# CIVIL LAW—PART II

# PROPERTY, SUCCESSION AND SPECIAL CONTRACTS

RUBEN F. BALANE *

For the student of Civil Law, aware as he must be of the often bewildering intricacies of his chosen—or forced—field of interest, survey year 1971 was almost an exciting year. A quiet and unobtrusive excitement though, if one may be allowed a oxymoron, rather than a sensational one. There was nothing anywhere near the to-do generated by such celebrated public law decisions as the habeas corpus cases arising out of the privilege suspension on 21 August 1971 or the *Tolentino v. Comelec* ruling on the voting age amendment in the Constitutional Convention. But for the student interested in the less grand but equally absorbing questions of civil law, there were a few milestones along his path of travel. He would have found, for instance, an answer to the unsettled question of whether the criterion to determine the character of land as urban or rural is that of use or that of place, for the purpose of applying the provisions on legal redemption. He would have found—hopefully—the answer to whether a usurious loan necessarily implied the nullity of the entire contract or only of the exorbitant interest. Not anything to whip up heated popular discussion, to be sure, but to the civil law disciple—a person whose persistent, if somewhat odd and uninteresting, mind works like a drill—terribly provocative issues.

From the hilltop, then, to the little milestones along the road.

## PROPERTY

### *Buildings as objects of chattel mortgage*

Article 415(1) of the Civil Code mentions, inter alia, buildings as immovable property. This classification notwithstanding, contracting parties have time and again entered into contracts of chattel mortgage with buildings as objects. The question of the validity of such a chattel mortgage has on numerous occasions been elevated to the Supreme Court for determination. Once again, during this survey year, the Court found it necessary to restate the rule and the distinctions on the matter, in the case of *Tumalad, et al. v. Vicencio et al.*,[1] the facts of which are as follows:

---

* *Assistant Professor* and *Secretary of the College*, College of Law, University of the Philippines.

[1] G.R. No. L-30173, September 30, 1971; 41 SCRA 143.

On 1 September 1955, the defendants executed a chattel mortgage in favor of the plaintiffs over a house of strong materials on a lot which was being rented by the defendants from Madrigal & Co. The chattel mortgage was duly registered with the Register of Deeds. The defendants failed to pay the loan for which the chattel mortgage was security, as a result of which the plaintiffs obtained an extra-judicial foreclosure, the plaintiffs themselves being the highest bidders in the auction sale. An action was then instituted to have the defendants vacate the house, but the defendants resisted, claiming, among other things, that the subject matter of the mortgage being a house of strong materials, a real estate, and not a chattel, mortgage should have been entered into by the parties.

The Court, in rejecting the contention of the defendants and upholding the chattel mortgage, reiterated the rule, laid down in several cases, that a chattel mortgage over a building would be set aside only if the rights of innocent third parties are adversely affected, and not when the only parties involved are the original parties to the contract.

The general rule was explained by the Court thus:

> "It is true that as held in Lopez v. Plaza Theatre, Inc.,[2] it is obvious that the inclusion of the building, separate and distinct from the land, in the enumeration of what may constitute real properties (Art. 415, New Civil Code) could only mean one thing—that *a building is by itself an immovable property* irrespective of whether or not said structure and the land on which it is adhered to (sic) belong to the same owner."[3]

Exceptions to the general rule, however, have been allowed. Continued the Court: "In Manarang v. Ofilada[4] it was held that "it is undeniable that the parties to a contract may by agreement treat as personal that which by nature would be real propery' " [5]

The reason for the distinction is that "unlike in the Iya and Lopez cases and in Leung Yee v. F.L. Strong Machinery [6] wherein third parties assailed the validity of the chattel mortgage, in this case, it is the defendants themselves who are here attacking the validity of the chattel mortgage."

To capsulate the rule therefore: chattel mortgages over buildings cannot prejudice third parties because a building is real property *in se,* but as between the contracting parties themselves such a mortgage shall be binding and effective.

---

[2] 103 Phil. 98 (1958).

[3] Citing also Associated Insurance Surety Co. v. Iya, 103 Phil. 972 (1958).

[4] 99 Phil. 109 (1956)

[5] Citing also Standard Oil Co. of New York v. Jaramillo, 44 Phil. 632 (1923); Luna v. Encarnacion, 91 Phil. 531 (1952); Navarro v. Pineda, G.R. No. L-18456, November 30, 1963, 9 SCRA 631 (1963); Evangelista v. Alto Surety, G.R. No. L-11139, April 23, 1958.

[6] 37 Phil. 644 (1918).

