Council of Iloilo, 49 Phil. 52 (1926).
[19] G.R. No. 26053, February 21, 1967.
[20] I SCOTT, THE LAW ON TRUSTS 2.3 (2d ed., 1956).

The old code defined ownership as "the right to enjoy and dispose of a thing without other limitations than those established by law."[21]

The bundle of rights or *jus* which go with ownership are known to every law student who has taken property. This bundle was mentioned in *Philippine Banking Corporation v. Lui She*.[22]

In that case, Justina Santos, of whose estate the plaintiff is the administrator, leased to Wong Heng, of whose estate the defendant is the administratrix, a piece of land for a period of 99 years with a fifty-year option to buy the property. The option was conditioned on Wong's acquiring Philippine citizenship which he failed to do.

The Bank sought to annul the lease with option to buy on a number of grounds. In granting annulment, the Supreme Court said:

> "But if an alien is given not only a lease of, but also an option to buy, a piece of land, by virtue of which the Filipino owner cannot sell or otherwise dispose of his property, this to last for 50 years, then it becomes clear that the arrangement is a virtual transfer of ownership whereby the owner divests himself in stages not only of the right to enjoy the land (*jus possidendi, jus utendi, jus fruendi* and *jus abutendi*) but also of the right to dispose of it (*jus disponendi*) — rights the sum total of which make up ownership. It is just as if today the possession is transferred, tomorrow, the use, the next day, the disposition, and so on, until ultimately all the rights of which ownership is made up are consolidated in an alien. And yet this is just exactly what the parties in this case did within the space of one year, with the result that Justina Santos' ownership of her property was reduced to a hollow concept. If this can be done, then the Constitutional ban against alien landholding in the Philippines, as announced in *Krivenko v. Register of Deeds*, [79 Phil. 461 (1947)], is indeed in grave peril."

It should be noted that Article 1643 of the Civil Code allows leases for not more than 99 years. And in *Smith, Bell & Co., Ltd. v. Register of Deeds of Davao*,[23] the Supreme Court impliedly held that an alien may lease private land for as long as 99 years. This, however, was *obiter* for the issue was not the duration of the lease but whether or not an alien may lease

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[21] Civil Code, Art. 428, par. 1.
[22] G.R. No. 17587, September 12, 1967.
[23] 96 Phil. 53 (1954).

private lands. More in accord with the rule enunciated in the *Philippine Banking Corporation* case was an opinion of the late Secretary of Justice Pedro Tuason, rendered shortly before the *Smith, Bell & Co., Ltd.* case was promulgated. In that opinion, the Chinese Ambassador, through the Secretary of Foreign Affairs, asked if aliens may lease private agricultural lands. Justice Tuason said, yes, they can but added the following caveat:

> "But leases may run, according to the Civil Code, up to 99 years, and a long-term lease may be such as to defeat the constitutional prohibition. Where that be the case, I believe that the courts would be justified in nullifying a contract of lease and the register of deeds in refusing to register it.
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> In [previous] opinions . . . 25 years was fixed as the maximum allowable period. Even this period may be too long, so long as virtually to amount to a transfer of ownership of the property purportedly leased. Pending determination of the reasonable period by the courts, and in the absence of legislation on the subject, 10 years would, in my opinion, be more in consonance with the spirit of the Organic Law."[24]

The attributes of ownership were also mentioned in NAWASA *v. Dator*.[25]

In a case previous to this[26], the Supreme Court declared plaintiff to be the owner of the Lucban Waterworks System, subject, however, to the jurisdiction, control and supervision of the defendant pursuant to Republic Act No. 1383 (1955) which, incidentally, was in that same case and others declared unconstitutional insofar as it provides for the transfer to the National Government, through the NAWASA, of the ownership of local waterworks systems belonging to municipal corporations, without due process of law.[27]

After the decision in that case had become final, Mayor Hobart Dator of Lucban ordered the collection of water rentals from the users of the system. NAWASA then filed a petition to declare Mayor Dator guilty of contempt of court, alleging that his action was in defiance of the decision. From an order denying the petition, NAWASA appealed to the Supreme Court.

