

of the municipal corporations. On license fees, a new case worth mentioning is cited. It is that of Physical Therapy etc. v. Municipal Board etc. G.R. No. L-10448, Aug. 30, 1957 wherein it was held that "with regards to the license fees of those inimical and dangerous to public health, morals or safety, the fee may be large without being a tax."

Likewise, new cases are cited to illustrate the municipal corporations' liability for torts and problems dealing with the municipal agencies.

Noteworthy in this book is the tabulation setting forth the scale of salaries of provincial and municipal officials according to the class of the province and municipality as the case may be.

The book further contains three outstanding executive orders of President Elpidio Quirino. They are instructions regarding the organization of municipalities and barrios; Executive Order No. 465, reclassifying the provinces of the Philippines; and Executive Order No. 466 reclassifying all municipalities in the Philippines.

Reading this book, I remember what an outstanding legal luminary said about the indispensability of law books to a law student. He stated that it is justifiable for a law student to be in debt just to buy a law book necessary for his studies. To my mind, this book is one of those contemplated.

ANSWERS TO BAR EXAMINATIONS FOR 1958

CIVIL LAW

(Answered by Prof. Eduardo P. Caguioa)

I.

- (a) When did the Civil Code of Spain of 1889 take effect in the Philippines?
 (b) When did the new Civil Code take effect?
 (c) In what Cases may the wife bind the conjugal partnership?

(a) December 7, 1889 (Mijares vs. Neri, 3 Phil. 199; Barretto vs. Tuazon, 59 Phil. 861) or December 8, 1889 (Benedicto vs. de la Rama, 3 Phil. 34; Veloso vs. Fontanosa, 13 Phil. 79).

(b) August 30, 1950 (Lara vs. Del Rosario, 50 O.G. 1975; Daney and Aznar vs. Garcia and Camporedondo, G.R.L. — 11483, Feb. 14, 1958).

(c) The wife may bind the conjugal partnership in the following cases: (1) In general, in every case with the husband's consent (Art. 127 Civ. C. Phil.); (2) For daily expenses of the family (Art. 115 Civ. C. Phil.); (3) When the management of the conjugal partnership has been transferred to her, either by the husband or by the court (Arts. 167, 168 Civ. C. Phil.); (4) When the debt is contracted by the wife in her profession, occupation or calling and the same redounds to the benefit of the family (Art. 117 Civ. C. Phil.); (5) When the wife acts as agent of the husband; (6) Moderate donations for charity (Art. 174 Civ. C. Phil.)

II.

- (a) A & B, both single and without suffering from any disability to marry one another, started living together as husband and wife during the year 1945. By August 30, 1950, they had been able to save, from the earnings of B, the man, property worth P20,000.00. In 1949, a son, C, was born to them. In 1953, B, feeling that death was approaching, married A. Shortly thereafter, he died, survived by A, their son C, and his father D. By the time of his death, he had managed to increase the savings by judicious investments and by his earnings to P50,000.00. Divide his estate assuming that he died intestate.

- (b) Divide the estate mentioned above assuming that B and A had never married each other, though they had continued living together as husband and wife until B's death.

(a) B's estate consists of:

1. P20,000 — this belongs entirely to B because it was earned by him while A and B were not yet married (Daney & Aznar vs. Garcia and Camporedondo, G.R.L.-11483, Feb. 14, 1958) since the rule of informal civil partnership applicable in case a man and woman live together without mar-

riage is only applicable to property acquired through their joint efforts (Flores vs. Rehabilitation Finance Corporation, 50 O.G. 1029; Daney vs. Garcia, G.R. L-11483, Feb. 14, 1958).

2. ₱15,000 — one-half (1/2) of ₱30,000 which was earned while they were still unmarried but after the effectivity of the new Civil Code and hence governed by the rule of co-ownership (Art. 144 Civ. C. Phil.)

The legal heirs of B are the following:

1. A — the surviving spouse, since A & B were legally married prior to B's death.

2. C — Although a natural child being born out of wedlock of parents who at the time of his conception were not disqualified by any impediment to marry each other (Art. 269 Civ. C. Phil.) was not legitimated because he was never recognized by both parents (Art. 271 Civ. C. Phil.) However, since he was a minor at time of B's death, he can bring an action to compel recognition (Art. 285 Civ. C. Phil.) on the ground that B cohabitated with A at the time of his conception (Art. 283 No. 3, Civ. C. Phil.) and likewise an action against A (Art. 284 Civ. C. Phil.). Once both actions are successfully concluded, C becomes a legitimated child and hence a legal heir.

3. D — being an ascendant is excluded by C and therefore will not inherit (Art. 887 No. 2, 985 Civ. C. Phil.)

The estate will be divided as follows:

1. A — will receive ₱8750 or 1/4 of the estate her share in compulsory succession (Art. 892 Civ. C. Phil.)

2. C — will receive ₱17,500 or 1/2 of the estate as his share in compulsory succession (Art. 888 Civ. C. Phil.) plus another ₱8,750 the balance of the estate or the vacant portion as first in the order of intestate succession (ART. 978 Civ. C. Phil.)

(b) The estate of B will be the same as above. The legal heirs will be: (1) C — who will be considered as a recognized natural child once the action mentioned in (a) is successfully concluded; (2) D — who being a legitimate ascendant is not excluded by C (Art. 991 Civ. C. Phil.); (3) A — will not succeed because there is no legal marriage and hence she is not a surviving spouse. The estate will be divided as follows: (1) C — will get ₱17,500 or 1/2 of the estate (Art. 991 Civ. C. Phil.) and (2) D — will get ₱17,500 or 1/2 of the estate (Art. 991 Civ. C. Phil.)

III.

(a) What are the rights of parents over the property of their minor children? To what purposes may the fruits and income of the child's property be applied?

(b) What are the successional rights under the New Civil Code of: (1) an adulterous or spurious child; (2) A natural child not acknowledged; (3) An acknowledged natural child.

(c) Name the order in which the claim for support shall be made if two or more persons are obliged to give it.

(a) It depends: As to the ordinary adventitious property of the child, the parents have administration and usufruct except when the child lives independently from them with their consent. With regard to the perfect property, they have ownership and usufruct unless expressly granted to the child. Finally with regard to the extraordinary adventitious property, the parents have administration unless otherwise provided in the donation or testamentary provision. (Arts. 321, 324, 325 Civ. C. Phil.) The

parents have furthermore the right to represent the child in court with regard to said properties (Art. 316, 320 Civ. C. Phil.)