*Owner's right of recovery in cases of unlawful deprivation*

Article 559 provides:

> "The possession of movable property acquired in good faith is equivalent to a title. Nevertheless, one who has lost any movable or has been unlawfully deprived thereof, may recover it from the person in possession of the same.
>
> If the possessor of a movable lost or of which the owner has been unlawfully deprived, has acquired it in good faith at a public sale, the owner cannot obtain its return without reimbursing the price paid therefor."

The application of the first paragraph of the above-quoted articles was explained in the case of *De Garcia v. Court of Appeals.*[7]

The case involved an action to recover a diamond ring. Sometime in October 1953, the plaintiff, while talking to defendant, Mrs. Garcia, recognized her ring on the latter's finger. The defendant, upon being asked where she bought the ring, replied that she bought it from her comadre, whereupon the plaintiff explained that the ring was stolen from her house in February, 1952. Mrs. Garcia handed the ring to the plaintiff and it fitted her finger. A few days later, the parties went to the Rebullida jewelry store, from which the plaintiff purchased her lost ring, and Rebullida himself examined the ring and affirmed that it was the very ring bought from him in 1947. Mrs. Garcia, however, refused to return the ring, claiming that she got it from a Mrs. Miranda, who got it from Miss Angelita Hinahon, who in turn got it from the owner, a certain Aling Petring.

The Supreme Court, in holding for the plaintiff and sustaining her right to recover, found the first paragraph of Article 559 applicable. The plaintiff, according to the Court, having been unlawfully deprived of the ring in question, was entitled to recover it from the defendant, who was found in possession thereof. The right of the owner cannot be defeated even by proof that there was good faith in the acquisition of the possessor.[8] The common law principle that where one of two innocent persons must suffer by a fraud perpetrated by another, the law imposes the loss upon the party, who, by his misplaced confidence, has enabled the fraud to be committed was held by the Court to be inapplicable to the case under consideration because it was covered by an express provision of the Civil Code.[9]

---

[7] G.R. No. L-20264, January 30, 1971; 37 SCRA 129

[8] Citing Cruz v. Pahati, 98 Phil. 788 (1956); Aznar v. Yapdiangco, 13 SCRA 486.

[9] In the writer's opinion, this statement of the Court was not meant to be as sweeping as it would appear. The rule above enunciated would conceivably be qualified so as to give the possessor, rather than the original owner, the superior right—and hence would yield to the common law rule of equity—if the owner was guilty of negligence. Cf. Santamaria v. Hongkong & Shanghai Banking Corporation, 89 Phil. 780 (1951).

Nor would this interpretation collide with the first sentence of the first paragraph of the said article because, according to the Court, that first sentence only grants or recognizes a *presumptive title sufficient to serve as a basis for acquisitive prescription.*[10] Article 559 in fact assumes that the possessor is as yet not the owner; for it is obvious that where the possessor has come to acquire indefeasible title by adverse possession for the necessary period, no proof of loss or illegal deprivation could avail the former owner of the chattel. He would no longer be entitled to recover it under any condition.[11]

*Usufruct over land does not necessarily imply usufruct over building constructed thereon*

Article 571, on the rights of the usufructuary, provides:

> "The usufructuary shall have the right to enjoy any increase which the thing in usufruct may acquire through accession, the servitudes established in its favor, and in general, all the benefits inherent therein."

The Supreme Court, in the case of *Gaboya v. Cui*[12] sought to harmonize this article with Articles 445, 447 and 449, on *accesión continua.* The following were the facts of the case: Don Mariano Cui, a widower, sold three lots in Cebu to three of his children, Rosario, Mercedes, and Antonio, pro indiviso for ₱64,000.00. Rosario was unable to pay her share and the sale to her was consequently cancelled. Thus, Don Mariano, Mercedes, and Antonio became co-owners of the whole mass. Don Mariano retained the usufruct of the property. In the deed of sale it was stipulated that: "I shall enjoy the fruits and rents of the same, as long as my natural life shall last." Subsequently, Mercedes and Antonio applied to the RFC for a loan of ₱130,000.00 with which to construct a twelve-door commercial building on the land. Don Mariano authorized the two to mortgage his share. Mercedes and Antonio received the monthly rentals of the commercial building in the amount of ₱4,800 a month. Subsequently, Don Mariano was declared incompetent and placed under guardianship. This action was instituted to recover the amount of ₱126,344.91 plus interest from Mercedes and Antonio as fruits due to Don Mariano. The claim included amounts allegedly due as rentals of the commercial building in question.

The lower court held that the usufruct did not include the rentals of the building, pointing out that the deed of sale as well as the authority to mortgage only provided that: "the rents of *said land* shall not be impaired and will always be received by me." The appellants, however, argue that Article 571 is determinative, inasmuch as the building was an accession to the land.