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[24] Sec. of Justice Op. No. 290, series of 1954.
[25] G.R. No. 21911, September 29, 1967.
[26] Municipality of Lucban v. NAWASA, G.R. No. 15525, October 1, 1961.
[27] See also Municipality of San Juan v. NAWASA, G.R. No. 22047, August 31, 1967.

The Supreme Court denied the appeal on the ground that a municipality is expressly granted by law[28] to fix and collect rents for water supplied by its waterworks system. Additionally, the court said:

> "Even without these express provisions, however, the authority of the municipality to fix and collect fees from its waterworks would be justified from its inherent power to administer what it owns privately. It is now settled that although the NAWASA may regulate and supervise the water plants owned and operated by cities and municipalities, the ownership thereof is vested in the municipality and in the operation thereof the municipality acts in its proprietary capacity. Like any private owner, the municipality enjoys the attributes of ownership under the New Civil Code. One such attribute is the right to use or enjoy the property. The municipality, here concerned, has chosen to use its waterworks system for revenue purposes. Its undertaking to supply water at a cost to its inhabitants, is in itself a business venture, and the fees collected therefrom, would be the only income that said municipality may derive from such business. If a governmental entity, like the NAWASA, were allowed to collect the fees that the consuming public pay for the water supplied to them by the municipality the latter, as owner, would be deprived of the full enjoyment of its property. As previously stated, ownership is nothing without the inherent rights of possession, control and enjoyment.[29]

IV. RIGHT OF ACCESSION

In accession, land, as a rule, is the principal, and whatever is built, planted or sown thereon by another is merely accessory. When accession takes place in good faith, the owner of the accessory is entitled to indemnity for the work and pending its payment to retain possession of the land.[30] But where accession takes place in bad faith, the owner of the accessory has no right to indemnity except for the necessary expenses of preservation of the land and even for these, he has no right to retain possession.[31]

In *De Leon v. Caluag*,[32] which was a petition for certiorari and injunction, the petitioners sought to stay the execution, pending appeal, of a judgment of the court of first

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[28] Rev. Adm. Code (1917), Sec. 2317; Rep. Act No. 2264 (1959), Sec. 2.
[29] See Municipality of La Carlota v. NAWASA, G.R. No. 20232, September 30, 1964.
[30] Civil Code, Arts. 448 and 546.
[31] Civil Code, Arts. 449, 452 and 546.
[32] G.R. No. 18722, September 14, 1967.

instance of Quezon City finding them to be builders in bad faith and ordering them to deliver possession of the land and its improvements to the plaintiff. Petitioners insisted they were builders in good faith and therefore entitled to retain possession until indemnified and, inferentially, pending their appeal. But the Supreme Court, in denying the petition, held that the Court of First Instance had found them to be builders in bad faith and that finding must be deemed correct until reversed.

V. QUIETING OF TITLE

The action to quiet title is one of the innovations of the new Civil Code. The action was recognized by the old Code of Civil Procedure which indicated where the venue should be laid, but no provision of the substantive law stated under what conditions the action may be brought.[33] Hence, Articles 476 through 481 of the present Civil Code which are all new.

Article 480 provides:

> "ART. 480. The principles of the general law on the quieting of title are hereby adopted insofar as they are not in conflict with this Code."

In *Septo v. Fabiana,*[34] the Supreme Court held that "it is an established rule of American jurisprudence (made applicable in this jurisdiction by Art. 480 of the New Civil Code) that actions to quiet title to property in the possession of the plaintiff are imprescriptible (44 Am. Jur. p. 47; Cooper vs. Rhea, 39 L.R.A. 930; Inland Empire Land Co. vs. Grant County, 138 Wash. 439, 245 Pac. 14)."

This rule was reiterated in *Gallar v. Husain.*[35] In that case, Teodoro Husain sold to Serapio Chichirita a parcel of registered land, reserving for himself the right to repurchase. The vendor did not redeem the land within the period stipulated. Soon after the sale, the vendee transferred his right to Graciana Husain who, in turn, transferred her right to Elias Gallar in exchange for one cow. Since then (1919), Gallar has been in possession of the land. All of the transactions were contained in private instruments.