With regard to the fruits and income of ordinary adventitious property the parents must apply it first to the expenses for the support and education of the child and secondly, to conjugal debts that redound to the benefit of the family (Art. 323 Civ. C. Phil.) As to extraordinary adventitious property, it must be spent for the education and instruction of the child, (Art. 325 Civ. C. Phil.)

(b) The successional rights are as follows:

1. An adulterous or spurious child — he is entitled to a legitime of 4/5 of what an acknowledged natural child gets or 2/5 of what a legitimate child is entitled to but in no case greater than the free portion after deducting the legitime of the surviving spouse. He is furthermore a primary compulsory heir and is not excluded by any other primary compulsory heir but he must prove his filiation (Arts. 895 and 887 Civ. C. Phil.)

2. A natural child not acknowledged — he has no successional rights since a natural child has no rights as such but only from the moment of recognition (Art. 282 Civ. C. Phil.) also (Arts. 887 and 287 Civil C. Phil.)

3. An Acknowledged natural child — he is entitled to a legitime equal to one half (1/2) of what a legitimate child is entitled to but in no case greater than the free portion after first deducting the legitime of the surviving spouse. He is likewise a primary compulsory heir and is not excluded by any other primary compulsory heir. (Arts. 895 and 887 Civ. C. Phil.)

(c) The claim for support, when proper and two or more persons are obliged to give it, shall be made in the following order:

- (1) From the spouse;
- (2) From the descendants of the nearest degree;
- (3) From the ascendants, also of the nearest degree;
- (4) From the brothers and sisters.

Among descendants and ascendants the order in which they are called to the intestate succession of the person who has a right to claim support shall be observed (Art. 294 Civ. C. Phil.)

IV.

(a) What is an agency coupled with an interest? Give an example.

(b) X, the owner of certain jewelry, entrusts them to Y for sale or return of the jewelry upon a specified period of time. Y sells the jewelry to Z, but retains the price. Can X obtain possession of the jewelry from Z? Why?

(c) Would your answer be different if, instead of selling the jewelry, Y had merely pawned them with Z, a private person? Explain. If Z had been a pawnbroker, duly licensed, what would be X's rights? Explain.

(a) An agency coupled with an interest is one in which the agent has an interest in the subject matter of the contract of agency. An example: Where the mortgagee is given a power to sell the property mortgaged in case of default (Pasno vs. Ravina, 54 Phil. 378).

(b) X cannot obtain possession of the jewelry from Z because in selling the property to Z, Y acted within the scope of his authority and therefore binding on the principal (Art. 1900 and 1910 Civ. C. Phil.)

(c) The answer would be different because in that case Y exceeds the scope of his authority and therefore the contract is not binding on X, un-

less he ratifies it. (Art. 1898 Civ. C. Phil.) The contract exceeds the scope of Y's authority because the power to sell does not include the power to mortgage which has the same character as pledge being accessory contracts of guaranty (Art. 1879 and 2085 Civ. C. Phil.)

X can recover the jewelry from Z although a pawnbroker, duly licensed, without any liability of reimbursement under Art. 559 of the Civil Code of the Phil. and because that is one of the risks of the pawnshop business in exchange for the high and onerous interest which he is allowed to charge (Arenas vs. Raymundo, 19 Phil. 47).

V.

- (a) Under what conditions may a private persons abate a public nuisance without judicial intervention?
- (b) A is owner of a grove of mango trees, some of the branches of which extend over the land of B. (1) Does B have the right to gather the mango fruits on the branches that extend into his land? Give reasons. (2) In the same case, because of a quarrel between A and B unrelated to the trees, B cuts off the branches insofar as they extend into his land, with the result that A's trees stop bearing fruit for a season. Does A have a right of action against B? Explain. (3) Would your answer be different if, instead of cutting off the protruding branches, B had cut off the roots of the trees which penetrated into his land, with the same result that the trees stopped bearing fruit? Explain.

(a) Any private person may abate a public nuisance which is specially injurious to him without judicial intervention, by removing or if necessary, by destroying the things which constitutes the same, without committing a breach of the peace, or doing unnecessary injury. But it is necessary:

- (1) That demand be first made upon the owner or possessor of the property to abate the nuisance;
- (2) That such demand has been rejected;
- (3) That the abatement be approved by the district health office and executed with the assistance of the local police;
- (4) That the value of the destruction does not exceed three thousand pesos (Art. 704 Civ. C. Phil.)

(b) 1. B does not have a right to gather the mango fruits on the branches that extend into his land unless the same have naturally fallen on his land (Art. 681 Civ. C. Phil.). The reason is that fruits are accession and belong to the owner of the tree that produces them (Art. 440, 441 Civ. C. Phil.) The fact that the branches of the tree extend over the property of B is immaterial as there being no attachment there is no accession.

2. A has a right of action against B, both civil and criminal. According to law, the only right of B is to demand that A cut the branches and in case of refusal go to court, but in no case can B take the law into his own hands and cut the branches (Art. 680 Civ. C. Phil.)

3. Yes, the answer would be different. B is not liable at all for cutting the roots even though it caused the tree not to bear fruit, for cutting the roots which penetrated into his land is his right (Art. 680 Civ. C. Phil.), the reason being that since they are attached to his land, they become his by reason of accession. Hence B was cutting his own property and therefore any damage to A due to said cutting will be *damnum absque injuria*.

VI.

Divide an estate of P120,000 among the legal heirs of the decedent who died intestate and is survived by the following:

- (1) A wife: A
- (2) A mother: B
- (3) Two legitimate children: C & D
- (4) Five grandchildren — E, son of C; F, daughter of D; G & H, legitimate children of X, a legitimate son of the decedent, who died before the decedent; and I, an acknowledged natural son of X;
- (5) One acknowledged natural son, J;
- (6) One adulterous child, K;
- (7) The deceased had also had an acknowledged natural daughter L who predeceased him but is survived by a legitimate daughter M and an acknowledged natural child, N;
- (8) The deceased also had another adulterous child, O who predeceased him, but who is survived by two spurious children P & Q.

In dividing the estate, first state who are the legal heirs of the deceased, and in what capacity they succeed; and as to those who may not succeed, why not. Then proceed to distribute the estate among the legal heirs.

The legal heirs are:

1. C & D, legitimate children in their own right;
2. G & H, legitimate grandchildren in representation of X;
3. A, the wife in her own right as surviving spouse;
4. J & K, illegitimate children in their own right;
5. M & N, in representation of L;
6. P & Q, in representation of O;

The following cannot succeed:

1. B, the mother of the decedent, since being an ascendant, she is excluded by the legitimate children (Arts. 887 and 985 Civ. C. Phil.)
2. I, acknowledged natural son of X, since being illegitimate he cannot represent X, who is a legitimate son (Art. 992 Civ. C. Phil.)