---

[10] Citing 2 TOLENTINO, CIVIL CODE OF THE PHILIPPINES 258; 4 MANRESA 380.
[11] Citing Sotto v. Enage, 43 O.G. 5075.
[12] G.R. No. L-19614, March 27, 1971, 38 SCRA 85 (1971).

The Supreme Court, speaking through Mr. Justice J.B.L. Reyes, upheld the lower court's decision, calling attention to the provisions of *accesión continua* (Articles 445 et seq.). The Court held: Under the articles on industrial accession, such accession is limited either to buildings erected on the land of another or buildings constructed by the owner of the land with materials owned by someone else. (citing Articles 445, 447, 449). Nowhere in these articles on industrial accession is there any mention of the case of a land-owner building on his own land with materials owned by himself. At most, the usufructuary's right in cases such as in the case at bar, is to demand rentals *for the use of the land* (and not the rentals for the building received by the naked owner). Scaevola's opinion is pertinent: "El nudo proprietario no podría, sin el consentimiento del usufructuario, hacer construcciones, plantaciones, y siembras en el predio objecto del usufructo; y en el caso de que aquél las consintiese, la utilización será común en los frutos y productos de los sembrado y plantado, y con respecto a las construcciones, el usufructuario tendra derecho a la renta que de mutuo acuerdo se fije a las mismas; en su defecto, por la autoridad judicial." [18]

Article 595 is also pertinent, according to the Court. In connection with the said article, it is to be noted that if the income from constructions made by the owner during the existence of the usufruct should be held to accrue automatically to the usufructuary under Article 571, such improvements could not diminish the value of the usufruct nor prejudice the right of the usufructuary, and the qualifications in Article 595 on the owner's right to build would be redundant. The limitations set by Article 595 to the construction rights of the naked owner of the land are evidently premised upon the fact that such constructions would necessarily reduce the area of the land under usufruct, for which the latter should be indemnified.

Hence, the usufructuary, Don Mariano Cui, was held to be entitled only to rentals for the area occupied by the building and not to the rentals actually realized from the building itself.

*Payment of compensation in easements of right of way*

The payment of compensation is necessary for the establishment of a legal servitude of right of way. Article 649 is clear on the matter when it provides:

> "The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.
>
> Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing

[18] CODIGO CIVIL, 288-297.

> a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.
>
> In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such encumbrance.
>
> This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts."

It will be noted that it is only when the last paragraph is applicable; i.e. when the isolation of the immovable is attributable to the proprietor's own acts, that the payment of compensation is not required. In the case of *Talisay-Silay Milling Co., Inc. v. CFI of Negros Occidental,*[14] the Court interpreted the aforequoted article to mean that in the event the amount of compensation or the necessity of the easement itself is disputed and an action thereon is instituted in court, there is need of pre-payment, that is to say, the easement cannot be ordered during the pendency of the case unless the plaintiff prays for the fixing of the amount of compensation. The facts of that case are:

The petitioner Central has been operating since 1920, when it entered into identical milling contracts with sugarcane planters, among them the respondents, granting it easements of right of way for railroad lines for the transportation of the cane to the mill. The contracts were for a period of fifty years. In 1970, the respondents refused to extend the fifty-year contractual right of way. On July 25, 1970, the Central lodged a complaint against the respondents for the conversion of their contractual easement into a legal easement. The issue was basically procedural; i.e., whether the petitioner had the right to a preliminary injunction in its favor for the purpose of maintaining the right of way during the pendency of the case. This procedural question, however, necessarily touched upon the provisions of Article 649 of the Civil Code. The Court, in refusing the preliminary injunction, declared: The petitioner claims that it has fulfilled all the preconditions prescribed in Articles 649 and 650. However, the petitioner's offer in a letter to lease the affected portions of respondent's property for ₱0.20 per square meter per annum does not satisfy the requirement of compensation or pre-payment. Pre-payment means the delivery of the proper indemnity required by law for the damage that might be incurred by the servient estate in the event the legal easement is constituted.[15] The fact that a voluntary agreement upon the extent of compensation to be paid cannot be reached by the parties is not an impediment to the establishment of such easement. The action of the dominant estate against the servient estate should include a prayer for the fixing of the amount which may be due from the former to the latter. The action filed by the petitioner Central did not opt for this.

[14] G.R. No. L-33423, December 22, 1971, 42 SCRA 577 (1971).

[15] Citing Article 649, in relation to Art. 1232.

## SUCCESSION

*Requirement of soundness of mind for valid will*

Article 799 explains what is meant by soundness of mind as a requirement for testamentary capacity:

> "To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause.
>
> It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act."