The present action, filed in 1960, sought to compel the heirs of Teodoro Husain to execute a formal deed of convey-

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[33] See Report of the Code Commission 55 (1948).
[34] 103 Phil. 683 (1958).
[35] G.R. No. 20954, May 24, 1967.

ance so that he could get a transfer certificate of title. Defendants invoked, among other things, prescription.

Treating the action as one to quiet title and not for specific performance because the sale had been consummated and title was in the plaintiff despite the fact that the transactions were made in private instruments only, the court held that the action did not prescribe inasmuch as the plaintiff was in possession of the land. The court added that the action would have prescribed if the defendants had been in possession for then, the action would not be to quiet title but for recovery of real property which must be brought within the statutory period.

VI. Co-Ownership

There is co-ownership whenever a thing or a right is owned *pro-indiviso* by different persons. No co-owner can be obliged to remain as such; he can demand partition at any time, subject to certain exceptions, insofar as his share is concerned.[36]

When the property owned in common is essentially indivisible, it cannot of course be partitioned physically. In such a case, it shall be sold and its proceeds distributed if the co-owners cannot agree that it be allotted to one of them who shall indemnify the others.[37] The same procedure should be followed when a physical division would render the thing owned in common unserviceable for the use for which it was intended.[38]

In *Ramirez v. Ramirez*,[39] which was an action for partition, Articles 495 and 498 of the Civil Code were invoked by other co-owners who sought to prevent the segregation of plaintiff's share.

The property owned in common was a parcel of land at the corner of Escolta and Plaza Sta. Cruz in Manila. Plaintiff was one of six co-owners who demanded that his share be segregated. Four of the other co-owners objected on the ground that a physical division of the property would cause inestimable damage to the interest of the co-owners. But the Supreme Court, in ordering partition, said:

> ". . . No evidence, however, has been introduced, or sought to be introduced, in support of this allegation. Moreover, the same

[36] See Civil Code, Arts. 484 and 494.
[37] See Civil Code, Art. 498.
[38] See Civil Code, Art. 495.
[39] G.R. No. 22621, September 29, 1967.

> is predicated upon the assumption that a real estate suitable for commercial purposes — such as the one herein sought to be partitioned — is likely to suffer a proportionately great diminution in value when its area becomes too small. But, then, if plaintiff's share of 260.26 square meters were segregated from the property in question, there would still remain a lot of 1,301.34 square meters. . . . A real estate of this size, in the very heart of Manila, is not, however, inconsequential, in comparison to that of the present property of the community. In other words, we do not believe that its value would be impaired, on account of the segregation of plaintiff's share, to such an extent as to warrant the conclusion that the property is indivisible."

VII. POSSESSION

Possession is the holding of a thing or the enjoyment of a right.[40] It is one of the rights which go with ownership although it can also exist as a distinct right.

The owner or possessor of a thing can recover possession thereof through the modes recognized by law.[41] If the object is a piece of land, the action to recover possession can either be a summary action for ejectment cognizable by an inferior court and which must be filed within one year from the time the cause of action accrued or an *accion publiciana* which must be filed in a court of first instance.

In *Calubayan v. Pascual*,[42] plaintiffs bought a piece of land from the Philippine Realty Corporation on October 22, 1957. At that time, the defendant was already on the land by mere tolerance of the owner. Soon after the plaintiffs had bought the land, they asked the defendant to see them but this request was ignored. Only on February 2, 1963 did the plaintiffs ask the defendant to vacate the land but this request was likewise ignored. Plaintiff then filed an action on May 6, 1963 in the Court of First Instance to recover possession. Did the Court of First Instance have jurisdiction over the case? No, said the Supreme Court because the defendant's detainer began only on February 2, 1963 when a demand to vacate was effectively made. Hence, when suit was filed on May 6, 1963, it should have been with an inferior court and not with the court of first instance.

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[40] Civil Code, Art. 523.
[41] See Civil Code, Arts. 428 and 539.
[42] G.R. No. 22645, September 18, 1967.