The distribution of the estate shall be as follows: Inasmuch as there are many illegitimate children, it is necessary first to apply compulsory succession in order that the legitimate of the legitimate children may not be impaired, and the balance, if any, shall be distributed by legal succession. Applying compulsory succession, we have:

1. To C, D and G & H in representation of X — P60,000 or 1/2 of the estate (Art. 888 Civ. C. Phil.) distributed as follows: C — P20,000; D — P20,000; G — P10,000; H — P10,000 (Arts. 979, 980, 981 Civ. C. Phil.)
2. To A — P20,000 — a share equal to one legitimate child (Art. 892 Civ. C. Phil.)
3. To J — P10,000 — a share equal to one-half of what a legitimate child gets (Art. 895 Civ. C. Phil.)
4. To K — P8,000 — a share equal to 4/5 of what an acknowledged natural child gets (Art. 895 Civ. C. Phil.)
5. To M and N, in representation of L, P10,000 distributed in proportion of 10:5 since M is legitimate and N an acknowledged natural child — hence to M — P6,666 2/3 and to N — P3,333 1/3; (Arts. 895, 902 Civ. C. Phil.)
6. To P & Q, in representation of O, — P8,000 distributed equally since both are spurious or P4,000 each; (Civ. C. Phil. Art. 895, 902).

The total share of all compulsory heirs amounts to P116,000 leaving there-

fore a vacant portion of P4,000 which shall go to the legitimate children as first in the order of intestate succession (Art. 978 Civ. C. Phil.) — hence the following will get these additional shares: C — P1,133 1/3, D — P1,133 1/3; G — P666 2/3 and H — P666 2/3 — Therefore the legitimate children and those representing them will get a total of: C — P21,133 1/3; D — P21,133 1/3; G — P10,666 2/3; H — P10,666 2/3.

VII.

(a) For what causes of action, if any, does the New Civil Code provide a period of limitation of: (1) Forty days; (2) Six months; (3) Three years; (4) Six years.

(b) A, with full knowledge that B is not the owner of a parcel of land, buys it for a nominal sum from B in 1945 and since then has been in open, actual, continuous and public possession thereof, under claim of title exclusive of any other rights and adverse to all other claimants. C, the real owner of the land, who has left it in 1944 by reason of the war, was able to return to the land only in 1958 and learning of A's possession, files suit. A claims prescription of ten years, because he took possession of the land before the New Civil Code; but C counters that as A entered the land in bad faith, and he had not yet acquired ownership by the time the New Civil Code took effect, the period is 30 years under the New Code. Decide.

(a) 1. Forty days — for Redhibitory action based on faults or defect of animals (Art. 1577 Civ. C. Phil.)

2. Six months — For actions for breach of warranty against hidden defects (Art. 1571 Civ. C. Phil.) and actions in case of sale of land and an area less than that agreed upon is delivered (Arts. 1539, 1542, 1543 Civ. C. Phil.)

3. Three Years — None in the Civil Code.

4. Six Years — Action upon an oral contract and upon a quasi contract (Art. 145 Civ. C. Phil.)

(b) A has acquired the land by acquisitive prescription since the case is governed by the Code of Civil Procedure inasmuch as the prescription was already running before the effectivity of the New Civil Code (Art. 1116 Civ. C. Phil.; Osorio vs. Tan Jongko, 51 O.G. 6221) Under the Code of Civil Procedure, the good or bad faith of A was immaterial and the period was ten years (Sec. 41, Act 190).

VIII.

(a) What contracts are required, by the Statute of Frauds, to be in writing?

(b) A challenges B to a chess match, loser to pay the winner P1,000.00. B accepts the challenge. A wins the match but B refuses to pay. May A sue B for the P1,000.00? Why?

(a) They are the following:

1. An agreement that by its terms is not to be performed within a year from the making thereof;
2. A special promise to answer for the debt, default, or miscarriage of another;
3. An agreement made in consideration of marriage, other than a mutual promise to marry;

4. An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods, chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

5. An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

6. A representation as to the credit of a third person.

(b) Yes A may sue B for the P1,000.00 unless there is an ordinance in the place where the bet was made prohibiting betting therein, since chess is a game of skill and not of chance (Arts. 2020 and 2013 Civ. C. Phil.) However, if the amount of the bet is excessive under the circumstances, the court shall reduce the loss to the proper sum (Art. 2020 Civ. C. Phil.)

IX.

(a) A lends to B, his son-in-law, and C, who is B's partner, both binding themselves jointly and severally to pay the debt to A. Upon due date, they fail to pay. A forgives B his share of the debt but sues C for one half of the debt. C pleads that the remission of B's share extinguishes the entire obligation as it is a joint and several obligation. Decide, giving reasons.

(b) Does a creditor have the rights to refuse payment if it is offered in the form of a bank check? Explain. What about a certified check? Explain.

(a) Although the obligation of B & C is joint and several, the entire obligation is not extinguished by the remission of the share of B but only up to that amount, which however equally benefits C (Inchausti & Co. vs. Yulo, 34 Phil. 978). Hence, C will only be liable for one-half of the debt, since there being no agreement as to their share it is presumed equal.

(b) The creditor has a right to refuse payment if it is offered in the form of a bank check because a bank check is not legal tender (Belisario vs. Natividad, 60 Phil. 156; CFI of Tarlac et al vs. Court of Appeals et, G.R. No. 4191, April 30, 1952) and payment of debts in money must be made in legal tender (Art. 1249 Civ. C. Phil.; R.A. 529).

The creditor may likewise refuse payment in the form of a certified check because like an ordinary check it is not legal tender. (Cuaycong vs. Rius, 47 O.G. 6125).

X.

(a) What causes of action may not be the subject of compromise?

(b) Name five instances wherein a litigant may be allowed to recover attorney's fees and expenses of litigation.

(c) X borrowed money from Y to finance the construction of a building, mortgaging his land and the building to be constructed thereon to secure the loan. After the building was erected, X failed to pay the laborers who worked on the building, and some suppliers who furnished materials

thereon. Upon foreclosure of the mortgage, who would have a preferential right to the proceeds of the sale — the laborers, the suppliers or the mortgage? Explain.

(a) No compromise upon the following questions shall be valid:

1. The civil status of persons;
2. The validity of a marriage or a legal separation;
3. Any ground for legal separation;
4. Future support;
5. The jurisdiction of courts;
6. Future legitime. (Art. 1814 Civ. C. Phil.)