For the purpose of determining whether the testator was competent or not, the law is not interested in the medical causes but in the effects of the causes. As explained by an authority: "The unsoundness of mind which the law contemplates as incapacitating a testator from making a will may be the result of many causes, such as mental disease, senile dementia, fevers, injuries, drugs, intoxicants, or the like. The law, however, does not deal with these causes. It is the effect of these causes with which the law must deal regardless of what the actual cause may be, and it is the quantity or degree of the effect which the law must determine to arrive at a decision on the presence or absence of testamentary capacity." [16]

The foregoing is illustrated in the case of *In the matter of the Testate Estate of Marie Garnier Garreau,*[17] the facts of which are as follows:

Marie Garreau, widow of Ramon Ramirez, was a native of Paris, but was a Filipino citizen residing in Madrid where she died childless at the age of 84 on 11 January 1959. The will in question was executed before a notary public in Madrid on 20 May 1958, instituting her niece, Lirio Pfannenschmidt, as her sole heir. A nephew, Jose Ma. Ramirez, opposed the probate petition, alleging that there was a prior will executed in Manila in 1949. The issue was whether the testatrix possessed testamentary capacity when she executed the 1958 will.

The Court held: The testatrix was mentally incapacitated when she made her second will. The following were established:

From the testimony of Jose Eugenio Ramirez, a brother-in-law: The testatrix was present at her husband's death in 1956 and saw his body just before he was buried, but when she went to her room after the funeral and saw that his bed was no longer there, she came out crying asking where her husband was and saying that she was going to look for him.

From the testimony of Julio Langa, who knew the testatrix for nine years: The testatrix was susceptible to another person's influence and she had a lack of memory for certain events.

---

16 TOLENTINO, CIVIL CODE OF THE PHILIPPINES 4.

17 G.R. No. L-19910, May 31, 1971, 39 SCRA 147 (1971).

Dr. Manuel de Arcos and Dr. Jose Germain, attending physicians to the testatrix, both testified to their patient's incapacity.

The petitioner herself expressed concern for the testatrix's infirmity in several letters and even considered the possibility of having her judicially pronounced incapacitated.

The evidence cumulatively considered leads to the definite conclusion that the testatrix was mentally incapacitated, as at the time she executed the will in question she did not know the nature of the estate to be disposed of, the proper objects of her bounty, and the character of the testamentary act.

It will be noted that although the testimony of attesting witnesses concerning the testator's mental condition is ordinarily entitled to great weight, this rule will not apply where, as in this case, the witnesses do not have a substantial basis for their declaration, being not more than casual acquaintances.

*Rule of proximity in intestate succession: the nearer excludes the farther; when representation proper*

Article 962 lays down the general rule of proximity in succession and provides for the exception:

> "In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place.
>
> Relative in the same degree shall inherit in equal shares, subject to the provisions of article 1006 with respect to relatives of the full and half blood, and of article 987, paragraph 2, concerning division between the paternal and maternal lines."

Article 972 explains the operation of the right of representation:

> "The right of representation takes place in the direct decending line, but never in the ascending.
>
> In the collateral line, it takes place only in favor of the children of brothers or sisters, whether they be of the full or half blood."

We notice from Article 972, paragraph 2, that representation in the collateral line takes place only with respect to children of brothers and sisters and in no other instance.

These two articles were applied in the case of *De los Santos v. De la Cruz.*[18] That case was an action for specific performance, the plaintiff alleging that she and several co-heirs, including the defendant, executed an extrajudicial partition agreement over a certain portion of land, agreeing to adjudicate three lots to the defendant in addition to his share, on condition that the defendant would undertake the development and subdivision of the estate. The defendant, in answer, alleged that the plaintiff has no cause of action against him for the reason that the plaintiff was not an heir of the

[18] G.R. No. L-29192, February 22, 1971, 37 SCRA 555 (1971).

decedent and was included in the partition agreement by mistake. The agreement was for the apportionment of the land among the heirs of the decedent Pelagia de la Cruz. The defendant is a nephew of the decedent, while the plaintiff is the grand-niece, child of a niece of the decedent who predeceased her. The issue was whether the plaintiff was a heir of the decedent.

The Court, speaking through Mr. Justice Villamor, resolved the issue against the plaintiff, holding that the latter could not be an heir, either by representation, because under Article 972, paragraph 2, the right of representation applies *only* in favor of children of brothers and sisters and not beyond (the plaintiff was a child of a niece), or in her own right, because under Article 962, the nearer relative (in this case, the nephews and nieces) excludes the farther[19] (the plaintiff was only a grand-niece).

Since the plaintiff was not a rightful heir, the delivery of any share to her was void,[20] and she naturally did not have any right to sue the defendant for specific performance.