Vitally affecting the right of possession is illegal entry on property by so-called squatters. This practice, which disregards the right of ownership, has contributed greatly to the breakdown of law and order in the Philippines. It is a serious problem in respect of which the government must take decisive action. In the words of the Supreme Court in the case of *City of Manila v. Garcia*:[43]

> "Since the last global war, squatting on another's property in this country has become a widespread vice. It was and is a blight. Squatters' areas pose problems of health, sanitation. They are breeding places for crime. They constitute proof that respect for the law and the rights of others, even those of the government, are being flouted. Knowingly, squatters have embarked on the pernicious act of occupying property whenever and wherever convenient to their interests — without as much as leave, and even against the will, of the owner. They are emboldened seemingly because of their belief that they could violate the law with impunity. The pugnaciousness of some of them has tied up the hands of legitimate owners. The latter are thus prevented from recovering possession by peaceful means. Government lands have not been spared by them. They know, of course, that intrusion into property, government or private, is wrong. But, then, the mills of justice grind slow, mainly because of lawyers who, by means, fair or foul, are quite often successful in procuring delay of the day of reckoning. Rampancy of forcible entry into government lands particularly, is abetted by the apathy of some public officials to enforce the government's rights. Obstinacy of these squatters is difficult to explain unless it is spawned by official tolerance, if not outright encouragement or protection. Said squatters have become insensible to the difference between right and wrong. To them, violation of law means nothing. With the result that squatting still exists, much to the detriment of public interest. It is high time that in this aspect, sanity and the rule of law be restored."

VIII. NUISANCE

The Civil Code contains a title on Nuisance which the old code did not have. Additionally, the present code has also two articles on easements against nuisance.[44]

A nuisance is something obnoxious or obstructive and a serious hindrance to the enjoyment of life and property. A

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[43] See note 19, *supra*.
[44] Arts. 682 and 683.

nuisance is either public or private[45] but whether public or private, lapse of time cannot legalize any nuisance.[46]

The remedies against a public nuisance are: (1) a criminal action; (2) a civil action; or (3) abatement without judicial proceedings.[47]

In *City of Manila v. Garcia, et al.*,[48] the Supreme Court ruled that the houses and constructions planted by the defendants on the plaintiff's premises were a nuisance. In the words of the court:

> ". . . They clearly hinder and impair the use of that property for school purposes. The courts may well take judicial notice of the fact that housing school children in the elementary grades has been and still is a perennial problem in the city. The selfish interests of defendants must have to yield to the general good. The public purpose of constructing the school building annex is paramount.
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> "In the situation thus obtaining, the houses and constructions aforesaid constitute public nuisance *per se*. And this, for the reason that they hinder and impair the use of the property for badly needed school building, to the prejudice of the education of the youth of the land. They shackle the hands of the government and thus obstruct performance of its constitutionally ordained obligation to establish and maintain a complete and adequate system of public education, and more, to *'provide at least free public primary instruction'*.
>
> "Reason dictates that no further delay should be countenanced. The public nuisance could well have been summarily abated by the city authorities themselves, *even without the aid of the courts.*"

This ruling amplifies that given in *Sitchon v. Aquino*,[49] to the effect that:

> "Again, houses constructed, without governmental authority, on public streets and waterways, obstruct *at all times* the free use by the public of said streets and waterways, and, accordingly, constitute nuisances per se, aside from public nuisances. As such, the summary removal thereof, without judicial process or proceedings may be authorized by the statute or municipal ordinance, despite the due process clause."

IX. PRESCRIPTION

Prescription is either acquisitive or extinctive. Acquisitive prescription raises a new title in the possessor whereas extinctive

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[45] Civil Code, Art. 695.
[46] Civil Code, Art. 698.
[47] Civil Code, Art. 699.
[48] See note 19, *supra*.
[49] 98 Phil. 458 (1956); See also Halili v. Lacson, 98 Phil. 772 (1956).

prescription bars a right of action. Of whatever kind, prescription is a social necessity; it is founded on public order which seeks to substitute certainty for doubt and contradiction, after the lapse of a given period.