(b) In the following five cases attorney's fees and expenses of litigation may be recovered:

1. When exemplary damages are awarded;
2. When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
3. In criminal cases of malicious prosecution against the plaintiff.
4. In case of a clearly unfounded civil action or proceeding against plaintiff;
5. Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. (Art. 2208 Civ. C. Phil.)

(c) The claim of the laborers and the suppliers is what is known as a refectionary credit and is a lien (Art. 2242 Nos. 3 and 4, Civ. C. Phil.) which however is limited to the building only and does not include the land on which the building stands (Lopez vs. Orosa, G.R.L.-10817, Feb. 28, 1958). Hence in the proceeds of the sale for the land — the Mortgagee shall be preferred since the laborers and suppliers have no lien thereon. However, as to the proceeds for the sale of the building, the Laborers, suppliers and the Mortgagee shall share pro rata after the payment of the taxes upon the building inasmuch as the Mortgagee likewise has a lien on said building (Art. 2242 No. 5 Civ. C. Phil.) Under the new Civil Code if there are two or more credits with respect to the same specific real property, they shall be satisfied pro rata, after the payment of the taxes upon the immovable property. (Art. 2249 Civ. C. Phil.)

POLITICAL LAW

(Answered by Prof. Jesus Y. Perez)

I.

- (a) What are the requisites of a good written constitution?
- (b) What are the different safeguards provided in the Constitution for the independence of the Supreme Court?

(a) A good written constitution must be broad, brief, and definite; broad, because it must outline an organization of the government for the whole State; brief, because its nature requires that only its great outlines should

be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves; definite, because any vagueness which may result in the opposing interpretation of its provisions may cause incalculable harm and chaos to the nation. (Malcolm, Phil. Const. Law, pp. 9-15).

(b) 1. The members of the Supreme Court hold office during good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office (Sec. 9, Article VII of the Constitution);

2. The salary of members of the Supreme Court shall not be diminished during their continuance in office (Ibid); and

3. The members of the Supreme Court can only be removed from office by impeachment (Sec. 1, Article IX of the Constitution).

II.

(a) Define or explain: Parliamentary Government, Federal Government; Corporative State.

(b) What are the advantages and the disadvantages of the presidential type of government.

(a) Parliamentary government is "that system in which the real executive — the cabinet or ministry — is immediately and legally responsible to the legislature or one branch of it (usually the more popular chamber) for its legislative and administrative acts and immediately or politically responsible to the electorate; while the titular or nominal executive — the Chief of State — occupies a position of irresponsibility." (Garner, Introduction to Political Science, p. 180.)

A Federal government is a form of government in which governmental powers are by the common sovereign distributed between a central government and the local governments, each being supreme within its own sphere, (Arruego, Principles of Political Science, pp. 135-136).

A corporative states is one in which absolute authority is centered in one corporate body consisting of representatives of major industries, as employer-employee groups, each of which controls all phases of its own field of endeavor; as the Italian corporative state in which governmental authority was carried on by such bodies.

(b) The advantages of the presidential type of government are: (1) the executive is assumed of a fixed term for the accomplishment of his tasks and (2) the separation of powers is a safeguard against despotism. Its disadvantages are: (1) an executive with a fixed tenure may become irresponsible knowing that he cannot be removed before his term expires and (2) conflicts between the legislative and executive branches of the government may be detrimental to public interests. (Garner, Political Science and Government, p. 316).

III.

Discuss the advantages of electing senators by district as previously done under the Jones Law; and state how this may be done in the coming elections.

There is hardly any advantage in the district system of electing senators under the Jones Law over the by far better system of electing senators at

large. But for it might be said that under the district system only men with real personal political following can be elected to the Senate, that is, those who are politically powerful in their own right in their respective districts. The second possible advantage is that the senator would take better care of his district, both in the allocation of pork barrel appropriations and in dispensing patronage. The attention of the Senator would be concentrated in a small geographical unit, that is, his district.

The change of electing the Senators from at large to the former system of electing them by district may be done only by amending our Constitution so as to provide therein for the division of the Philippines into various Senatorial districts and electing the Senators by district.

IV.

- (a) Define public office, giving its essential elements.
 (b) State how or when the authority of an officer terminates.

(a) A public office is the right, authority and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is vested with some sovereign function of government to be exercised by him for the benefit of the public (Mechem, Public Officers, p. 1).

Elements of public office:

1. It must be created by law or by ordinance authorized by law;
2. It must possess some sovereign functions of government to be exercised for public interest;
3. The function must be defined, expressly or impliedly by law;
4. The function must be exercised by an officer directly under that of a superior officer, unless they are functions conferred by the law upon inferior officers, who by law, are under the control of a superior; and
5. It must have some permanency or continuity, not temporary or occasional (State v. Kawkins, 257 441; 53 A.L.R. 583, Martin, Political Law Review, p. 284).

- (b) 1. By expiration of term of office;
 2. By reaching the age limit;
 3. By resignation;
 4. By acceptance of an incompatible office;
 5. By abandonment;
 6. By removal;
 7. By impeachment;
 8. By death;
 9. By abolition of the office; and
 10. By recall (Martin, Political Law Review, p. 290).

V.

- (a) Distinguish "de facto" from "de jure" officer.
 (b) Define police power, and who may exercise it in the Philippines? Give its basis, as well as its limitations.

(a) An officer de facto may be ousted in a direct proceeding against him while an officer de jure cannot be so removed. A de jure officer has the lawful right or title, without the possession of the office, while a de facto

officer has the possession and performs the duties under color of right without being qualified in law to act (22 R.C.L. 589; Tayko v. Capistrano, 53 Phil. 866; Martin, Political Law Review, p. 287).

(b) Police power is the power to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and propriety (Barbier v. Connelly, 113 U.S. 27). Those who may exercise it are Congress and by delegation, the President, municipal councils and provincial boards with the approval of the Department Head (Martin, Political Law Review, p. 108).

The police power is based on the Latin maxim "*salus populi suprema est lex*", — the welfare of the people is the supreme law and "*sic utere tuo ut alienum non laedas*" — so use your own as not to injure another's property. Its source is the social compact by which an individual must part with some rights and privileges for the common good (Martin, Political Law Review, p. 104).

The limitations of police power are first, that the interests of the public generally, as distinguished from those of a particular class, requires such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals (U.S. v. Toribio, 15 Phil. 85, 87; Martin, Political Law Review p. 104).

VI.

- (a) Name and discuss briefly the three (3) inherent powers of sovereignty in every government.
 (b) Is it legal for the Senate to commit a private individual, for contempt of that body, to prison even beyond the period of its legislative session? Why?