## SALES

*Conventional redemption*

When unregistered property sold under *pacto de retro* is mortgaged by the vendor, the mortgagee acquires no better right than the vendor-mortgagor. This was the essence of the ruling in *Oviedo v. Garcia*.[21] The defendants in that case were vendees *a retro* of an unregistered parcel of land. The contract of *pacto de retro* sale was executed on 17 May 1947. The period of repurchase was ten years, which period lapsed without the vendors having exercised their right of repurchase. Meanwhile, on 26 January 1949, the parcel (of which the land in question was a part) was one of several parcels mortgaged by the vendors to the plaintiffs; the mortgage was recorded in the Registry of Deeds. Upon the vendor's failure to pay the loan for which the mortgage was security, the plaintiffs instituted foreclosure proceedings in court; the land was sold at public auction, with the plaintiffs as highest bidders; a certificate of sale was issued; and the lower court issued an Order confirming the sale. The issue elevated to the Supreme Court was whether the plaintiff-mortgagees acquired a right superior to that of the defendant-vendees *a retro*. The Court held for the vendees *a retro* declaring: Bearing in mind that the land sold *a retro* to the defendants was part of the land mortgaged to the plaintiffs, if may be presumed that when the plaintiffs loaned the money to the vendors, they were cognizant of the defendants' possession and the nature of their claim. At any rate, before entering into the mortgage transaction, they were in duty bound to exercise diligence such as would enable them to determine the nature and extent of the mortgagors' rights

[19] Citing Pavia v. Iturralde, 5 Phil. 176 (1905).
[20] CIVIL CODE, Article 1105.
[21] G.R. No. L-23770, July 9, 1971, 40 SCRA 17 (1971).

in the properties, the same being all unregistered lands. Hence, having at least a constructive knowledge of the defendants' rights, they must respect those rights. By virtue of the *pacto de retro* sale, the defendants automatically acquired ownership of the property upon the expiration of the redemption period.[22]

Two points are worth stressing in connection with the ruling in this case. First, irrevocable ownership is acquired by the vendee *a retro* upon the expiration of the period for redemption, regardless of whether or not there has been a judicial order of consolidation under Article 1607. As held in the case of *Rosario v. Rosario*[23]: "Article 1607 is a reproduction of Article 1509 of the old Civil Code to the effect that the vendee shall irrevocably acquire ownership upon the vendor's failure to fulfill what is prescribed in Article 1518 (now Article 1616). Under the law, ownership is consolidated by operation of law in the vendee and the vendor loses his rights over the property. The requirement of a judicial order in Article 1607 is merely for purposes of registering consolidation of title . . . ." Second, the property involved in the *Oviedo* case was unregistered land. Had the land been registered, the mortgagees, if unaware of the *pacto de retro* sale, and reliant solely on a clean certificate of title, would have been protected in their right as against the vendees *a retro.*

*Legal redemption—criterion for determining character of land*

Articles 1621 and 1622 lay down the requisites for the exercise of legal redemption by adjoining owners, the first in cases of rural lands and the second, of urban lands. That the adjoining owner interested in exercising the right of redemption must allege and prove the existence of the requisites in his favor was the substance of the ruling in *Ortega v. Orcine.*[24] More significantly, however, the *Ortega* decision should be of interest to students of civil law because it lays down the criterion for determining whether the land is rural, and therefore governed by Article 1621, or urban, and therefore subject to Article 1622. The weight of opinion heretofore seemed to be that the character of the land depended on the use to which it was devoted, rather than the place where it was located; thus, a farm in the metropolitan area would be rural land, while a lot on which a villa, for example, is constructed is urban even if situated in a rural area. This criterion was not adopted by the Supreme Court in the *Ortega* case. Instead, the Court used the factor of place as the determining basis for the characterization. The facts of that case are the following: It was an action to enforce an alleged right of legal redemption under Article 1622 over an adjoining parcel of land with an area of 4,452 square meters. The land in question was

[22] Citing Manalang v. Manalansan, G.R. No. L-13646, July 26, 1960; Almirañez v. Devera, G.R. No. L-19496, February 27, 1965, 13 SCRA 343 (1965).
[23] G.R. No. L-13018, Decmber 29, 1960.
[24] G.R. No. L-28317, March 31, 1971, 38 SCRA 276 (1971).