Hereunder are the more noteworthy cases on prescription:

Ang v. American Steamship Agencies, Inc.,[50] was a suit for damages for alleged conversion of goods by the defendant covered by a bill of lading which had been indorsed to the plaintiff. The goods had been landed on May 9, 1961 but the suit was brought only on October 30, 1963.

Defendant invoked prescription, citing Section 3 of the Carriage of Goods by Sea Act — Commonwealth Act No. 65 (1936) which provides that a suit against a carrier for loss or damage must be brought within one year after the delivery of the goods or the date when the goods should have been delivered.

The Supreme Court distinguished loss or damage to goods from misdelivery or conversion. In the former, the one-year period was designed to meet the exigencies of maritime hazards. But in the latter, the special need for the short period of limitation does not obtain. Since the suit was predicated not upon loss or damage but on alleged misdelivery or conversion, the applicable rule is that found in the Civil Code — ten years for a breach of written contract or four years for quasi-delict.[51] In either cases, the suit had not prescribed.

In *Laurel-Manila v. Galvon*,[52] a piece of land was sold on March 21, 1925, to the defendants subject to repurchase within the period stipulated but it was only in 1932 when the vendees consolidated their title. In 1954, plaintiffs sought to recover the property on the ground that the transaction was not in reality a *pacto de retro* sale but a mere equitable mortgage. The Supreme Court held that whether the cause of action accrued in 1925 when the sale was made or in 1932 when title was consolidated, the action was barred under the old Code of Civil Procedure applicable to the case which provided for a maximum period of ten years for bringing such an action.

Plaintiffs sought to invoke Article 1141 of the Civil Code which bars real actions only after the lapse of thirty years.

[50] G.R. No. 22941, January 27, 1967.
[51] Arts. 1144, par. 1 and 1146.
[52] G.R. No. 23057, May 24, 1967.

But the Supreme Court pointed out that the Civil Code could not retroactively apply to the case because the same code in Article 1116 provides:

> "ART. 1116. Prescription already running before the effectivity of this Code shall be governed by laws previously in force; but if since the time this Code took effect the entire period herein required for prescription should elapse, the present Code shall be applicable, even though by the former laws a longer period might be required."

In *Calo v. Degamo*,[53] petitioner sought to disbar respondent for a perjury which the latter committed on January 17, 1959. The complaint was filed only on March 2, 1962 and the respondent invoked the defense of prescription. The Supreme Court said: "This defense does not lie; the rule is that —

> 'The ordinary statutes of limitation have no application to disbarment proceedings, nor does the circumstance that the facts set up as a ground for disbarment constitute a crime, prosecution for which in a criminal proceeding is barred by limitation, affect the disbarment proceeding . . .' (5 Am. Jur. 434)"

In *Lopez v. Auditor General*,[54] plaintiff sought, in 1959, to obtain compensation for a part of his registered land located in Lopez, Quezon, which was used for building a road in 1937. Defendants refused to pay on ground of prescription, invoking *Jaen v. Agregado*,[55] which held that where private property is acquired by the government and all that remains is the payment of the price, the owner's action to collect the price must be brought within ten years. On the other hand, plaintiff invoked *Alfonso v. Pasay City*.[56] which held that where private property is taken by the government for public use without first acquiring title thereto, the owner's action to recover the land or its value does not prescribe.

The Supreme Court held the first case to be applicable on the ground that the government had acquired title to the property when plaintiff delivered possession thereof in 1937 "in exchange for another piece of land." (The facts are not clear but presumably, plaintiff did not get the "another piece of land.") And as to the fact that the exchange was not registered,

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[53] G.R. Adm. Case No. 5161, June 27, 1967.
[54] G.R. No. 25859, July 13, 1967.
[55] 97 Phil. 990 (1955).
[56] G.R. No. 12754, January 30, 1960, 57 O.G. 3308 (May, 1961).

the Court held that it did not affect the validity of the transfer for rights of innocent third parties or subsequent transferees were not involved.

In *Harden v. Harden*,[57] the payment of attorney's fees due to the estate of Claro M. Recto who died on October 2, 1960 was the subject of the litigation.