(a) The three inherent powers of sovereignty in every government are police power, taxation and eminent domain. These powers exist independently of the fundamental law as a necessary attribute of sovereignty; they underlie the constitution and rest upon necessity because there can be no effective government without them; they constitute the three methods by which the state interferes with private property rights; they are enduring and indestructible as the state itself; each presupposes an equivalent compensation, by the police power through the maintenance of healthy economic standard of society, by taxation in the form of protection and benefits from the government, and by eminent domain through the receipt of the market value of the property taken (Malcolm, Phil. Const. Law, pp. 336-337, Martin, Political Law Review, Pre-bar reviewer, p. 102). Police power is the power to prescribe regulations to promote the health, peace, morals education, good order or safety or general welfare of the people (Primicias v. Francisco, 18 O.G. 3280). Taxation is a term ordinarily used to refer to the sovereign power to raise revenue for any public purpose (Cooley on Taxation, 4th Ed. 72). Taxes are the enforced proportional contribution from persons, property and privilege levied by the state by virtue of sovereignty (Cooley 4th Ed. p. 72). The right of eminent domain is the right of the nation or state or of those to whom the power has been lawfully delegated, to condemn private property to public use, and to appropriate the ownership and possession of such property for such use, upon paying the owner a due compensation to be ascertained according to law (Black Constitutional Law, p. 468).

(b) Yes; it is legal for the Senate to commit to prison for contempt of that body a private individual beyond the period of its legislative session because the Senate is a continuing body and does not cease to exist upon the periodical dissolution of the Congress as only one-third of its membership is replaced every two years and since the very reason for vesting legislative bodies with the power to punish for contempt is self-preservation, it is but logical to say that the power of self-preservation is co-existent with the life that is to be preserved (*Arnault v. Nazareno*, 46 O.G. 3100).

VII.

- (a) **What is the nature of the jurisdiction of the Court of Tax Appeals and what cases are appealable to it?**
 (b) **Distinguish taxes from license fees.**

(a) The nature of the jurisdiction of the Court of Tax Appeals is appellate (Sec. 7, R.A. No. 1125). Such appellate jurisdiction of the Court of Tax Appeals extends to:

Under Section 7, Republic Act No. 1125 —

1. Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relations thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

2. Decisions of the Commissioner of Customs in case involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matter arising under the Customs Law or other law or part of law administered by the Bureau of Customs; and

3. Decisions of the provincial or city Board of Assessment Appeals in cases involving the assessment and taxation of real property or other matters arising under the Assessment Law including rules and regulations relative thereto.

Under Section 2402, Republic Act No. 1937—

1. Rulings of the Commissioner of Customs in any matter brought before him upon protest, or his actions or rulings in any case of seizure.

(b) Taxes are imposed for revenue purposes while licenses are for regulation; taxes are more onerous and comprehensive than license fees; taxes, except for lawful considerations, cannot be surrendered by the state; license fees may be surrendered with or without consideration. (*Martin*, Political Law Review, p. 108).

VIII.

- (a) **"A", after filing his certificate of candidacy with the Commission on Elections, did not hold meetings or distribute sufficient posters to apprise the electorate of his candidacy. Acting on these facts, the Commission on Elections concluded that "A"'s certificate of candidacy was filed in bad faith and consequently cancelled the same. Decide with reasons whether or not the Commission on Elections acted properly.**
 (b) **State five grounds upon which an unsuccessful candidate for municipal mayor may protest the election of his opponent.**

(a) The Commission on Elections did not act properly. "Good faith is always to be presumed. Failure to hold campaign meetings or to distri-

bute posters may be caused by a desire not to stoop to the usual forms of winning votes, and this may have been impelled by the highest principles of ethics and the desire to give the electorate freedom of choice without resort to the common system of campaigning". The Commission on Elections therefore acted with abuse of discretion in concluding that, because "A" has refused to follow the common and ordinary form of campaigning, his candidacy has been attended by bad faith (*Reyts v. Commissioner of Elections, et al.*, G.R. No. L-13069). Moreover, sections 36 and 37 of the Revised Election Code give the Commission on Elections no discretion to give or not to give due course to certificates of candidacy. It is the ministerial duty of the Commission to receive such certificates and there would be no use in receiving the certificates of candidacy if they were not to be given due course. Lastly, the power of decision of the Commission is limited to purely 'administrative questions' (Art. X, Sec. 2, Const. of the Phil.). Since the Commission does not even have the power to decide matters involving the right to vote, how could it therefore, assert the greater and more far-reaching authority to determine who among those possessing the qualifications prescribed by the Constitution or the law, who have complied with the procedural requirements relative to the filing of certificates of candidacy — should be allowed to enjoy the full benefits intended by law therefor? (*Abcede v. Imperial, et al.*, G.R. No. L-13001; *Reyes v. Commission on Elections, et al.*, supra).

(b) 1. That the protestee did not possess the qualifications for the office;

2. That votes were illegally or improperly counted for the protestee and if a recount is made, he would not get a plurality;

3. That the protestee has spent in his campaign more than the salary for one year corresponding to the office for which he is a candidate;

4. That the protestee has solicited or received contributions in connection with his campaign from public utility corporations or from foreigners; and

5. That he has spent to induce voters to vote or withhold his vote or to vote for or against any candidate, or has given free transportation, food or drinks during a public meeting or during registration or voting days or has electioneered in the polling places (*Martin*, Political Law Review, p. 338).

IX.

- (a) **A filed suit to recover damages from the provincial government for the death of his son caused by negligence of a regular chauffeur of said government. The accident occurred while the chauffeur was driving the government car at the highway construction. May the province be held liable? Does the doctrine of respondeat superior apply? Reasons.**
 (b) **Describe briefly the procedure in the creation of a new municipality?**

(a) The province is not liable for damages for the act of its driver because it is a settled rule that the government is not liable for the acts of its negligent employee while the latter is engaged in the performance of governmental duties as distinguished from corporate or proprietary or business functions and the construction or maintenance of roads in which the truck and driver worked at the time of the accident are admittedly governmental activities (*Palafox v. Province of Ilocos Norte*, G.R. No. L-10659). The provincial government acted merely as the agent of the State in the exercise of the governmental function of constructing and maintaining roads and governmental affairs do not lose their governmental character by being dele-

gated to public municipal corporations (*Mendoza v. de Leon*, 33 Phil. 508, 511).

The doctrine of *respondet superior* has no application to the instant case because the government does not undertake to guarantee to any person the fidelity of the officers or agent whom it employs, since that would involve it in all its operations in endless embarrassments, difficulties and losses, which would be subversive of the public interest (*Mendoza v. de Leon*, supra; *U.S. v. Kirkpatrick*, 9 Wheat., 720; 6 L. ed., 199).