sold to defendant Esplana on 3 March 1965 for ₱10,000.00 by the defendant Orcine. At the time of sale the land was devoted to agriculture. After the sale, Esplana subdivided the land into small lots for residential purposes. Plaintiff Ortega's land was formerly agricultural but at the time of Orcine's sale to Esplana, Ortega's land was being used as a school site. The issue was whether Ortega had the right to redeem. The Court held in the negative, declaring: Assuming that Esplana's land is rural, it is obvious that since the plaintiff's land is admittedly urban, the redemption cannot be allowed because it would not be in line with the purpose of redemption, namely, to encourage better development and utilization of agricultural lands.[25] Assuming that Esplana's land is urban (and it is in fact to be assumed, according to the Court, that the lands are urban inasmuch as they are apparently in the populated section of the town), neither can redemption be allowed because an owner of urban land may not redeem an adjoining urban property where he does not allege in his complaint, much less prove at the trial, that the latter is so small and so situated that a major portion thereof cannot be used for any practical purpose within a reasonable time, having been bought merely for speculation.[26] The Court further pointed out that the purpose of Article 1622, a new provision, is to discourage speculation in real estate and the consequent aggravation of housing problems in centers of population.

As to the criterion for determining the character of the land as urban or rural, the Court explained: "The term 'urban' in this provision (i.e. Article 1622) does not necessarily refer to the nature of the land itself sought to be redeemed nor to the purpose to which it is somehow devoted, but to the character of the community or vicinity in which it is found. In this sense, even if the land is somehow devoted to agriculture, it is still urban, in contemplation of this law, if it is located within the center of poulation or the more or less populated portion of a city or town."

## LEASE

*Lessor's right to ask for rescission upon lessee's failure to pay promptly*

Article 1659 reads:

> "If the lessor or the lessee should not comply with the obligations set forth in articles 1654 and 1657, the aggrieved party may ask for the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force."

Failure on the part of the lessee to pay promptly constitutes a violation of Article 1657 and gives the lessor the right, under Article 1659,

[25] Citing 10 MANRESA, 328; Cortes v. Flores, 47 Phil. 992 (1924).
[26] Citing de la Cruz v. Cruz, G.R. No. L-27759, April 17, 1970, 32 SCRA 307 (1970), Soriente v. Court of Appeals, G.R. No. L-17343, August 31, 1963, 8 SCRA 750 (1963).

to sue for rescission. The case of *Pamintuan v. Court of Appeals*[27] illustrates this: The lease contract involved in that case provided for a monthly rental of ₱15.00, payable *promptly* at the end of every month (paragraph 2 of the contract). Another provision (paragraph 3) stipulated that failure to pay rentals for six consecutive months would automatically annul the contract. The petitioner-lessees contend: "What good is there to grant the lessees a six-month period of grace if the lessor can rescind the lease contract anyway, with but a month's failure to pay rentals?" The Court, in upholding the lessor's right to demand rescission even before the six-month period, adopted the decision of the lower court, declaring: The right to rescind the contract pursuant to Article 1659 of the Civil Code is different from the automatic annulment of the contract in accordance with paragraph 3 thereof. They arise from different causes and are based on different grounds. In making deposit of rentals at six-month intervals, the defendants (lessees) prevented the automatic cancellation of the contract but did not deprive the owner of the right to ask for the rescission of the contract for failure of the lessee to pay rentals promptly at the end of every month. It was never contemplated that the rentals were to be payable every six months, otherwise, there would have been no necessity for the stipulation in paragraph 2 of the contract.

*Lessor's right to terminate lease contract at the expiration of implied periods; court's power to fix longer term*

If the period for the lease has not been fixed, it is understood to be from month to month if the rent agreed upon is monthly. So provides Article 1687. Consequently, the lease contract is terminable at the end of every month. The lessor's right to terminate such a lease was recognized in the case of *Peligrino v. General Base Metals, Inc.*[28] The plaintiff in that case leased a piece of land on January 1948 to Castrodes and L. C. Hudson for ₱7.00 a month. On 19 May 1949, Hudson sold its mining claims, tools, and leasehold rights on the land to the defendant. The lease was for an indefinite period. In a letter dated 4 January 1960, the plaintiff demanded an increase of the rental to ₱100.00 a month, or, in the alternative, that the defendant vacate the property before the end of the month, should the increased rental not be acceptable to the defendant. The defendant rejected both alternatives. The Court held: Considering the nature of the lease contract (on a monthly basis), the plaintiff had the right to terminate the same at the end of every month, giving timely notice to the defendant. This the plaintiff did, giving the defendant the opportunity to continue with the lease by paying the increased rental. When the defendant refused, the plaintiff had the right to eject it. The trial court, however, was right in holding that, considering the period of time that the defendant and its predecessor

[27] G.R. No. L-28367, November 29, 1971, 42 SCRA 344 (1971).
[28] G.R. No. L-22683, May 31, 1971, 39 SCRA 216 (1971).

had been in occupancy of the leased property and the fact that it was in dire need of it in connection with the development and operation of its mining claims, it was entitled, in equity, to have its right of possession extended so that it might have an opportunity to look for another suitable property. The one-year grace period was just.