Fred and Esperanza Harden were spouses who acquired considerable conjugal properties until 1938 when they separated. In 1941, Mrs. Harden hired Recto as her counsel in a suit she was contemplating to file against her husband. She agreed to pay Recto 20% of her share in the conjugal partnership. Recto filed suit against Mr. Harden and Jose Salumbides who was Harden's attorney-in-fact. The suit was discontinued because in 1952, the Hardens concluded an amicable settlement in Canada. Nonetheless, Recto was able to obtain a judgment for ₱304,-110.97 as his attorney's fees. In the meantime, all writs and processes in this case were dissolved but the receivership of the conjugal properties which was ordered in 1946, was maintained.

By 1961, the Recto claim had been paid except for ₱30,624.00. The present incident deals with ₱60,797.29 received by Salumbides as cash dividends from Surigao Consolidated Mining Co. from April 15, 1950 to July 2, 1955. It had been previously held that Salumbides did own the Surigao shares. Although the shares were registered in Salumbides' name they were in fact owned by the Hardens.

Salumbides set up several defenses, including prescription, in order to resist the Recto claim. But the Supreme Court held there could be no prescription, extinctive or acquisitive. There was no extinctive prescription, ruled the court, because of the several Recto motions asking payment of the attorney's fees. Under Article 1155 of the Civil Code, "The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor."

Neither could there be acquisitive prescription in favor of Salumbides since he possessed the dividends, not in the concept of owner, adverse to the Hardens, but rather as attorney-in-fact of Mr. Harden.

[57] G.R. No. 22174, July 21, 1967.

In *Joaquin v. Cojuangco,*[58] the plaintiff claimed that he was the heir of Pedro Joaquin who died in 1914; that Pedro Joaquin left several parcels of land which were entrusted to administrators who were able to procure registration of the lands in their own names and later conveyed them to third persons who knew that they were not truly owned by the vendors. The defendants, who were the vendees, took the lands in 1928 and 1936, respectively, and since then have been in adverse possession of the same.

The Supreme Court held that even assuming that a trust relationship had existed between the predecessors of the parties, the action for reconveyance could not prosper. Such an action will succeed only if the trustees still hold the properties but not after they had conveyed them to third persons who acquired the properties for value and claimed adverse title in themselves. In this case, said the court, "Whatever may be said... as to the nature of the possession of their immediate predecessors, and irrespective of the fact that said defendants had a right to rely on the former's certificates of title and become registered owners themselves upon the conveyance of the lands to them, their adverse possession ripened into ownership by prescription for 10 years... and bars an action for recovery thereafter."

It should be added, however, that an action for reconveyance against a trustee may fail even if he still holds the property, where he has made an open repudiation of the trust by unequivocal acts made known to the *cestui que trust* and sufficient time has elapsed for prescription to supervene.[59] And so in *Cuaycong v. Cuaycong,*[60] the Court made the *obiter* that an action to enforce on implied trust prescribes in 10 years counted from the time it was repudiated.

Julio v. Dalandan,[61] was a suit for the delivery of a piece of land. Clemente Dalandan, defendant's predecessor, executed on September 8, 1959, a document wherein he promised to deliver to Victoria Julio a piece of land. Behind the promise was the fact that before the last war, Clemente incurred a debt and to secure its payment Victoriana Dalandan, Victoria's predecessor,

[58] G.R. No. 18060, July 25, 1967.
[59] Laguna v. Levantino, 71 Phil. 566 (1941).
[60] G.R. No. 21616, December 11, 1967.
[61] G.R. No. 19012, October 30, 1967.

mortgaged her own land. The debt was not paid, the mortgage was foreclosed, and Victoriana lost her land.

The decision does not state when the suit was commenced; only that on April 29, 1961, the lower court dismissed it on the ground that 10 years had elapsed from the time the document was executed.

In its review of the order of dismissal, the Supreme Court held plaintiff's suit was not yet barred by the statute of limitations, citing Article 1141 of the Civil Code which reads.

> "Real actions over immovables prescribe after thirty years.
>
> "This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription."

The court took this view because the motion to dismiss was predicated on the prescription of plaintiff's action — not on acquisitive prescription.