(b) A new municipality may be created either by an act of the Congress or by the President, through an Executive Order, under Section 68 of the Revised Administrative Code. The creation of a new municipality is, however, generally effected by means of an executive order of the President. In the creation of a new municipality through an Executive Order, the following procedure is usually followed:

The inhabitants of the barrio that desire to form a new municipality file a petition, through the Provincial Board, setting forth the advantages of becoming a separate municipality and the disadvantages of its present status as a barrio. The petition must state the following:

1. Name of the proposed political division.
2. Recommendation of the Provincial Board.
3. Description of the boundary lines which shall separate the proposed political division from its mother political division.
4. Description of the existing means of communication between the proposed political division and the poblacion of the mother municipality;
5. Statement of the Provincial Treasurer showing the probable annual income and expenditures.
6. Statement of the present population of the proposed municipality by the District Health Officer.
7. Statement of the Division Superintendent of Schools as to the probable effect of the proposed organization upon the school activities in the mother municipality and in the proposed municipality.

The petition should be forwarded to the Office of the President who, upon careful study, may promulgate an Executive Order creating the barrio into a regular municipality (*Martin*, *Political Law Review*, p. 220).

X.

In the general elections held in 1951, A and B were elected mayor and vice-mayor, respectively, of a certain municipality. A discharged the duties and functions of mayor continuously until May 22, 1954, when he received a letter from the Office of the President suspending him from office and directing B to act as Mayor. Thereupon, B acted as mayor and the Provincial Fiscal investigated the charges referred to in the letter. After holding hearings in connection with the charges, the provincial fiscal submitted his report thereon. Since then the matter has been pending in the Office of the President for decision. Inasmuch as the same did not appear to be forthcoming, and the term of A, who remained suspended, was about to expire, he instituted an action for quo warranto, upon the ground that B was illegally holding the office of mayor and he is the one entitled thereto. Decide, with reasons, whether the action will prosper.

A's action will prosper because the power of the President over the removal and suspension of local elective officials is merely appellate and, hence, Mayor A's suspension from office by the President is illegal. The original

jurisdiction to suspend and remove municipal officials under the procedure laid down in Secs. 2188 and 2191 of the Revised Administrative Code is vested in the provincial Board. The President may conduct investigations of municipal officials only as a means to ascertain whether the provincial governor or the provincial board should take action leading to removal or suspension of said officials (*Querubin v. Castro*, G.R. No. L-9779). Quo warranto proceedings may therefore be availed of by Mayor A to oust Vice-Mayor B from acting as mayor and to regain his office because the latter unlawfully holds the position of Acting Mayor and Mayor A is entitled to said office (Rule 68, Secs. 1 and 6, Rules of Court).

LAND REGISTRATION AND MORTGAGES

(Answered by Prof. Antonio H. Noblejas)

I.

- (a) What lands are, and what are not registerable under Act 496?
- (b) When does title to a piece of land registered under Act 496 become indefeasible?
- (c) Who are, and who are not protected by the indefeasibility of said title?

(a) The following lands are registerable by private persons under Act 496:

1. **Private lands** — i.e. those lands which have been segregated from the general mass of the public domain by any form of grant by the State, and which are in the possession of the original grantees or their successors-in-interests. The title to the property may be in the form of a gratuitous sale, adjustment title, special grant, or possessory information title converted into a record of ownership.

2. **Public Agricultural land** to which claimants have acquired imperfect or incomplete title within the contemplation of Sec. 48 of Commonwealth Act 141. Most of the lands now occupied or possessed by the people throughout the Philippines are not covered by titles issued by the Government. Hence, they have not been segregated from the public domain and are considered as public lands. However, the present possessors or claimants thereof may have imperfect or incomplete title thereto which justifies the registration of said lands in their names, provided that they fulfill all the conditions prescribed by Secs. 47 and 48 of Commonwealth Act 141 (Sec. 48-b whereof, as amended by R.A. No. 1942 approved June 22, 1947 and Republic Act 2061 approved June 13, 1953).

3. **Disposable public lands** to which no one has acquired imperfect title. —The major portion of the agricultural public lands in the Philippines may be disposed of by homestead, administrative legalization (free patent), sale, donation, exchange and lease.

It will be observed, that the Constitution provides that all natural resources, except agricultural lands, are inalienable (Art. XIII, Sec. 1, Consti-

tution). Hence, only agricultural lands may now be registered by private persons under Act 496. It must be noted though, that residential lots are classified under agricultural lands (*Krivenko vs. Register of Deeds of Manila*), and hence are likewise registerable. It may also be noted, further, that mining patents issued under the former mining laws and registered in the registry of property in accordance with Sec. 122 of Act 496 remain under the operation of the Torrens system, while mineral lands which had been located but not yet patented before the Constitution took effect on Nov. 15, 1935 are considered segregated from the public domain, and the holders thereof are entitled to the issuance of patents and consequent Torrens titles therefor upon compliance with the terms and conditions prescribed by law (*Gold Creek Mining Corp. vs. Rodriguez et al.*, 66 Phil. 259; *Salacot Mining Co. vs. Rodriguez et al.*, 67 Phil. 97).

Under Act 496, the following lands are not registrable by any private person: —

1. Those devoted to general public use — e.g. public roads, plazas, canals, streets, rivers, banks and shores;
2. Those devoted to public service — e.g. towns, walls, and fortresses.
3. Public Forests
4. Mineral Lands
5. Those reserved by the government for public or quasi-public purposes.

(b) After the expiration of one year from the date the decree of registration of lands under the Land Registration Act is issued the title to such lands is settled and unimpeachable. The same may not be impeached in another proceeding for registration of lands previously registered under the Land Registration Act. (*Sy-Juco et al. vs. Francisco*, 53 O.G. 7, p. 2186, April 15, 1957.)

(c) The protection of indefeasibility accorded by the law to registered owners does not extend to a subsequent transferee who takes the certificate of title with notice of the flaw of his title and of his predecessor. Such protection is given only in favor of purchasers for value and in good faith. (*Vicley Barrios vs. Dolor*, 2 Phil. 44; *Mojica vs. Fernandez*, 9 Phil. 403; *Consunji vs. Tizon*, 15 Phil. 81.)

• II.

- (a) In what stages of a registration proceedings are the following issued:
 (1) order of general default, (2) decree of registration, and (3) title?
 (b) Against whom may a writ of possession issue?

(a) 1. An order of default may be issued or entered by the Court at the time of the initial hearing when no person appears and files opposition within the period prescribed in the notice of initial hearing.

2. The decree of registration is issued by the Commissioner of Land Registration upon receipt of and pursuant to an Order of the Court which is issued after the judgment or decision has become final.