## AGENCY

*The agent's duty of fidelity to the principal*

The contract of agency is a fiduciary relationship between principal and agent. Hence, the agent is bound by the strictest rules of fidelity and honesty in all his acts by virtue of the agency. Apropos of this, Article 1891 provides:

> "Every agent is bound to render an account of his transactions and to deliver to the principal whatever he may have received by virtue of the agency, even though it may not be owing to the principal.
>
> Every stipulation exempting the agent from the obligation to render an account shall be void."

The rigor with which the court will exact this obligation of fidelity from the agent can be gleaned from the case of *Domingo v. Domingo*.[29] The rather elaborate background facts are as follows: On 2 June 1956, Vicente Domingo granted to Gregorio Domingo an exclusive agency to sell a lot with an area of 88,477 square meters, at ₱2.00 per square meter. The total consideration would thus be ₱176,954.00. A 5% commission was agreed upon, if the property was sold by Vicente or by anyone else during the 30-day duration of the agency or if the property was sold by Vicente within three months from the termination of the agency to a purchaser to whom it was submitted by Gregorio during the continuance of the agency with notice to Vicente. On 3 June 1956, Gregorio authorized Teofilo Purisima to look for a buyer, promising him one-half of the 5% commission. Purisima then introduced Oscar de Leon to Gregorio as a prospective buyer. Oscar offered to buy at a much lower price but Vicente directed Gregorio to tell Oscar to raise his offer. The latter raised the offer to ₱109,000 and Vicente agreed. Oscar then paid Vicente ₱1,000 as earnest money and Vicente advanced to Gregorio the sum of ₱300.00. Oscar confirmed the offer to pay for the property at ₱1.20 per square meter. Part of the purchase price was Oscar's house and lot in Cubao which he promised to vacate, first on 15 September 1956, then on 1 December 1956. Oscar gave Gregorio a gift or *propina* of ₱1,000 for succeeding in persuading Vicente to sell at ₱1.20 per square meter. This gift was not disclosed by Gregorio to Vicente. Subsequently, Oscar informed Gregorio that he was giving up the negotiation, alleging that he did not receive his money from his brother in the States. Gregorio, sensing something fishy, went to Vicente, demanding his commission but Vicente tore

[29] G.R. No. L-30573, October 29, 1971, 42 SCRA 131 (1971).

the original of the document of agency to pieces. Gregorio then discovered in the office of the Register of Deeds that Amparo de Leon, Oscar's wife, had sold the Cubao house and lot to Vicente as down payment for Vicente's land. Gregorio was then informed by Oscar that Vicente had asked him to eliminate Gregorio in the transaction and that he would sell his property for ₱104,000. Upon demand by Gregorio, Vicente replied that he was not entitled to any commission inasmuch as the buyer was Amparo, and not Oscar.

The issue were: (1) whether Gregorio's failure to inform Vicente of the gift or *propina* constitutes fraud and worked to forfeit the commission; and (2) whether Vicente or Gregorio should be directly liable to Purisima for the latter's share in the commission.

The Court held:

The decisive legal provisions are Articles 1891 and 1909. These provisions demand the utmost good faith, fidelity, honesty, candor, and fairness on the part of the agent to his principal. The law imposes upon the agent the absolute obligation to make full disclosure or complete account to his principal of all his transactions and other material facts relevant to the agency. Hence, an agent who takes a secret profit in the nature of a bonus, gratuity, or personal benefit from the vendee, without revealing the same to the principal, is guilty of breach of loyalty and forfeits his commission, even if the principal suffers no injury or obtained better results, or even if custom or usage allows it, because the rule is to prevent possibility of any wrong, not to remedy or repair an actual damage. If the agent breaches his duty of loyalty, the principal has a right to treat him, insofar as the commission is concerned, as if no agency existed. The duty under Article 1891 does not apply if the agent acted only as a middleman with the task of merely bringing together the vendor and the vendee, who themselves will negotiate on the terms and conditions of the transaction, or if the agent had informed the principal of the bonus and the latter did not object. That was not the case here.

The Court held that Gregorio must forfeit his right to the commission and return the part thereof which he had already received from the principal. Gregorio was furthermore ordered to pay the sub-agent, Purisima, one-half of the ₱1,300 which he received by virtue of the agency.

## MUTUUM

Long a subject of controversy among commentators was the legal standing of a usurious contract. Was the whole contract void, that is, both as to the principal and the interest? Or did the nullity extend only to the whole interest, leaving the principal valid and thus recoverable by the usurer? Or was it merely the excess over the allowed rate of interest that was void?