3. The title (original certificate of title) is registered, and the owner's duplicate thereof issued to the registered owner, by the Register of Deeds of the province where the land is located upon his receipt of the Decree issued by the Land Registration Commission.

(b) A writ of possession may be issued not only against the person who has been defeated in a registration case but also against anyone unlawfully and adversely occupying the land or any portion thereof during the land registration proceedings up to the issuance of the final decree. It is the

duty of the registration court to issue writ when asked for by the successful claimant. (*Demorar vs. Ibañez and Poras* 5, O.G. p. 2872, June, 1955).

III.

- (a) State the grounds for review of a decree of registration. May absence and minority constitute grounds for review?
 (b) What property may be the object of real estate mortgage?

(a) There is only one ground for review of a decree of registration under Sec. 38 of Act 496, and that is actual fraud. However, the following conditions must exist to justify the petition for review:

1. That a land belonging to a person has been registered in the name of another or that an interest of a person in a land belonging to an applicant for registration has been omitted in the application;
2. That the registration has been procured through actual fraud, or that the omission in the application of the interest of a third person in the property is intentional;
3. That the petitioner is the owner of said property or interest therein;
4. That the property has not been transferred to an innocent purchaser for value;
5. That the action is filed within one year from the issuance and entry of the decree of registration; and
6. That the actual fraud must be perpetrated or utilized in the procurement of the decree and not thereafter.

Absence and minority do not constitute actual fraud and cannot be grounds for review of the decree (*Valmonte vs. Villaroman*, 52 Phil. 221).

(b) The following may be the subject matter of real estate mortgage:

1. Real property or immovables, and
2. Alienable real rights in accordance with the laws imposed upon immovables. E.g. Usufruct, surface right, and the right of redemption.

IV.

X, for value and in good faith, bought a piece of land. Thereafter, he presented and filed with the Register of Deeds the notarial deed of sale, together with the owner's duplicates certificate of title and paid the corresponding fees after which the Registrar entered in the entry book called daybook the necessary annotations required by law. Question: Is the entry in the daybook sufficient registration to afford X the full protection of the law? Why?

Yes, Sec. 56 of the Land Registration Act says that deeds relating to registered land shall upon payment of the filing fee, be entered in the entry book also called daybook in some sections — with notations of the year, month, day, hour, and minute of their reception and that "they shall be regarded as registered from the moment so noted". And applying this provision in the case of *Levin vs. Bass et al.* G.R. Nos. L-4340 to 4346, decided on May 28, 1952, the Supreme Court held that "an innocent purchaser for value of registered land becomes the registered owner and in contemplation of law the holder of a certificate thereof the moment he present and filed a duly notarized and lawful deed of sale and the same is entered on the daybook and at the same time he surrenders or presents the owner's duplicate certificate of title to the property sold and pays the full amount of registration fees, because what remains to be done lies not within his power to perform. (*Potenciano et al. v. Dineros*, G.R. No. L-7614, May 31, 1955.)

V.

On Nov. 6, 1951, A executed in favor of X a chattel mortgage over his house erected on a lot then owned by him. The deed was duly registered in the Chattel Mortgage Register on Dec. 6, 1951. On Oct. 18, 1952, A became the registered owner of both the house and lot, and on October 24, 1952, he executed a real estate mortgage over his said house and lot in favor of Y and same was annotated on his (A's) title. On Dec. 26, 1952, because of non-payment of A's debt to X, the sheriff sold A's house to X. On Oct. 29, 1953, Y filed suit to foreclose the real estate mortgage covering the house and lot. He obtained judgment in his favor and the mortgaged properties were sold to him at the execution sale. Question: Who has a better right to the house, X or Y? Give reasons for your answer.

Y in this case has the better right, because the chattel mortgage constituted on the house, which is the basis of X's claim, was null and void, its subject being a house which by nature is a real property and not a movable property. Hence, the sale made by the sheriff to X was likewise a nullity, since the chattel mortgage which was the basis of the extrajudicial foreclosure sale has been declared null and void.

According to the Supreme Court, "a building certainly cannot be divested of its character of a realty by the fact that the land on which it is constructed belongs to another. To hold it the other way, the possibility is not remote that it would result in confusion, for to cloak the building with an uncertain status made dependent on the ownership of the land would create a situation where a permanent fixture changes its nature or character as the ownership of the land changes hands. In the case at bar, as personal properties could only be the subject of a chattel mortgage (Sec. 1, Act 3952) and as obviously the structure in question is not one, the execution of the chattel mortgage covering said building is clearly invalid and a nullity. While it is true that said document was correspondingly registered in the Chattel Mortgage Register of Rizal, this act produced no effect whatsoever for where the interest conveyed is in the nature of a real property, the registration of the document in the registry of chattels is merely a futile act. Thus, the registration of the chattel mortgage of a building of strong materials produce no effect as far as the building is concerned (*Leung Yee vs. Strong Machinery Co.*, 37 Phil. 644). Nor can we give any consideration to the contention of the surety that it has acquired ownership over the property in question by reason of the sale conducted by the Provincial Sheriff of Rizal, for as this Court has aptly pronounced:

"A mortgage creditor who purchases real properties at an extrajudicial foreclosure sale thereof by virtue of a chattel mortgage constituted in his favor, which mortgage has been declared null and void with respect to said real properties, acquires no right there to by virtue of said sale". (*De la Riva vs. Ah Kee*, 60 Phil. 899).

Wherefore, Y in this case has the right to foreclose not only the land but also the building erected thereon. This decision, however, is without prejudice to any right that X may have against A on account of the mortgage of said building that A executed in favor of X. (*Associated Insurance & Surety Company, Inc., vs. Isabel Iya, et al.*, G.R. No. L-10838, May 30, 1958.)

VI.

- (a) May a torrens title be amended or corrected and if so, state the procedure to be followed and the grounds that may be invoked for such amendment or correction,
- (b) May land already decreed in an ordinary registration be again the subject of adjudication in a subsequent cadastral proceeding? Explain your answer.

(a) Yes, a Torrens title may be amended or corrected by specific provision of Section 112 of Act No. 496. Under said Section 112, a Torrens title may be amended or corrected only by an order of the court, after a petition for the purpose has been filed by the registered owner or other person in interest and entitled in the original case in which the decree of registration was entered. The grounds that may be invoked for such amendment or correction are:

1. That an error, omission, or mistake was made in entering a certificate or any memorandum thereon;
2. That the name or status of a person mentioned in the certificate has been changed;
3. That a registered interest is terminated;
4. That new rights have arisen which do not appear on the certificate; or
5. Upon any other reasonable ground.

(b) Land already decreed in an ordinary registration proceeding may again be included in a cadastral proceeding, but in such a case, the land cannot be adjudicated in the name of a person other than the registered owner in the ordinary registration because the jurisdiction of the Cadastral Court is limited to ordering the necessary corrections of technical errors in the description of the land, so that the principle of indefeasibility of title remains unimpeached.

VII.

- (a) From what time may the question as to whether a land acquired by way of homestead is conjugal or exclusive property of one of the spouses, be determined?
- (b) Who may apply for a "free patent"?

(a) The questions as to whether a land acquired by way of homestead is conjugal or exclusive property of only one of the spouses, may be determined, not from the time of the issuance of the patent, but from the time of fulfillment of the requirements of the Public Land Law for the acquisition of such right to the patent.

(b) Any natural born citizen of the Philippines who is not the owner of more than twenty-four hectares and who since July 4, 1945, or prior thereto, has continuously occupied and cultivated, whether by himself or by his predecessors-in-interest, or who shall have paid the real estate tax thereon, is entitled to apply for a free patent, or gratuitous grant of said land, provided that it is not more than twenty-four hectares in area. So that mere payment of taxes for the period above stated is sufficient even if the land has not been cultivated provided, of course that it is not occupied by other persons.

VIII.

A owned a piece of land which he entrusted to B. Without A's knowledge or consent, B registered the land in his name. Thereafter, the land passed thru the hands of several innocent purchasers for value until Jan. 1, 1940,

when it finally came to the possession of the defendants (children of B) by purchase. When plaintiffs (children of A) learned of the fraudulent registration of the land of their father by B, they immediately filed suit praying for the reconveyance to them of the land in question, claiming as cause of action, breach of trust and fraudulent registration. Granting that there was really breach of trust committed by the father of the defendants in registering the land, should the suit prosper? Why? Is there any other equitable remedy that may be resorted to by the plaintiffs and if so, explain it.

The suit may or may not prosper, depending upon whether the defendants are innocent purchasers. If they were not aware of the breach of trust committed by their father at the time of the perfection of the sale, then they are considered innocent purchasers and for value and therefore, the suit will not prosper because they get the protection of the law on indefeasibility of title. Otherwise, the suit will prosper, because the protection of indefeasibility accorded by the law to registered owners does not extend to a subsequent transferee who takes a certificate of title with notice of the flaw of his title and that of his predecessor. Such a protection is given only in favor of purchasers for value and in good faith.

The plaintiffs may file a personal action for recovery of damages from B. If, however, B is already dead or insolvent, they may recover from the assurance fund, provided they are not guilty of negligence or breach of trust. One of those entitled to recover damages from the assurance fund are those who may have been wrongfully deprived of their land or any interest therein thru the bringing of the land under the provisions of the Land Registration Act, provided that no negligence can be attributable to them or that the losses or damages were not occasioned by a breach of trust.

IX.

In 1933, an alien bought a piece of registered lot and immediately built his residence thereon. He, however, has not registered the deed of sale in his favor up to the present.

- (a) May he now register the deed of sale and obtain a title in his name, notwithstanding the Constitutional prohibition against aliens acquiring public agricultural lands? Reasons for your answer.
- (b) Does lease to aliens of private lands in the Philippines come under the said prohibition?

(a) Yes, the alien may still register the deed of sale and the improvement if he so desires, and obtain a new certificate of title in his name. The sale of the lot was perfected in 1933 or before the adoption of the Constitution which prohibits aliens from acquiring private agricultural lands in the Philippines. The alien therefore, has acquired a vested right to the lot before the Constitution took effect, which vested right he cannot now be deprived of without due process of law and which the same Constitution recognizes and respects. Besides, registration does not confer ownership — it merely confirms ownership.

(b) No, lease to alien of private lands in the Philippines does not come under the Constitutional prohibition. Even if under the new Civil Code aliens cannot lease private lands since they are specifically disqualified from buying, yet, the Constitution does not prohibit the lease of public lands, much less private lands, to aliens. Certainly, Congress cannot be above the Constitution.

X.

State the legal effect and the reason therefor, of each of the following stipulations in a real estate mortgage:

1. Prohibition against alienation or subsequent mortgage of the property without prior consent of the mortgagee.
 2. Pactum Commissorium.
 3. Tipo or upset price.
- (a) Suppose you are the Register of Deeds and a deed of sale covering a mortgage property containing such a prohibition, is presented to you for record, will you register the deed of sale, there being no document evidencing consent of the mortgagee? Why?

1. A prohibition against alienation or subsequent mortgage of the property without prior consent of the mortgagee is valid. What is prohibited by the Civil Code and therefore void, is absolute prohibition to alienate the immovable mortgaged. In this case, there is no prohibition regarding alienation or subsequent mortgage. What is being required is the consent merely of the first mortgagee. In effect, there is only a limitation on the right of the mortgagor, and therefore, not violative of the provision of the Civil Code.

The reason for this prohibition is to preserve to the owner one of the legal attributes of ownership.

2. A stipulation constituting a pactum commissorium which gives the creditor the right to appropriate for himself the property mortgaged upon failure to pay the loan, is null and void, being contrary to the provisions of the Civil Code to the effect that the creditor cannot appropriate the things given by way of mortgage or dispose of them and any stipulation to the contrary is null and void. Even with such a clause, the sale must take place and the property awarded to the highest bidder. The stipulation is ineffectual and may be disregarded.

3. A stipulation in a contract fixing a tipo or upset price at which the property will be sold at the foreclosure proceeding is null and void, because it is in violation of Section 3, Rule 70 of the Rules of Court, which provides that property mortgaged shall be sold to the highest bidder. Even if the deed contains such stipulation, the sale shall take place and the property sold to the highest bidder. (Bank of the P.I. vs. Yulo, 31 Phil. 472.) It has been observed, however, that the cases wherein a tipo has been prohibited or the provision therefor rendered null and void, are cases wherein the ultimate buyer or highest bidder was not the mortgagee. In these cases such provision for tipo is obviously ineffectual as being contrary to law. On the other hand, if the highest bidder and ultimate buyer at public auction happens to be the mortgagee himself with whom the mortgagor had made the contract of mortgage with a stipulation as to tipo or upset price, it would seem that the stipulation herein should be followed and upheld since the mortgagor and mortgagee, as private parties to their own contract, should be bound by the provisions of their private contract.

(a) If I were the Register of Deeds, I would deny the registration of the deed of sale, but require the registrant to present the written consent of the mortgagee. If such consent is withheld, then the stipulation becomes absolute and therefore null and void, and may be disregarded as if it has never been placed at all in the instrument.