The uncertainty was not helped any by the seemingly contradictory provisions of the Civil Code and the Usury Law. Articles 1175, 1413, 1957 and 1961 of the Civil Code and Section 6 of the Usury Law seemed to defy reconciliation. So perplexing was the situation. The case, therefore, of *Briones v. Cammayo*[80] is jurisprudence of major importance, for here an unequivocal rule on the matter is laid down—the principal is recoverable by the creditor but all the interest is forfeited, except legal interest from the time of the filing of the complaint. That it will remain as *the* ruling on the question is not a certainty, for three members of the Court, all of considerable eminence,—Chief Justice Concepcion, Justice Castro (the *ponente* of the dissenting opinion), and Justice Fernando—registered a strong dissent. For the meantime, at any rate, the *Briones* case is the ruling case law.

The facts of the case are extremely simple: it involved a complaint filed by the plaintiff to recover an alleged loan of ₱1,500 from the defendants. The latter allege that the loan was usurious because, in fact, only ₱1,250 was delivered to them, although the contract stated ₱1,500. The facts are not in dispute. The loan was a usurious one.

The issues were two: (1) whether the plaintiff could recover the principal obligation; and

(2) whether the plaintiff could recover the interest, and, if so, at what rate.

The majority opinion, penned by Mr. Justice Dizon, held:

Construing Section 6 of the Usury Law, we held in *Go Chioco v. Martinez*[81] that even if the contract of loan is declared usurious, the creditor is entitled to collect the money actually loaned and the legal interest due thereon.[82] In these cases it was recognized that under Act No. 2655 (the Usury Law) a usurious contract is void; that the creditor had no right of action to recover the interest in excess of the lawful rate; but that this did not mean that the debtor may keep the principal received by him as loan—thus unjustly enriching himself to the damage of the creditor.[83]

Article 1957 (a new provision) does not change the rule, continued the majority opinion.[84] In that case, (i.e. Angel Jose), Article 1411 was cited by the appellants to bring into operation the *pari delicto* principle. But a contract of loan with usurious interest consists of principal and accessory stipulations; the principal one is to pay the debt; the accessory stipulation is to pay interest thereon. And the two stipulations are divisible in the sense

[80] G.R. No. L-23559, October 4, 1971, 41 SCRA 404 (1971).

[81] 45 Phil. 256 (1923).

[82] Citing also Gui Jong v. Rivera, 45 Phil. 778 (1924); Aguilar v. Rubiato, 40 Phil. 570 (1919), Delgado v. Duque Valgona, 44 Phil. 739 (1923).

[83] Citing also Lopez v. El Hogar Filipino, 47 Phil. 249 (1925); Palileo v. Cosio, 97 Phil. 919 (1955); Pascual v. Perez, G.R. No. L-19554, January 31, 1964, 10 SCRA 199 (1964).

[84] Citing Angel Jose v. Chelda Enterprises, G.R. No. L-25704, April 24, 1968, 23 SCRA 119 (1968).

that the former can still stand without the latter. Article 1420, on divisible contracts, is therefore applicable.

Section 6 of the Usury Law and Article 1413 of the Civil Code are not inconsistent, because article 1413 means the *whole* usurious interest; that is to say, the whole stipulation as to interest is void.

To punish the usurer, it is not necessary to forfeit the principal of the usurious loan because in the Usury Law there is provision for adequate punishment by means of criminal prosecution.

The plaintiff may, therefore, recover the principal from the appellant with 6% per annum interest from the date of the filing of the complaint.

The majority opinion was concurred in by Justices Barredo and J.B.L. Reyes. It was pointed out in the concurring opinion that there was no conflict between the Usury Law and the Civil Code. Section 6 of the former and Article 1413 of the latter, both allowing the borrower to recover all the interest he has paid indicate that the borrower may not recover the amount delivered as payment for the principal debt, and, conversely, the lender may collect the same if it has not been paid by the borrower.

The dissenters, as already mentioned above, were Chief Justice Concepcion, Justice Castro, (who penned the dissenting opinion), and Justice Fernando. They pointed out: In a contract tainted with usury, the prestation to pay usurious interest is an integral part of the cause of the contract. It is also the controlling cause, for a usurer lends his money not just to have it returned but indeed to acquire inordinate gain. Hence, Article 1957 declares the usurious loan void as to the loan and void as to the usurious interest. The last sentence of Article 1957 is an exception to the general rule in Article 1411, insofar as amounts already paid by the borrower are concerned. This is also provided by Article 1413, but the lender is not allowed to recover the principal because no such exception is made. The lender, therefore falls under the general rule in Article 1411, respecting the non-recoverability of anything already delivered by virtue of the illegal contract.